GENERAL AGREEMENT ON

TARIFFS AND TRADE

RESTRICTED

C/M/218
19 April 1988

Limited Distribution

COUNCIL
22 March 1988

MINUTES OF MEETING

Held in the Centre William Rappard
on 22 March 1988

Chairman: Mr. A. H. Jamal (Tanzania)

Subjects discussed:

The Director-General informed the Council of the death of Mr. Jacques Nusbaumer, Director, Group of Negotiations on Services Division, and said that a memorial ceremony would be held on 29 March in the Council room.

Representatives then rose and the Council paid tribute to the memory of Mr. Nusbaumer by observing a brief period of silence.

1. Trade in Textiles
- Report of the Textiles Committee (COM.TEX/55)
- Report of the Textiles Surveillance Body (COM.TEX/SB/1316 and Add.1)

The Director-General, Chairman of the Textiles Committee, recalled that in March 1987, the Council had adopted the report of the Textiles Committee containing the first review of the operation of the Multifibre Arrangement as extended by the 1986 Protocol (MFA IV), and had taken note of the report of the Textiles Surveillance Body. The Council now had before it the Committee's report (COM.TEX/55) on its second review of the operation of the Arrangement as extended by the 1986 Protocol. In conducting its review, the Committee had had before it: (a) a survey by the Secretariat on demand, production and trade in textiles and clothing (COM.TEX/W/198) as well as textiles and clothing statistics (COM.TEX/197);

(b) a compilation of original submissions by participating members to the Sub-Committee on Adjustment (COM.TEX/54); and (c) a report by the Textiles Surveillance Body (COM.TEX/SB/1316 and Add.1) which was also before the Council. The latter report was the first one submitted to the Committee under MFA IV, covering the period from August 1986 through September 1987. At its meeting in December 1987, the Committee had also agreed upon the membership of the TSB for 1988. He added that the previous week, the Committee had accepted a request from Costa Rica to become a party to the Arrangement. Thus, as of 22 March 1987 there were 39 signatories to the Arrangement, counting the European Economic Community as one.

The Council took note of the statement and of the report of the Textiles Surveillance Body (COM.TEX/SB/1316 and Add.1) and adopted the report of the Textiles Committee (COM.TEX/55).

2. Canada - Import, distribution and sale of alcoholic drinks by provincial marketing agencies
- Panel report (L/6304)

The Chairman recalled that at its meeting on 12 March 1985, the Council had established a panel to examine the complaint by the European Communities. The Panel had concluded its work and its report (L/6304) was before the Council.

Mr. Haran, Chairman of the Panel, introduced the Panel's report. He said that the Panel had held eight meetings between December 1986 and October 1987, and had submitted its report to the parties on 14 October 1987. To allow for the Community to consult with its member States and Canada with its provinces, the Panel had given the parties six weeks to try to reach a mutually acceptable solution to the dispute, setting a deadline of 1 December 1987 for circulation of the report to other contracting parties. Both the Community and Canada had requested an extension of the deadline to provide more time for bilateral negotiations. In January 1988, the Panel made a minor modification in the report, which was circulated to contracting parties on 5 February 1988. The Panel's having had to organize a considerable amount of complex information meant that its report was unavoidably lengthy. One of the main questions before the Panel had related to the interpretation of Article XXIV:12 concerning "reasonable measures" to be taken by contracting parties in order to ensure observance of GATT provisions by regional authorities. The Panel had noted that the Government of Canada considered that it had already taken such reasonable measures as were available to it to ensure such observance by the Provincial Liquor Boards. The Panel had also noted, however, that the efforts of the Canadian federal authorities had been directed towards ensuring the observance of these provisions as they interpreted them, and not as the Panel interpreted them. It was therefore the Panel's view that Canada should be given a reasonable period of time to take such measures to bring the practices of the Provincial Liquor Boards into line with the relevant provisions of the General Agreement. The Panel therefore recommended that the CONTRACTING PARTIES request Canada to: (1) take such reasonable measures as might be available to it to ensure observance by the Provincial Liquor Boards of the provisions of Articles II and XI of the General Agreement; and (2) report to the CONTRACTING PARTIES on the action

taken before the end of 1988, to permit the CONTRACTING PARTIES to decide on any further action that might be necessary. He stressed that the Panel's findings and conclusions had been reached and adopted unanimously by its members.

