

**GENERAL AGREEMENT ON
TARIFFS AND TRADE**

CONTRACTING PARTIES
Forty-Second Session

SUMMARY RECORD OF THE FIRST MEETING

Held at the International Conference Centre, Geneva
on Monday, 24 November 1986, at 3 p.m.

Chairman: Mr. K. Chiba (Japan)

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Chairman's opening address

The CHAIRMAN made an opening address (GATT/1401).

Adoption of the Agenda

The CHAIRMAN noted that the Provisional Agenda was contained in L/6062.

The Agenda was adopted.

Order of Business

The CHAIRMAN drew attention to the Proposed Order of Business in W.42/2. This document gave an outline of organization of work during the Session, beginning with the presentation of reports of the Council and of the Committee on Trade and Development. The Chairman himself would draw attention to the reports of the Committees and Councils charged with implementing the MTN Agreements and Arrangements.

The CONTRACTING PARTIES approved the Order of Business as proposed in W.42/2.

Presentation of reports

The CHAIRMAN presented the Council's report (L/6091 and Add.1) on behalf of the Council Chairman, Mr. Park (Korea), who was no longer stationed in Geneva. He said that the variety and importance of the trade policy issues considered by the Council over the past year testified to that body's rôle as the hub of the GATT system. The main focus of individual contracting parties' efforts during 1986 had been the preparation for and follow-up to the Ministerial meeting at Punta del Este, and the negotiations over the future of the Multifibre Arrangement.¹ However, the scores of issues covered by the Council's report showed once again the Council's function as the place where the CONTRACTING PARTIES dealt, on a continuing basis, with regular and unexpected trade policy issues involving the operation of the General Agreement.

The Council's work over the past year could be put into distinct categories. The first type of work was comprised by the regular items of business which came before it, year in and year out, such as reports on regional agreements, requests for waivers and reports under waivers already in force.

The second category consisted of more ad hoc business, as individual contracting parties brought to the Council matters affecting their trade interests, such as restrictions which had been imposed on their exports to other contracting parties, or, as sometimes also happened, announcements that they themselves had taken trade-liberalizing measures.

A third type of work concerned trade disputes between contracting parties which had invoked Articles XXII and XXIII. He drew particular attention to this area because it was in the use of, and respect or lack of respect for, GATT's unique dispute settlement mechanism that one could see clear evidence of whether the GATT multilateral trading system was effective or not. It was encouraging to see from the list of disputes in this report that, in some cases, contracting parties had used both the spirit and letter of the procedures to settle their differences satisfactorily. In some other cases, the procedures were still underway, while in still others it had so far not been possible to achieve satisfactory results. This was an area where all contracting parties faced the challenge of respecting the mechanism as a whole and recognizing the responsibility that its use entailed.

¹Arrangement Regarding International Trade in Textiles (BISD 21S/3), as extended by the 1977 Protocol (BISD 24S/5), the 1981 Protocol (BISD 28S/3), and the 1986 Protocol (L/6030).

A fourth category of work concerned the growing membership of GATT and the requests for accession or provisional accession which the Council had dealt with during the past year.

In addition to those four categories, there was a fifth and special type of Council business which derived from the twice-yearly meetings held to review developments in the trading system and (since 1983) to monitor paragraph 7(i) of the 1982 Ministerial Declaration. At the most recent of these special meetings, the Council had discussed its future rôle with respect to surveillance in the light of the decision concerning the surveillance of standstill and rollback commitments embodied in the Punta del Este Declaration.

Mr. Tettamanti (Argentina) presented the report of the Committee on Trade and Development (L/6092) on behalf of Mr. Lopez-Noguerol (Argentina), Chairman of the Committee, who was no longer stationed in Geneva. He noted that in the course of 1986, the Committee had pursued its work in relation to both its regular and continuing responsibilities under its terms of reference, and in relation to the relevant aspects of ongoing activities in GATT before and after the Ministerial meeting at Punta del Este.

In carrying out a review of recent developments in international trade, as part of its regular activities, the Committee had had an exchange of views on the serious difficulties that continued to confront the international trade of developing countries, including the problems of commodity prices, the terms of trade of countries mainly dependent on commodity exports and the continuing decline of the share of developing countries in the value of world exports and imports. In this connection, the Committee had taken note of the continuing concern over the erosion of the GATT system through the drift away from the principle of non-discrimination, the increasing reliance on quantitative restrictions and other non-tariff measures, the growing use of market sharing arrangements, and the spread of subsidization, with policies in the areas of agriculture, textiles and clothing providing examples of the more important and firmly entrenched exceptions from GATT rules. The hope had been widely shared that the success of the Uruguay Round would reverse these negative trends and strengthen the integrity of the GATT system.

The Committee had reviewed developments in implementing the provisions of Part IV and the operation of the Enabling Clause (BISD 26S/203), and had taken note of the modifications effected by a number of developed contracting parties in the coverage and application of tariff preferences in their respective GSP schemes. While the improvements had been welcomed, concerns had also been expressed over some aspects of the operation of certain arrangements.

In the expectation that continuing its work program would provide an input for decisions to be taken in the context of the Uruguay Round, the Committee had carried out preliminary discussions on possible modalities for negotiations on further trade liberalization in the tropical products sector.

The Committee had also had an exchange of views on its possible rôle during the Uruguay Round. There had been a general consensus that in addition to continuing its regular activities, the Committee should have an important rôle in keeping under review the progress of the negotiations from the point of view of developing countries without, however, interfering in the negotiating process itself.

The Committee had taken note of a Secretariat paper on the strengthening and reorientation of the technical cooperation activities of the GATT Secretariat to meet the needs of developing countries in the Uruguay Round. The suggestions contained in the paper had been welcomed, and the need for assistance to further the effective participation of developing countries in the negotiations had been stressed.

The CHAIRMAN then drew attention to the following reports of the Committees and Councils charged with implementation of the MTN Agreements and Arrangements: Committee on Trade in Civil Aircraft (L/6056), Committee on Technical Barriers to Trade (L/6061), Committee on Import Licensing (L/6064), International Dairy Products Council (L/6068), International Meat Council (L/6072), Committee on Government Procurement (L/6074), Committee on Anti-Dumping Practices (L/6081), Committee on Subsidies and Countervailing Measures (L/6089) and Committee on Customs Valuation (L/6094).