The representative of the European Communities said that the Panel had carefully analysed the issues in this complex case and had reached sound findings regarding the conformity of certain practices of the Provincial Liquor Boards with the provisions of the General Agreement. In particular, the following conclusions should be highlighted: (1) The so-called Provincial Statement of Intentions of 1979 and the related exchange of letters could not be held to constitute an agreement in terms of Article II:4 and did not, therefore, modify Canada's obligations arising from the inclusion of alcoholic beverages in its GATT Schedule. (2) Price mark-ups imposed by the Liquor Boards which were higher on imported than on like domestic alcoholic beverages could be justified under Article II:4 only to the extent that they represented additional costs necessarily associated with marketing of the imported products, the burden of proof being on Canada. (3) Liquor Board practices concerning listing/delisting requirements and the availability of points of sale which discriminated against imported alcoholic beverages were restrictions made effective through state-trading organizations contrary to Article XI:1. (4) The Panel had seen great force in the argument that Article III:4 was also applicable to state-trading enterprises, at least in the case of a combination of a monopoly of importation and one of distribution.

He expressed the Community's disappointment with the Panel's conclusions regarding Canada's obligations under Article XXIV:12. On the one hand, the Panel had concluded that the Government of Canada had clearly not taken all the measures available to it to ensure observance of the provisions of the General Agreement by Provincial Liquor Boards, as provided in Article XXIV:12, while on the other hand, it had recommended giving Canada additional time to take measures to bring the practices into line with the General Agreement and to report to the CONTRACTING PARTIES on the action taken before the end of 1988. The Community noted that such an additional delay was unusual and considered that it should not be regarded as a precedent. Finally, the Panel had not addressed the questions of nullification and impairment and of compensation for competitive opportunities lost as a result of the practices. These questions had been addressed in the Panel report on measures affecting the sale of gold coins (L/5863) and should also have been addressed by the present Panel, which had not called into question the conclusions of the earlier report. Nevertheless, the Community was willing to accept the Panel report and supported its adoption at the present meeting, in the expectation that Canada would comply with the recommendations in time and would fully ensure observance by the Provincial Liquor Boards of Canada's GATT obligations.

The representative of Canada expressed his country's appreciation to the Panel for its sensitivity in dealing with an issue involving delicate questions relating to constitutional matters. The care taken in preparing this report had aided deliberations in Canada; the quality of the report was a positive contribution to the GATT dispute settlement system. In its arguments before the Panel, Canada had particularly sought to clarify the

meanings of the provisions of the General Agreement as they related to state-trading enterprises. The Panel had gone some distance in this direction in its conclusions, but had stopped short of what Canada continued to believe was the meaning of Article XVII. With respect to the Panel's conclusions in paragraph 4.16 of the report, Canada could not agree that the margin of profit would on average have to be the same on both the domestic and the like imported product so as not to undermine the value of tariff concessions under Article II. His authorities considered that the Panel's interpretation did not accord with normal conditions of competition or reflect the realities of the market place. With respect to the conclusions in paragraphs 4.34 and 4.35, his delegation affirmed its view that Canada's obligations were clearly stated in Article XXIV:12 of the General Agreement. While Canada acknowledged that the terms "reasonable" and "available" in that Article were not self-defining, as a practical matter what was reasonable and what was available ultimately had to be judged in a domestic context, taking into account the sensitive issues of domestic politics and policies. Therefore, with respect to the conclusions in paragraph 4.34, Canada considered it inconceivable that contracting parties would consider substituting their views on a question of internal constitutional and political options for those of the federal state concerned. On the basis of this understanding, Canada would not stand in the way of a Council decision to adopt the Panel report. His Government would be working with the provinces during 1988 and would report on action taken before the end of 1988, as called for in the Panel's recommendations.

The representative of Japan said that his delegation did not oppose adoption of the Panel report if there was a consensus in the Council to do so. However, in Japan 's view, the report contained certain interpretations of GATT provisions relating to state trading which were clearly inappropriate as they totally ignored the drafting history of the General Agreement. One of the points his delegation saw as highly questionable was the Panel's interpretation of the interpretative Note ad Articles XI, XII, XIII, XIV and XVIII (paragraphs 4.24 and 4.25 of the report). In the light of drafting history, it was clear that the provisions stipulating the discipline on restrictions in the field of private trade and those concerning the discipline on state-trading monopolies were originally moulded as two distinct sets of legal frameworks in the General Agreement. The Panel's interpretation, which concluded -- without adequate reasoning -- that the "General Elimination of Quantitative Restrictions" provided in Article XI:1 applied to import restrictions made effective through a state-trading monopoly on the basis of the wording of the interpretative Note ad Articles XI, XII, XIII, XIV and XVIII, lacked legal precision and was inappropriate. With respect to paragraph 4.26 of the report, its meaning was not entirely clear, and Japan was not convinced of the validity of the Panel's inclination to the argument that Article III:4 was also applicable to state-trading enterprises at least when the monopoly of the importation and that of the distribution in the domestic markets were combined. Japan therefore requested that its position vis-à-vis some of the Panel's findings, as well as Japan's understanding that the Council's adoption of the report would not establish a generally applicable interpretation of the provisions relating to state trading, be clearly recorded.

The representative of Chile said that his country had encountered difficulties of access to Canada's market, particularly regarding wines, because of the arbitrary and discriminatory practices of the Provincial Liquor Boards. For that reason, his delegation supported adoption of the Panel's conclusions and hoped that Canada would do everything possible to implement the Panel's recommendations.

The representative of the United States expressed his country's satisfaction with Canada's acceptance of the report. As his delegation had previously indicated and demonstrated by its participation in the Panel's review, the United States had an interest in the trade affected by the Panel's recommendations, and would watch carefully how Canada approached implementation of the report. His delegation disagreed with the position taken by Japan, and believed that the Panel had both analyzed the situation and argued its position well.

The representative of Jamaica said that his delegation supported adoption of the report and hoped that action would be taken to ensure compliance by the Provincial Liquor Boards with Article XXIV:12. Jamaica was pleased that Canada accepted the report and looked forward to future reports regarding implementation of its recommendations.

The representative of Australia commended Canada for its position on adopting the report, particularly because of the difficulties faced by a federal state on these matters. His delegation supported adoption of the report and urged Canada to take such measures as were consistent with its constitutional framework to eliminate the measures addressed in Australia's submission. His delegation noted that the report's recommendations did not specify the measures Canada was to take and felt this was appropriate, as any decision which directed Canada to introduce federal legislation would be unacceptable. Regarding Japan's statement, his delegation endorsed the statement by the United States.

The representative of the European Communities welcomed Canada's acceptance of the report. However, the Community had concerns regarding statements made by the Canadian Government the previous day on the foreseeable implementation of the recommendations, particularly regarding beer. The Community was also concerned by the interpretations supported by Canada in its statement, but understood that Canada's views did not constitute a reservation. The Community expected full implementation of the Panel report in due time.

The representative of Canada said that in light of the comments, his delegation wanted to stress that Canada would be working with the provinces during 1988 and would report on the action taken regarding the report's implementation before the end of 1988, as called for in the Panel's recommendations. Canada had concerns with the Community's two interpretative statements at the present meeting, while Australia's remarks were very pertinent and relevant.

The Council took note of the statements and adopted the Panel report (L/6304).

3. Canada - Measures on exports of unprocessed salmon and herring - Panel report (L/6268)

The Chairman recalled that at its February meeting the Council had agreed to revert to the matter at the present meeting.

The representative of the United States noted that the report was being considered by the Council for the third time and urged its adoption at the present meeting.