Report of the Council (L/6091 and Add.1)

The CHAIRMAN referred to the report of the Council of Representatives on its work since the Forty-First Session. He proposed that the CONTRACTING PARTIES consider the report point by point, and stressed that it was not intended to reflect detailed positions of delegations, since the Council Minutes contained such information and remained the record of the Council's work.

Point 1. Work Program resulting from the 1982 Ministerial Meeting

Sub-point 1(b). Quantitative Restrictions and Other Non-Tariff Measures

The CHAIRMAN noted that the Council had forwarded the Group's report (L/6073) and the statements made at the 5-6 November Council meeting to the CONTRACTING PARTIES for appropriate action. The report contained recommendations in paragraphs 28, 49 and 51. He pointed out that a

decision was needed at the present Session in respect of paragraph 51, namely the question of the Group's future rôle, which it had referred to the CONTRACTING PARTIES.

Mr. Huslid (Norway), Chairman of the Group on Quantitative Restrictions and Other Non-Tariff Measures, referred to paragraph 50 of the Group's report, concerning possible options for the Group's future. Those options would have to be considered in the light of the Uruguay Round and of the mechanisms set up to conduct the negotiations. While a decision on the Group's future could be deferred to the Council, it might be preferable for a decision to be taken by the CONTRACTING PARTIES at the present Session.

Mr. Jara (Chile) said his delegation would prefer that a decision on the Group's future be taken at the present Session.

The CHAIRMAN said that informal consultations would be needed on this matter, and that the CONTRACTING PARTIES would revert to it with a view to taking a decision in respect of the Group's future rôle.¹

Sub-point 1(c). Export of Domestically Prohibited Goods

Mr. Nagaratnam (Sri Lanka) recalled that the problem of exports of domestically prohibited goods had first been raised in 1982 and had been included in the 1982 Ministerial Work Program. The resulting notification procedures had enabled useful information to be collected, particularly on the laws and regulations covering such goods. No formal machinery had been set up to deal with the matter, but informal consultations had been carried on from time to time among interested parties. However, the fact remained that no action as such had emerged to deal with trade in these products. His delegation considered that a further decision by the CONTRACTING PARTIES was timely, because the 1982 Ministerial decision (BISD 29S/19) and the CONTRACTING PARTIES' Decision of 1984 (L/5759) needed to be reinforced in the light of recent developments. First, it was necessary to establish the track on which further work in this area should continue. Although this subject had been referred to in the Chairman's statement before adoption of the 1986 Ministerial Declaration (MIN.DEC/Chair), Sri Lanka reiterated that such work should be undertaken under GATT's regular work program. Second, it was necessary to carry work further in this area with a view to establishing guidelines for action and thereby defining GATT's rôle. This would ensure the avoidance of any duplication with activities of other international organizations. GATT's rôle lay in dealing with the trade aspects of this problem. He submitted his delegation's proposal in W.42/3 for consideration and adoption by the CONTRACTING PARTIES.

¹See SR.42/4, page 4.

Mr. Samuels (United States), Mr. Jaramillo (Colombia) and Mr. Karim (Bangladesh) supported adoption of Sri Lanka's proposal.

Mr. Samuels (United States) said his country had already notified to GATT the US laws and regulations on this subject, and believed it would be useful for other contracting parties to do likewise. His delegation shared the view that GATT efforts in this area should not duplicate or be inconsistent with what was being done in other international bodies including the WHO, OECD, FAO, UNEP and IRPTC. The United States would approach the consultations with that concern in mind and trusted that other delegations would do the same.

Mr. Jaramillo (Colombia) said his delegation believed that a decision by the CONTRACTING PARTIES on Sri Lanka's proposal would be an important step in pursuance of the 1982 Ministerial Declaration. Colombia had already made the relevant notifications.

Mr. Luyten (European Communities) said that his delegation viewed positively the concerns expressed by Sri Lanka in W.42/3. The Community and several of its member States had made the relevant notifications. However, the Community was concerned that GATT should remain effective and efficient; this meant that the relevant information supplied to GATT should be as operational as possible. His authorities were concerned that all the laws and regulations would constitute a huge amount of documentation which would then have to be translated into the other two official GATT languages. Consultations on this subject should address the problem of the volume of documentation. One should examine, for example, whether such documentation was already available in other international organizations; if so, a large amount of translation and printing could be avoided.

The CHAIRMAN proposed that the CONTRACTING PARTIES agree to the proposal in W.42/3.

Mr. Luyten (European Communities) confirmed his delegation's reservation concerning the feasibility of Sri Lanka's proposal.

The CONTRACTING PARTIES agreed to the proposal in W.42/3.

Sub-point 1(d). Textiles and Clothing

The CHAIRMAN noted that at its meeting on 5 November the Council had forwarded the report of the Chairman of the Working Party on Textiles and Clothing (L/6071) to the CONTRACTING PARTIES for consideration and any appropriate action.

Mr. Cartland (Hong Kong) said his delegation considered that the Working Party had exhausted the possibilities under its 1982 Ministerial mandate (BISD 29S/20). That mandate had now been superseded by the 1986 Ministerial Declaration which set a new basis for work on textiles and clothing aimed at the eventual integration of that sector into GATT on the basis of strengthened GATT rules and disciplines. It was therefore appropriate that the Working Party should now terminate its work, and for the CONTRACTING PARTIES to note that work on this area in the Uruguay Round would continue under appropriate organizational arrangements made by the Group of Negotiations on Goods. Hong Kong considered, in view of the high degree of specificity in this sector and of the fact that it had been the subject of an institutionalized derogation from GATT for a number of years, that work should continue on a separate basis at an appropriate time.

Mr. Shukla (India) said the fact that the Working Party's work had terminated should not be interpreted to mean that the important task which had been entrusted to it needed no further efforts. Ministers at Punta del Este had made a unanimous commitment in the 1986 Declaration to work out modalities for integrating this sector of trade with the GATT rules. India looked forward to an early start to this work in the new round in a separate, specially identified structure for that purpose.

The CONTRACTING PARTIES adopted the Working Party's report (L/6071) and agreed that the Working Party should terminate its work in the light of the considerations referred to in the report and of the statements made at the present Session.