The representative of Canada said that since the February meeting, his authorities had had the opportunity to reflect further on this Panel report. He recalled that Canada had expressed strong reservations about the Panel's interpretation of Article XX(g) with regard to measures relating to conservation. In brief, the Panel had placed a strict interpretation on that Article by insisting that measures had to be "primarily" related to conservation. The fact that the Panel had found Canada's measures not to meet this strict interpretation was not surprising; it was difficult to envisage how any quantitative export restriction could meet these criteria. This Panel report had brought to light the broader question of further processing of natural resource products. It was Canada's view that there should be a fair balance between the obligations of resource-exporting countries not to impose trade restrictions on unprocessed raw materials, and the obligations of nations which were consumers of natural resources not to impose steeply escalating tariffs or other barriers that impeded access for processed natural resource products. There were elements in the trading system which biased trade towards unprocessed rather than processed products. Canada believed that a priority of the current multilateral trade negotiations should be to establish a better balance of obligations between natural resource exporting and importing countries. Canada would not stand in the way of the adoption of the report, and intended to implement its recommendations and to remove the existing export restrictions as soon as possible. In order to address its legitimate fishery conservation and management concerns, Canada planned to put in place a landing requirement covering Pacific salmon and herring. This new system, to be implemented no later than 1 January 1989, would operate in a transparent manner and would allow access to unprocessed Pacific salmon and herring. In summary, although Canada had certain concerns with the problem of tariff escalation in natural resource-based products and considered that the Panel finding went too far in its interpretation of Article XX(g), it was prepared to allow adoption of the report and to remove the measures which the Panel had found to be inconsistent with Canada's GATT obligations.

The representative of the United States thanked Canada for allowing the report to be adopted. However, until the measures taken by Canada to respond to the Panel's recommendation could be seen and analyzed, the United States reserved its right to object if the measures chosen for the landing requirement did not in fact bring Canada's practices into conformity with its GATT obligations.

The Council took note of the statements and adopted the Panel report (L/6268).

4. Norway - Restrictions on imports of apples and pears - Recourse to Article XXIII:2 by the United States (L/6311)

The Chairman drew attention to the communication from the United States in document L/6311.

The representative of the United States said that his country had negotiated with Norway for many years seeking liberalization of that country's seasonal prohibition on imports of apples and pears. Under the current system, Norway simply denied import licences during the harvest season until the domestic apple crop was sold. The motivation for this quantitative restriction on imports appeared to be purely protection for apple and pear producers, and the United States believed it to be completely unjustified under the General Agreement. His authorities had consulted with the Norwegian Government under Article XXIII:1 the previous autumn, but had not reached a mutually satisfactory permanent solution to the problem. His delegation had reserved its rights under the General Agreement to seek permanent elimination of these restrictions in conformity with Norway's GATT obligations. Since then, the two parties had again engaged in bilateral discussions to resolve the issue, but to no avail. The United States asked the Council to establish a panel at the present meeting because it hoped to complete the dispute settlement process in advance of its own autumn 1988 apple and pear harvest.

The representative of Norway confirmed that Article XXIII:1 consultations with the United States had been held twice during 1987 on this matter. Norway regretted the US decision to attack its import régime for apples and pears at the present time when all contracting parties, including Norway, were facing decisive negotiations with a view to establishing more operational rules and disciplines in agricultural trade. Dispute proceedings at the present juncture, contesting the very legality of part of Norway's import régime, were not conducive to promoting those negotiations, which, in Norway's view, of necessity had to take as a point of departure its existing system. The US move was the more unreasonable as the United States already had freer access to the Norwegian market for apples and pears than to the markets of the majority of contracting parties. In fact, about two-thirds and four-fifths of Norway's total consumption of apples and pears respectively came from imports. However, in spite of this, out of respect for GATT dispute settlement, his delegation would not oppose the establishment of a panel requested by a contracting party.

He reassured the United States that Norway would not try to delay the panel process, but wanted to make clear the much greater importance of this matter for his country than for the big contracting party raising it. His delegation would therefore have to treat the matter with all the seriousness it warranted and would, in so doing, need to take the time necessary for a thorough examination of the matter in all its dimensions and would resist any attempt to rush it through in undue haste.