Point 3. Consultative Group of Eighteen

The Director-General, Chairman of the Consultative Group of Eighteen, noted that the Group had not met during 1986 as a result of the heavy pressure of work on delegations and on high officials in capitals, deriving from the preparations for the Ministerial meeting at Punta del Este. For this reason, he had not submitted a written report on the Group's activities in 1986 to the Council. It was the responsibility of the CONTRACTING PARTIES to decide upon the Group's membership for 1987. He recalled that at their Forty-First Session, the CONTRACTING PARTIES had agreed that the Group's composition for 1986 should be decided by the Council at its first meeting in the new year. In February 1986, the Council had agreed on a new and enlarged composition for the Group comprising 22 full members and 9 alternate members. Some delegations had made the point that the enlarged composition should not necessarily be regarded as permanent. He had informed the Council on 5 November that in view of the fact that the Group had not met since its new composition had been agreed, he intended to propose to the CONTRACTING PARTIES that the composition agreed for 1986 should be kept unchanged in 1987. However, consultations had taken place since then among some of the

"constituencies" represented in the Group. As a result of those consultations he had been informed that, subject to the agreement of the CONTRACTING PARTIES, the seats occupied by Colombia and Switzerland in 1986 would be occupied by Chile and Austria respectively in 1987. On this basis, he proposed that the Group's composition for 1987 be as follows: Argentina, Australia, Austria, Brazil, Canada, Chile, Côte d'Ivoire, European Economic Community, Egypt, Hungary, India, Indonesia, Jamaica, Japan, Korea, Nigeria, Norway, Pakistan, Philippines, Turkey, United States and Zaïre. The alternate members would be: Czechoslovakia, New Zealand, Nicaragua, Romania, Sweden, Switzerland, Tanzania, Uruguay and Yugoslavia.

The CONTRACTING PARTIES approved the Group's membership for 1987 as proposed by the Director-General.

Point 5. Tariff Matters

Sub-point 5(b). Harmonized System

Mr. Viganó (Argentina) recalled that his delegation's proposal in C/W/509 had been discussed at the Council meeting on 21 November, at which a number of developing countries had supported it. The decision to implement the Harmonized System had resulted in difficulties for certain contracting parties, particularly developing countries, regarding the 90-day deadline set out for Article XXVIII negotiations. The draft decision annexed to C/W/509 aimed at finding a flexible and pragmatic solution to the problems faced by some developing countries in this area. At that meeting, some delegations had said they wanted more time to study Argentina's proposal, given that the matter had been raised under "Other Business"; however, it was urgent to find a practical solution to this problem and Argentina would appreciate a decision being taken at the present Session. He emphasized that the draft decision did not seek to modify the time limits fixed in 1980 for renegotiations under Article XXVIII (C/113). The proposal aimed at covering exceptional problems arising from introduction of the Harmonized System.

Mr. El-Gowhari (Egypt) supported adoption of the draft decision in the Annex to C/W/509. He said that the logic behind C/W/509 referred to the fact that the procedures of Article XXVIII had not been designed to handle such voluminous and complex examinations of schedules as had resulted from introduction of the Harmonized System. Although the procedural aspects of transposition to the Harmonized System had been discussed in the Committee on Tariff Concessions, the degree of complexity of this issue had not been adequately foreseen. Egypt was grateful to those developed contracting parties which had supplied his delegation with bilateral analyses of their schedules. His delegation urged other contracting parties which had not provided such analyses to do so. Egypt considered that every effort should be made to observe the 1 January 1988 deadline set for introduction of Harmonized System, but at the same time believed that there was a need for flexibility in this respect.

Mr. Martins (Brazil) said that as his delegation had stated at the Council meeting on 21 November, Brazil attached great importance to this subject. His delegation supported Argentina's statement and adoption of the draft decision in the Annex to C/W/509.

Mrs. Garcia (Cuba) supported Argentina's statement and adoption of the draft decision, which she noted had been proposed by a number of developing countries including her own. She said that Cuba had faced serious difficulties in analysing the voluminous information which it had received concerning transposition of tariff items to the Harmonized System.

Mr. de la Pena (Mexico) said that his country was among those which had faced technical problems in analysing information concerning transposition from one tariff line to another, and had followed with attention the work carried out on this matter by the Customs Cooperation Council. He thanked the Secretariat for making available the relevant information on computer tapes which would help delegations to identify items for which their countries could be considered as initial or substantial suppliers, and to overcome obstacles which they faced in analysing this type of information. Mexico considered it was necessary to give these countries a longer period of time compared to that foreseen for this type of renegotiation; consequently, his delegation supported adoption of the draft decision.

Mrs. Pereira (Nicaragua) said that as a co-sponsor of document C/W/509, her country supported Argentina's statement and adoption of the draft decision.

Mr. Koentarso (Indonesia), speaking on behalf of the ASEAN contracting parties, said they saw the difficulty of the negotiations related to introduction of the Harmonized System, and wanted those negotiations to be carried out with agreed flexibility and understanding.

Mr. Yavuzalp (Turkey) said his delegation had experienced the same difficulties referred to by previous speakers; his country therefore supported the draft decision.

Mr. Munir Ahmad (Pakistan) supported adoption of the draft decision.

Mr. Samuels (United States) said that while his delegation understood the concerns which had been expressed about having to examine voluminous Harmonized System documentation, it did not believe that the proposed decision in C/W/509 was necessary. The United States considered that adoption of such a decision would needlessly delay progress on what was already a tight timetable for concluding negotiations and implementing the System by 1 January 1988. There was already enough flexibility to handle the problems without a formal decision by the CONTRACTING PARTIES. This issue had been foreseen in the Committee on

Tariff Concessions where, acting on a suggestion from the United States (TAR/W/61), it had been agreed that for purposes of the 90-day deadline under Article XXVIII, it would be enough for a contracting party to submit a letter reserving its rights on any particular concession, with specific claims to follow as soon as possible thereafter. This was in fact what most countries, developed and developing, had done. The United States suggested that this matter be taken up at the meeting of the Committee on Tariff Concessions in December.

Mr. Satherstrom (Canada) said his delegation appreciated the difficulties which all contracting parties faced in reviewing the documentation relating to introduction of the Harmonized System. However, Canada did not think it necessary to modify the procedures under Article XXVIII. His delegation was prepared to help other delegations in reviewing the transposition of Canada's Schedule and recognized that the 90-day deadline was already being applied flexibly. His delegation believed that it could accommodate on a bilateral basis the concerns of all contracting parties on this matter.

Mr. Jaramillo (Colombia) supported Argentina's statement and adoption of the draft decision.

Mr. Luyten (European Communities) said his delegation understood the difficulties which had arisen and he confirmed the Community's readiness to be flexible in dealing with the problems involved. His delegation continued to be ready to supply technical assistance to developing contracting parties which required such help. However, the deadline for implementing the Harmonized System on 1 January 1988 had to be respected; for practical reasons there was a time beyond which consultations could not be extended.

Mr. Lacarte (Uruguay) noted that his delegation was a co-sponsor of the statement and draft decision in C/W/509. The points made by the United States and the European Communities on this subject were reasonable, but his delegation still maintained the reasons for presenting the draft decision and asked that it be adopted.

Mrs. Kljajić (Yugoslavia) supported the statements by Argentina and other developing countries on this subject, and noted that Yugoslavia was one of the co-sponsors of C/W/509. She reiterated the concerns which her delegation had expressed in the Committee on Tariff Concessions about the difficulties which her country had faced in bilateral discussions with certain developed countries on the transposition of items into the Harmonized System. Yugoslavia was making every effort to transmit its tariff schedule to other contracting parties on time, but was facing severe difficulties in doing so. Her delegation considered that the serious problems faced by many developing countries on this subject should be fully taken into account.

Mr. Anell (Sweden) said his delegation understood the problems raised by developing countries and believed that every effort should be made to help countries facing such difficulties. However, it was not for

procedural reasons that Sweden was concerned about a blank prolongation of the 90-day deadline. His country needed to conclude the relevant negotiations in order to be able to submit legislation to Parliament by March 1987 at the latest. If this were not done, Sweden would not be able to meet the 1 January 1988 deadline for introduction of the Harmonized System, and this would have consequences for the Uruguay Round negotiations. His delegation shared the view that the 90-day deadline was already being interpreted and applied flexibly.

Mr. Reisch (Austria) said his delegation shared the views expressed by Sweden.

Mr. Martins (Brazil) proposed that delegations consult on this issue so as to be able to take a decision on the proposal in C/W/509 at the present Session.

Mr. Augé (Customs Cooperation Council), speaking as an observer, said that the CCC and its 98 member countries, almost all of which were contracting parties, attached particular importance to the Harmonized System entering into force on 1 January 1988. He emphasized that the System resulted from 12 years of detailed work and that it already had 47 signatories, six of which had signed without any reserve of ratification. The System should have entered into force on 1 January 1987, but that date had had to be postponed by one year because it had not been possible to conclude the relevant Article XXVIII tariff negotiations. The CCC firmly hoped that the satisfactory evolution of such negotiations in 1987 would enable the system to take effect on 1 January 1988, the date for which all the legal and technical arrangements had been set.

Mr. Williams (Nigeria) said he considered that developed countries should appreciate the problems faced by developing countries in this matter and that the CONTRACTING PARTIES should therefore adopt the draft decision.

The CHAIRMAN suggested that the CONTRACTING PARTIES revert to this item later in the present Session and that meanwhile the interested delegations would consult informally on the problem.

The CONTRACTING PARTIES so agreed.¹

Point 11. United States - Measures affecting Cuban sugar exports

Mr. Lechuga (Cuba) recalled that at the 22 May Council meeting, his delegation had requested circulation of a communication (L/5980) in which it was stated that in December 1985 the US President had approved the new Food Security Act of 1985, which specified that he would not grant any cane or beet sugar import quota unless the country concerned certified

¹ See SR.42/4, page 5.

that it did not import sugar produced in Cuba for re-export to the United States. At the Council meeting, his delegation had said that these restrictions not only affected Cuba but were a threat to other contracting parties which traded with Cuba, and were part and parcel of the policy pursued by the United States in respect of Cuba, in violation of GATT rules and principles and also in violation of normal relations and international co-operation. Although the United States had stated that the measure was directed simply and solely against Cuba and not against any other country, one week after the Punta del Este meeting in September, the United States Senate had approved an amendment to the Drug Control Act which, he said, specified that any country importing sugar from Cuba would lose its quota. He said that the sponsor of the amendment had stated during the Senate debate that a certain country should be penalized for importing sugar from Cuba. He offered to make available to contracting parties a photocopy of the US Congressional Record of 27 September 1986 showing what had been said concerning the country in question. He said that the understanding reached with the sponsor of the amendment carried with it the threat that measures could be taken in 1987 to prevent trade in Cuban sugar with third countries. He said that certain countries had supported Cuba's position at the May Council meeting since they realized that the measure was prejudicial to GATT's principles and objectives. Cuba believed that the situation had become worse because the measure was directed not only against Cuba but against other countries which, in exercise of their sovereign rights, traded with Cuba.

Mr. Samuels (United States) recalled that his delegation had said at the May Council meeting that the US measures in no way breached GATT obligations, but reflected the fact, long recognized by contracting parties, that the United States had maintained an embargo on bilateral trade with Cuba since 1962 for national security reasons. His authorities would continue to ensure that the embargo was not circumvented.

Mr. Vargas (Nicaragua) reaffirmed the statement made by his delegation on this matter at the May Council meeting. The US measures affected third countries as well as Cuba, and also violated the 1982 and 1986 Ministerial Declarations.

Mr. Tettamanti (Argentina) reaffirmed the statement made by his delegation on this matter at the May Council meeting, and expressed his country's opposition to the taking of coercive measures for political purposes, whatever the reason for those measures.

Mr. Martins (Brazil) reaffirmed the statement which his delegation had made on this matter at the May Council meeting.

Mr. Lacarte (Uruguay) reaffirmed the statement which his delegation had made on this matter at the May Council meeting.

Mr. Jung (Czechoslovakia) expressed his delegation's concern over the US measures, which harmed the legitimate trade interests of not only

Cuba but also third countries, and undermined the international trading system.

Mr. Mariátegui (Peru) reaffirmed the statement which his delegation had made on this matter at the May Council meeting.