While it was not his intention to start the panel proceedings in the Council, his delegation felt obliged to make the following statement, given that the United States had already, both in its written submission (L/6311) and in its statement at the present meeting, begun its legal arguments and

had even drawn conclusions. It was Norway's view and conviction that its import restrictions on apples and pears were in full conformity with its GATT obligations. The import régime for these products was based on legislation adopted in the 1930s, well in advance of the negotiations leading up to the General Agreement and the Protocol of Provisional Application. This legislation was without any doubt -- and contrary to the US assertion -- mandatory in the sense that it was clearly impossible for any government to change or abolish it without the Norwegian parliament's consent, which would not be given. This had been true in 1947 and was still true. Thus the provisions of the Protocol of Provisional Application regarding existing legislation were clearly applicable to this import régime which was, therefore, fully consistent with Norway's GATT obligations.

The representative of Australia said that his country exported apples and pears to northern Europe, and reserved its right to make a submission to the panel.

The representative of the United States expressed satisfaction with Norway's willingness to agree to the establishment of a panel at the present meeting, and with its assertion that it would not use any delaying tactics in the panel's proceedings. He noted that this was indeed an important matter for the United States, and that his authorities would be watching the evolution of this panel around harvest time.

The representatives of Canada and Hungary reserved their delegations' rights to make a submission to the panel.

The Council took note of the statements, agreed to establish a panel and authorized the Council Chairman to draw up the terms of reference and to designate the Chairman and members of the Panel in consultation with the parties concerned.

The representative of the European Communities said the Community had an interest in this matter and reserved its right to make a submission to the panel. He said that he would make a statement after the Council had finished its consideration of both items 4 and 5.

The Council took note of the statement.

5. Korea - Restrictions on imports of beef
- Recourse to Article XXIII:2 by the United States (L/6316)

The Chairman drew attention to the communication from the United States in document L/6316.

The representative of the United States said that for almost three years Korea had banned the import of bovine meat. Following numerous bilateral discussions on this subject during that period, the United States and Korea had held consultations under Article XXIII:1 on 19-20 February and on 21 March. Korea had neither offered an acceptable justification for

the ban, nor offered to lift it. Therefore, the United States was forced to request the Council to establish a panel under Article XXIII:2 to examine Korea's restrictions on the importation of bovine meat.

The representative of Korea said that consultations between the United States and Korea under Article XXIII:1 had not been fully exhausted; there had been only two consultations so far. On 25 January 1988 Korea had received a letter from the United States in which it had requested consultations under Article XXIII:1 on the question of beef, to which Korea had agreed. The first consultation had been held on 19 and 20 February and the second on the day before the present meeting. Furthermore, as this issue involved other interested countries, Korea was scheduled to have consultations with Australia the following day. Korea believed that in order to find a comprehensive solution, it was indispensable to hear the views of other interested parties. He said that of the two consultations held so far with the United States, the first had been largely devoted to legal presentations by both sides; only in the second consultation had there been substantive discussion. Korea had put forward a proposal with a view to reaching a mutually acceptable solution. Therefore, it was his delegation's view that requesting the establishment of a panel at the present juncture was premature. He asked the United States to continue the bilateral consultations in an effort to seek a practical solution.

The representative of the United States said that his delegation deeply regretted Korea's response. Korea's claim that consultations had not been exhausted was wrong. He said that if it were for the country charged with violations of the GATT to decide on the timing and duration of consultations, they could go on forever. In the US view, the consultations had indeed been exhausted. He repeated that Korea had offered no acceptable justification for the ban, nor offered to lift it. That was the type of response and situation which called the entire dispute settlement process into question, and his delegation hoped that Korea would reconsider its position.

The representative of Korea said that his delegation had a different perception of the status of the consultations at issue; Korea believed they had not yet been fully exhausted and saw a possibility of further exploring a satisfactory solution. For that reason, Korea could not agree to the establishment of a panel.

The representative of Australia said that his country fully supported the right of any contracting party to seek the establishment of a panel if consultations had not yielded a satisfactory solution to a dispute. Accordingly, Australia supported the US request and reserved its right to make a submission to the panel should it be established. Australia had a particular interest in this case which was potentially larger than that of the United States. Prior to the complete closure of the Korean beef market in 1984, Australia had been the principal, in fact predominant, supplier. In 1983, Australia exported 64,000 tons of beef to Korea, which was Australia's third largest beef export market. That trade was worth A$107 million to Australia's beef industry, and 8.5 percent of Australia's total export earnings were derived from beef and veal. The sudden closure

of the market and the loss of those export earnings had caused considerable disruption to the Australian beef industry, and had been repeatedly raised with Korea in official and Ministerial trade talks and other bilateral discussions. His Government had stressed that the market-opening process should be implemented in a non-discriminatory manner and had received assurances from Korea that Australia would have an equal opportunity to compete when imports were resumed. In 1985, Australia's Minister for Trade had been assured as to the early resumption of beef imports when the demand and supply situation in Korea permitted. Further representations had been made in October 1987 and February 1988. However, no evidence of market-opening action had been forthcoming. On 22 February 1988, Australia had requested Article XXIII:1 consultations concerning Korea's measures and restrictions applying to the importation of beef. Since that time Australia had been in close contact with the Government of Korea in an effort to agree to a date for consultations, with the aim of completing a first round prior to the present Council meeting. However, it had not been possible to find a date prior to 23 March. The outcome of these consultations would be carefully evaluated in Canberra. Should those consultations not be satisfactory, a clear option would be for Australia also to request a panel to examine Korea's beef import régime.

The representative of Canada said that Canada and Australia had the same position regarding a contracting party's right to have a panel established. Furthermore, it was for the complainant to determine the appropriate moment to request the panel. For that reason his delegation supported the US request. Canada had an interest in this case and reserved its right to make a submission to the panel if established.

The representative of New Zealand said that his country had a close interest in this trade and had pursued the matter with Korea over a number of years. On 1 June 1986, New Zealand had been given an assurance by the Ministry of Trade and Industry of Korea "that New Zealand would have access for high quality beef in the latter half of 1986". To date that expectation had not been fulfilled. In recent weeks New Zealand had brought to the attention of the Korean Ministry of Trade and Industries and the Ministry of Agriculture, Forestry and Fisheries its continuing interest in supplying the Korean market. In the meantime New Zealand had noted the US request for recourse to Article XXIII:2 and its request for a panel. New Zealand would have an interest in this panel, if established, and in whatever consultations were ongoing.

The representative of Korea said that as consultations with Australia would be held the following day, he did not want to preempt their outcome by commenting on Australia's statement. As to Australia's reference to the date for the Article XXIII:1 consultation, he explained that there had not been sufficient time for a delegation from his capital to come to Geneva. That delegation would explain Korea's position fully at the consultations. He was sure that Australia would understand that there had been several requests and that Korea could not hold two consultations at the same time. As to Canada's statement, Korea did not deny that any contracting party had a right to have a panel, but firmly believed that a panel should be established only if Article XXIII:1 consultations had failed to produce a satisfactory solution within a reasonable period of time. His delegation

did not believe that consultations with the United States had been exhausted, and consequently could not support the US request. Korea hoped that the United States would approach further consultations in a constructive spirit with a view to reaching a mutually satisfactory solution.

The representative of the United States said that almost three years had already been spent in consultations and that the time for delay had long passed. The United States regretted Korea's response, and hoped that the Korean Government would reconsider its position prior to the next Council meeting.