Mr. Kaczurba (Poland) noted that his country had been affected by unilateral discriminatory measures, and he reaffirmed the statement which his delegation had made on this matter at the May Council meeting.

Mr. Furulyás (Hungary) reaffirmed the statement which his delegation had made on this matter at the May Council meeting, and expressed his country's opposition to trade measures taken for political purposes.

Point 15. European Economic Community - Discriminatory restrictions maintained by Portugal and Spain on imports from Japan

Mr. Kobayashi (Japan) said that his delegation would continue to examine the question of discriminatory restrictions maintained by Portugal and Spain on imports from Japan, within the competent working party in GATT, which he understood was to meet soon.

Point 16. Recourse to Articles XXII and XXIII

Sub-point 16(c)(iii). Japan - Restrictions on imports of herring, pollock and surimi

Mr. Samuels (United States) expressed his delegation's regret that a panel on Japanese import restrictions on herring, pollock and surimi had not been established at the Council meeting on 21 November. The United States expected that this would be done at the next Council meeting. In the meantime, his delegation would continue to hope for a mutually satisfactory solution.

Mr. Endo (Japan) said that his delegation, too, hoped for a satisfactory solution through consultations.

Sub-point 16(c)(iv). Japan - Customs duties, taxes and labelling practices on imported wines and alcoholic beverages

The CHAIRMAN said that informal consultations were being held on this matter and suggested that the CONTRACTING PARTIES revert to it later in the Session.

This was agreed.¹

¹ See SR.42/4, page 5.

Sub-point 16(e)(i). United States - Trade measures affecting Nicaragua

The CHAIRMAN said that as agreed at the Council meeting on 5-6 November 1986, he had held informal discussions with the parties to this dispute and with other delegations that had taken an active part in the Council's deliberations at that meeting. As he had informed the Council at its meeting on 21 November, those discussions unfortunately had not led to a positive result, and he had indicated to the Council that he would so inform the CONTRACTING PARTIES when this sub-point in the Council's report was taken up at the Session.

Mrs. Pereira (Nicaragua), recalled the history of this dispute within GATT and said that the unnecessary and harmful delay in setting up a panel on this matter had been due essentially to US opposition and to the refusal by the United States to accept terms of reference consistent with GATT dispute settlement procedures and practices. The general principle involved was important, being a question of determining whether the obstinacy of the contracting party applying a measure could impede the proper functioning of one of the essential mechanisms of the General Agreement, could prevent a panel from making an objective evaluation and from giving its opinion on the applicability of the General Agreement and the GATT consistency of a measure, and could limit the rights conferred by the General Agreement on each contracting party. As many representatives had stated at the Council meeting on 5-6 November, restricting a panel's examination of measures taken under the General Agreement eroded confidence in GATT rules and weakened the multilateral trading system. In the Ministerial Declaration launching the Uruguay Round, each contracting party had undertaken, with immediate effect, "...not to take any trade restrictive or distorting measure inconsistent with the provisions of the General Agreement...", and "...not to take any trade restrictive or distorting measure in the legitimate exercise of its GATT rights, that would go beyond that which is necessary to remedy specific situations, as provided for in the General Agreement...". She said the discussion at the 5-6 November Council meeting, when the Panel's report had been presented, was illustrative and informative, and that the United States could have drawn wise conclusions from it regarding the repercussions that prolongation of the embargo could have on the new round of negotiations. Unfortunately, that had not been the case, and only a few days after the Council meeting, the US Government had extended the embargo for a further six months. The Panel report had found, without ambiguity, that the US measure ran counter to basic aims of GATT, inter alia to foster non-discriminatory and open trade policies, to further the development of the less-developed contracting parties, and to reduce uncertainty in trade relations. Almost all the representatives that had spoken at the Council meeting had supported that finding and had expressed concern over the negative effects of such measures. Several had stressed that the embargo was damaging to GATT in one of its primary functions, that of protecting the interests of the weaker trading partners.

She said that the Punta del Este Declaration was a signal designed to restore confidence in the GATT system, and, in the words of the Director-General, the immediate impact of this signal would depend a great deal on the effectiveness with which the commitments on standstill and rollback were implemented. The US decision to continue the embargo endangered the development and quality of, as well as confidence in, the negotiations.

She referred to a resolution recently adopted by the United Nations General Assembly entitled "Trade embargo against Nicaragua", against which only one negative vote had been cast. Paragraph 1 of the resolution invited all States members of the international community to continue to promote concrete forms of co-operation in Central America, in particular to help reduce the negative effects of the trade embargo against Nicaragua; paragraph 2 deplored the continuation of the embargo which was contrary to General Assembly Resolution 40/188 and the judgement of the International Court of Justice. The measures proposed by the resolution were identical to those which Nicaragua had proposed for consideration by the CONTRACTING PARTIES. She quoted from statements made at the 5-6 November Council meeting to the effect that the General Agreement was the emanation, in the trade area, of the general principle of international law, and that any action which clearly undermined the United Nations Charter had to be seen as a gross abuse of the rights conferred by the General Agreement. For this reason, it was the inescapable duty of contracting parties to ensure that the discretionary right in Article XXI was not invoked arbitrarily.

She said that the discussions in the Council left no doubt about contracting parties' views on this matter, and that there was a GATT consensus on the appeal to the United States to withdraw its embargo and on the proposal that contracting parties be allowed to provide assistance to mitigate the effects of the embargo on Nicaragua. The Panel's report constituted a milestone in GATT's history, and Nicaragua hoped that it would contribute to a satisfactory solution of this dispute and thereby help to strengthen the GATT system and consolidate and strengthen the rights of each contracting party.

Mr. Samuels (United States) said that his delegation had no intention of engaging in a further weakening of the GATT by using the Session as a forum for debate on a political matter that could not be resolved by a trade organization. It had always been understood, even in the drafting of the ITO Charter, that "essentially political matters" belonged in other fora. The US position had been fully and clearly stated in the Council, and had been set forth in full in the Council minutes (C/M/196, 204, 205) to which he referred contracting parties and to which he added three points. First, any claim that the Panel's findings were contrary to international law was groundless. The Panel had examined Nicaragua's complaint in the light of GATT provisions; its conclusions were appropriate and legally correct on that point. The

Panel had made no conclusions inconsistent with international law, nor had it expressed an opinion on the views of the International Court of Justice (ICJ). That was not in the Panel's purview, nor was it appropriate for the CONTRACTING PARTIES to do so. Likewise, the ICJ had not purported to opine on or to apply the GATT. Second, it had to be recognized that the Panel's terms of reference were the appropriate ones, and that by virtue of Article XXI itself, and its drafting history, the CONTRACTING PARTIES could do nothing more than the Panel had done. The GATT could not judge or examine the security situation that had motivated the United States to invoke Article XXI. Third, Nicaragua had made recommendations to the CONTRACTING PARTIES that were not recommendations from the Panel. Indeed, the Panel had considered the same proposals during its deliberations and had properly declined to accept them. Consequently, Nicaragua had chosen to cast aside the Panel's work and to take matters into its own hands. The US choice was to accept the sound conclusions of the Panel and to adopt its report. His delegation believed a number of contracting parties were prepared to do so as well.

Mr. Lechuga (Cuba) noted that the representative of the United States had said that GATT was not the proper forum to discuss this problem; however, the measure in question was purely political and violated the General Agreement. He asked what would be the proper forum in which to discuss this matter, if not GATT, the ICJ or the UN General Assembly. While it was unlikely that the United States would lift the embargo, contracting parties should spare no effort in taking measures to compensate Nicaragua for the damage it had suffered from the US measure.

Mr. Tettamanti (Argentina) reiterated his delegation's position as stated at the 5-6 November Council meeting. Argentina considered the US measure to be use of an economic measure for political purposes. The Panel's report showed that the Panel had remained within its terms of reference, and that some solution should be sought within GATT, namely, removal of the embargo and implementation of measures to help Nicaragua. His delegation felt that as long as Article XXI referred to political aspects of a trade measure, GATT could not be excluded from considering such problems, since the organization did not operate in a vacuum.

Mr. Lacarte (Uruguay) said that his delegation's position on this matter, as stated at the Council meeting on 5-6 November, had not changed.

Mr. Williams (Trinidad and Tobago) said that his delegation maintained the view expressed in the Council that the US measure was contrary to the letter and spirit of the GATT. The Panel's restrictive terms of reference had prevented it from reaching the sort of conclusion it could otherwise have reached. His delegation continued to support the plea to lift the embargo and the ICJ's finding regarding the US claim of national security justification.

Mr. Tonwe (Nigeria) recalled that at the 5-6 November Council meeting, his delegation had stated clearly that it did not think Article XXI prescribed unlimited scope for the United States to take the measures it had taken. He reiterated that it was not proper for the United States to claim a security threat from Nicaragua. Nigeria regretted that the Panel's restrictive terms of reference had prevented it from reaching an objective decision on this matter. In Nigeria's view, there had been a wide consensus in the Council that great damage had been done to Nicaragua's economy, and wide acknowledgement that this had to be halted. Contracting parties had an abiding responsibility to ensure the credibility of the General Agreement. He reiterated that contracting parties should take the necessary measures to mitigate the impact of the embargo on Nicaragua, without awaiting a recommendation by the Council to do so. This matter should remain on the agenda of the CONTRACTING PARTIES until a solution could be found. It was crucial, during the new round, that contracting parties show prudence in the measures they took, in order to ensure the credibility of the General Agreement.

Ms. Kljajić (Yugoslavia) reaffirmed her delegation's position as stated at the 5-6 November Council meeting. Yugoslavia supported Nicaragua's request that the embargo be lifted and that contracting parties find a way to compensate that country for the trade damage caused by the US measure.

Mr. Kisiri (Tanzania) reaffirmed his delegation's position as stated at the 5-6 November Council meeting.

Mr. Jung (Czechoslovakia) confirmed his delegation's position as stated at the 5-6 November Council meeting. Czechoslovakia maintained the view that the US measure had not been justified under Article XXI and that the embargo had deprived Nicaragua of benefits under the General Agreement. His delegation therefore believed that the CONTRACTING PARTIES should help resolve this case by recommending the lifting of the embargo and by taking measures to mitigate its effects.

Mr. de la Pena (Mexico) reiterated his delegation's statement at the 5-6 November Council meeting, and in particular Mexico's inclusion among those contracting parties appealing to the United States to remove the embargo as soon as possible. In Mexico's view, a solution to this question would benefit contracting parties in general and GATT in particular.

Mr. Endo (Japan) recalled that at the 5-6 November Council meeting, his delegation had pointed out that no contracting party should be denied the right to raise problems or submit complaints to the CONTRACTING PARTIES, but that at the same time, the roots of this particular dispute were too deep to be addressed in the context of the General Agreement. Therefore, the solution to this matter should be sought within the wider political framework.

Mr. Jaramillo (Colombia) reiterated his delegation's statement, made at the 5-6 November Council meeting, that the United States should remove the embargo with a view to normalizing trade relations. His delegation believed that this would be a very positive step for contracting parties' work in GATT.

Mr. Kaczurba (Poland) said that his delegation maintained its view that the measures applied against Nicaragua were inconsistent with objectives of specific provisions of the General Agreement which had been invoked in this case. His delegation was deeply concerned at the failure of the dispute settlement mechanism to solve this problem.

Mr. Furulyas (Hungary) said that Hungary's position on this matter was identical to that on Point 11 of the Council's report.¹

Mr. Martins (Brazil) reiterated his delegation's statement at the 5-6 November Council meeting.

Mr. Mariátegui (Peru) reiterated his delegation's position as stated at the 5-6 November Council meeting and requested that some viable means be found to remove the embargo.

Mr. Randhawa (India) recalled his delegation's views expressed at the 5-6 November Council meeting and supported the view that the United States should revoke its trade embargo against Nicaragua.

Mr. Anell (Sweden) reiterated his delegation's statement at the 5-6 November Council meeting.

Mr. Beesley (Canada) said that this issue raised difficult but important questions, on which there were precedents but few useful guidelines concerning interpretation of Article XXI. Canada's position, as stated in the Council on 5-6 November, had not changed. While Canada differed with the United States on the underlying political questions, it did not welcome a discussion of those issues in GATT. He then noted the following point which, he said, had led to the action presently before the CONTRACTING PARTIES. The Ministerial Declaration of 1982 underlined that when action was taken under Article XXI, all contracting parties affected by such action retained their full GATT rights. The Panel had noted in this case that a suspension of Nicaragua's obligations vis-à-vis the United States could not alter, in Nicaragua's favour, the balance of advantages accruing to the two contracting parties under the General Agreement. Similarly, the Panel had found that a recommendation to authorize Nicaragua to withdraw its concessions in respect of the United States would be meaningless, due to the two-way embargo. The Panel had concluded that, in the circumstances, it could take no decision under

¹ See page 13.

Article XXIII:2 that would re-establish the balance of advantages that had existed before the US embargo. Consequently, the Panel had decided not to propose a ruling on the basic question of whether actions under Article XXI could nullify or impair GATT benefits of the adversely affected contracting party. The Panel had further considered whether it was appropriate for a panel established under Article XXIII to make recommendations on requests for waivers under Article XXV, and had concluded that a recommendation on the waiver proposed by Nicaragua would not be excluded from the Panel's terms of reference; however, the Panel had decided not to make such a recommendation. The Panel had emphasized, however, that Nicaragua had the right to submit a proposal for a waiver directly to the CONTRACTING PARTIES. His delegation was not convinced of the validity of that conclusion, since the waiver process was intended to relieve a country of its obligations, whereas in this case, that process was being sought to impose obligations on a contracting party. Canada was not attempting to dispose of this issue on those grounds but wanted to point out the difficulties inherent in this situation. He said that while it might be necessary for the survival of GATT to maintain Article XXI, Canada was not convinced that GATT would benefit from an unfettered right of any contracting party to invoke Article XXI under any circumstances. Canada had considered the possibility of proposing a working party to examine Article XXI, but had concluded that that procedure would be unproductive and perhaps even counterproductive. In these circumstances, his delegation maintained its position stated in the Council, and would neither oppose nor recommend adoption of the Panel's report.

Mr. Luyten (European Communities) said that his delegation had taken a clear position on this issue in the Council, which had been well described in the Council minutes (C/M/204). He reiterated that it was obviously very difficult to reconcile the interests of a country invoking national security concerns with the interests of the trading system. Perhaps more time might help contracting parties to resolve this problem, and the Community was ready to contribute to any sensible solution.

Mrs. Pereira (Nicaragua) stressed two points in her earlier statement, which she said had been misinterpreted. The first was the question of whether this matter belonged to other fora. Her delegation believed that the drafters of the General Agreement never thought it could be invoked in order to violate the United Nations Charter. If this question really belonged to other fora, then they had already given their findings, and Nicaragua did not believe it possible for the CONTRACTING PARTIES to permit the US embargo to be justified simply through a provision of the General Agreement. The CONTRACTING PARTIES should take into consideration the political fora and the political decisions that had been taken, as had been the case in other matters. The second was the alleged intention of Nicaragua to replace the Panel in its functions. Her delegation's intention was simply to ask the CONTRACTING PARTIES to

assume their responsibilities under the rules of the General Agreement. Unfortunately, Nicaragua would have to insist on its rights, because there was no other alternative, and also because it was convinced that in the long run this would benefit the multilateral trading system and developing countries in particular.

The CHAIRMAN suggested that this matter be referred back to the Council.

The CONTRACTING PARTIES so agreed.

Point 20. Waivers under Article XXV:5

Sub-point 20(a). CARIBCAN - Request by Canada for a waiver under Article XXV:5

The CHAIRMAN said that further time would be needed to complete the Working Party's examination of Canada's request, and suggested that the CONTRACTING PARTIES revert to this matter.

This was agreed.¹

Sub-point 20(c). Pakistan - Renegotiation of schedule

The CHAIRMAN drew attention to the Council's recommendation that the draft decision in Annex I of its report be adopted by the CONTRACTING PARTIES by a vote.

The decision (L/6096) was adopted by 62 votes in favour and none against.

Point 24. China's status as a contracting party

Mr. Qian (China), speaking as an observer, referred to his country's request of 10 July 1986 for resumption of its membership in GATT. That request represented his Government's desire to expand further China's trade relations with other countries under the multilateral trading system, and could be viewed as a natural outcome of China's economic reform and open policy since 1978. China believed that its participation as a contracting party in GATT work would further the objectives of the General Agreement, serving the interests of both China and all contracting parties. Over the past year, China's economic structural

¹ See SR.42/4, page 6.

reform had continued in breadth and depth, and the same was true of the restructuring of its foreign trade system. New regulations had been adopted to improve the investment environment. A customs law had been tabled for examination and approval. Steps were also being taken towards opening the domestic financial market. It was expected that 1986 would see a substantial increase in China's foreign trade. The volume of exports in the first nine months had already amounted to US\$21.4 billion, whereas the volume of imports, far exceeding that of exports, had reached a record high of US\$30.3 billion. He said that developments over the year in China's economic situation and trade policy would undoubtedly contribute to the upcoming negotiations on China's request for the resumption of its GATT membership. Preparatory work for such resumption was currently in full swing in Beijing. The drafting of the memorandum on China's economic system and foreign trade régime, which was expected to be submitted to the CONTRACTING PARTIES by early 1987, was entering its final stage. He said that 1987 would be a very busy year for his delegation, which looked forward to working with all delegations on China's request in the same spirit of cooperation as had been shown at the July 1986 meeting of the Council.

Sub-point 26(a). Consultations on trade with Hungary

Mr. Furulyás (Hungary) said that the report of the Working Party on Trade with Hungary and the discussion on that report in the Council clearly reflected those aspects of the consultations dealing with the discriminatory quantitative restrictions maintained on Hungarian products by the European Economic Community's member States. There had recently been contacts between the Community and Hungary with a view to preparing talks on concluding a bilateral trade agreement. Those contacts had shown signs of a positive approach on the part of the Community, and he reiterated his authorities' readiness to enter into such negotiations. Hungary regarded the conclusion of a bilateral agreement as serving mutual interests, and his country's objectives were known: the agreement should recognize Hungary's GATT rights and should ensure, on that basis and among other things, the implementation by the Community's member States and by the Commission of non-discriminatory treatment for Hungary according to the provisions of the General Agreement. Furthermore, the agreement should offer Hungary's industrial and agricultural products substantially better access to Community markets. He expressed the hope that the negotiations could be launched and pursued on that basis.

Mr. Luyten (European Communities) said he had noted Hungary's statement, and recalled that contracting parties took part in the GATT system on the basis of the provisions of their respective protocols of accession. The Community was, at present, considering entering into bilateral negotiations with Hungary.

Point 29. International Trade Centre

Mr. Rahman (Bangladesh) expressed his country's appreciation for the International Trade Centre's trade promotion activities in developing countries. Bangladesh had benefited from the Centre's technical assistance activities in areas such as development of institutional infrastructure in trade promotion, export market development, export promotion services, and small and medium-sized export enterprises. The Centre's programs for least-developed countries had been of particular relevance to his country, which hoped that these programs would in future be enlarged in order to serve those countries more effectively. Bangladesh requested GATT's continued and increased support for the Centre.

Mr. El-Gowhari (Egypt) expressed his delegation's appreciation and thanks for the Centre's activities. Egypt had worked closely with it on a number of projects and looked forward to continuing to do so.

Mr. Nagaratnam (Sri Lanka) expressed his delegation's appreciation for the Centre's activities in the promotion and development of developing countries' exports. Those activities assumed an added importance at the present time, given the need of most countries for stronger export performance and greater export earnings to revitalize growth and development and to overcome external debt problems. In order that the Centre might respond effectively to the growing needs in developing countries through expanded programs of technical cooperation, Sri Lanka urged the Centre to continue its efforts to increase the Trust Fund contributions and to diversify its sources of finance. His country was grateful for the contributions of the traditional and new donors.

Mr. Lechuga (Cuba) said his country was grateful for the Centre's useful efforts. Cuba would like to see the Centre's activities diversified in order to allow greater opportunities to make use of what it offered.

Sub-point 30(a)(iii). Report of the Committee on Budget, Finance and Administration

The CONTRACTING PARTIES adopted the report of the Committee on Budget, Finance and Administration (L/6055), including the recommendations contained therein, and the Resolution on the expenditure of the CONTRACTING PARTIES in 1987 and the ways and means to meet that expenditure.

Sub-point 30(b). Salaries and pensions of professional and higher category officials

The DIRECTOR-GENERAL said that the Budget Committee's formal discussions on salaries and pensions of the GATT professional staff,

which were recorded in its report, represented no more than the tip of a very large iceberg. The Committee itself had held informal sessions on the subject, and the Chairman of the CONTRACTING PARTIES had established an informal group of a number of delegations. He said that heads of Geneva-based agencies in the UN family had coordinated their positions on salary and pension matters, which had also been reviewed by all agency heads in the Administrative Committee on Coordination. Furthermore, discussions and negotiations had taken place in a multitude of interrelated bodies, including the International Civil Service Commission, the Joint Staff Pension Board and, currently, the Fifth Committee of the UN General Assembly. Unfortunately, none of these intense and time-consuming discussions had led so far to satisfactory solutions for the very serious problems affecting both salaries and pensions of the professional staff.

As regards salaries, exchange rate movements over the previous two years had considerably eroded the take-home pay of professional staff. Since the beginning of September 1986, GATT and the other Geneva agencies had been applying the so-called Remuneration Correction Factor established by the International Civil Service Commission as an interim measure to mitigate fluctuations in take-home pay. This correction factor was essentially a damage-limitation device which established both a floor and ceiling for salaries. As a floor, its initial effect had been modest, but it should help to offset any further depreciation of the dollar. As a ceiling, it unfortunately prevented any significant recovery in a salary scale in Swiss francs whose present level was the same as it had been in 1982, even though the cost of living had since increased by some 10 per cent.

The pension situation was, in his view, even more serious. Year after year, the pension benefits expected by the professional and higher category staff had been eroded. There was no end in sight to this process, which clearly negated the principle of acquired rights. A critical point was now being reached, because the arithmetic of the pension scheme was such that, for some senior or long-serving staff, the proposals currently under discussion in New York might, if adopted, make it wise for those staff to seek early -- and in certain cases, this would mean immediate -- retirement. It appeared, in fact, that the General Assembly was likely to decide during its present session on another reduction in pensionable remuneration in dollars. Such a reduction, on top of the losses implied for most pensioners by the worldwide fall in the dollar's exchange rate, would result in further substantial cuts in pension benefits.

He said that none of this was conducive to healthy management of staff and resources. He was grateful for the constructive spirit with which a number of delegations had approached these problems, and especially for the efforts of the Chairman of the CONTRACTING PARTIES and Mr. Feij (Netherlands) to find solutions to them. He hoped that such solutions would be found.

The CHAIRMAN recalled that the Council had taken note on 22 May and 15 July 1986 (C/M/198 and C/M/201) of the statements made by the Director-General and representatives about salaries and pensions of professional and higher category officials. He informed the CONTRACTING PARTIES that he had asked Mr. Feij to chair an informal group, composed of eight persons from selected delegations acting in a personal capacity, to study these matters and give the Chairman of the CONTRACTING PARTIES advice on them. The group was nearing completion of its work on the salaries problem caused by the way in which the Post Adjustment System had responded to exchange rate fluctuations between the US dollar and the Swiss franc. The informal group would start discussing the pension problem following the present Session of CONTRACTING PARTIES, and was expected to submit its report to the Chairman of the CONTRACTING PARTIES in the near future. He hoped that the CONTRACTING PARTIES would pay due attention to these problems so that the staff could continue to devote themselves to their work in a satisfactory environment.

Sub-point 30(c)(ii). Procedures for future appointment of the Director-General

The CHAIRMAN recalled that the Council had agreed on 15 May 1986 (C/M/197) that detailed rules and procedures be examined for the appointment to the office of Director-General in the future and for the renewal of such appointment, that consultations be initiated for this purpose, and that the decision on the new rules and procedures be reached by the November 1986 Session of the CONTRACTING PARTIES. As envisaged in that decision by the Council, he had carried out a series of consultations with contracting parties, which had been facilitated by draft texts proposed by Brazil. While these consultations had shown broad consensus on a large number of points, there were some points on which further discussion was necessary. He expected to be able to put before the CONTRACTING PARTIES the text of an understanding on this matter before the close of the Session.¹

The meeting adjourned at 6.30 p.m.

¹ See SR.42/4, page 8.