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

The representative of the European Communities referred to what he called the good use of the dispute settlement procedure. He recalled his statement under item 4, in which he had deliberately used the word "interest" and had refrained from speaking of trade interest; this was also true of item 5. For some time the Community had used its influence and friendship with its partners, including Korea and Japan, in order to explain that there was nothing shameful about the dispute settlement procedure, and that it should be used insofar as possible in a routine manner in order to deal with individual cases and specific situations when disputes arose. However, the proliferation of the recourse to the dispute settlement procedure was quite another matter, which perhaps deserved careful thought. That proliferation might, in fact, be an indication of the vitality, energy and health of the organization, particularly when this led to solutions in specific situations and in turn contributed to a general reduction of trade tensions. But when this procedure was resorted to systematically, constantly, and perhaps in an overly-hasty manner, this might be an indication of impotence, of bad health or of a difficult situation; this was particularly so when such resort led to an impasse, to increased tensions, and represented an attempt to introduce new obligations and perhaps to deal with a problem which negotiations had failed to solve. While the Council was meant to deal with the routine business of GATT, the "spirit" of Punta del Este should not be forgotten. It was true that in that "spirit", reference had been made to the legitimate exercise of contracting parties' rights, but there was also reference to the guarantee whereby the parties to negotiations should not take or adopt trade measures which would enable them to improve their negotiating position. The fact that only trade measures had been mentioned was perhaps the single defect in the wording in view of the overall "spirit" of the Declaration. The Community hoped that no contracting party would try to play the sorcerer's apprentice in the Council, because this would risk creating problems when dealing with the interpretation of -- or trying to introduce new interpretations of -- certain GATT Articles. The Community was fully aware of the present situation and of its own position, and would stand very firm regarding any attempt to invade the area of the negotiation by a clever and systematic use of the dispute settlement procedure.

The representative of the United States said that the increase in requests for dispute settlement procedures in the previous year and a half had, to some observers, reflected an increasing competence for the GATT and an increasing commitment by contracting parties to deal with bilateral issues in a multilateral forum. One heard frequent charges about bilateralism in trade policy; yet attempts by those accused of bilateral actions to bring matters into a multilateral forum were sometimes being trivialized. Consistency in some cases was worth considering. In the US view, the increased use of GATT dispute settlement procedures seemed to be one of the most likely courses of action for a country to follow if it wished to keep within the Punta del Este spirit. The Uruguay Round had been launched in part because of concern over the credibility of the multilateral system and of GATT. The dispute settlement process was one of the most important factors in that credibility and therefore, was important for contracting parties to utilize. Indeed, the Community had remarked that countries resorted to the dispute settlement process when unable to solve a situation through prior negotiations. The fact that the increase in disputes brought to the Council under dispute settlement procedures had been largely in the area of agriculture should be a message to the Council of the need for the Uruguay Round to get to the bottom of the serious problem the world faced in agricultural trade.

The representative of Norway said that the Community had mentioned something which would have an important bearing on the negotiations over the next two and a half years: that was the relationship between the dispute settlement mechanism and what would enhance the capacity to contribute to the negotiations. With regard to the US complaint against Norway,[1] his delegation did not think that the dispute settlement procedure would further negotiations. That should be kept in mind as well as the Community's statement on this matter.

The representative of Australia said that the Community's statement did not seem to suggest that any contracting party which resorted to the dispute settlement procedure was doing so for other than serious reasons. It seemed, however, that the Community was implying -- by the suggestion that now was not a good time to increase the number of matters under dispute settlement procedures because of the mood captured by the spirit of Punta del Este -- that it was better to negotiate these issues away in the Round. He said that it was important to remember that the point of resorting to a panel under the dispute settlement procedures was to test the legality of a measure; one of the fundamental premises of the Round, and one of the elements of the spirit of Punta del Este, was that a country did not go into the Round to negotiate away illegal measures. He trusted that that was not what the Community was suggesting. Finally, it was pertinent to note that there had been an upsurge of cases concerning agriculture, due to the fact that agricultural trade was littered with illegal measures. He suggested that the process of testing these measures in the dispute settlement procedure was just beginning.

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[1] Item no.4.

The representative of Japan said that his delegation had no objection to the use of dispute settlement procedures. Japan did not think such action was shameful, and could indeed serve very useful purposes. However, the Council should keep in mind the fundamental objective of the GATT which favoured, to the extent possible, the settlement of disputes through consultations.

The Director-General reminded representatives that in June the Council would hold another special meeting related to surveillance, and that on that occasion he would make a report on the status of cases under dispute settlement procedures. He suggested that Council members keep in mind the possibility of having at that meeting the same type of discussion as the present one, and perhaps even to push it a bit further.

The Chairman thanked the Director-General for his helpful suggestion. In his view, the Uruguay Round would be an important beneficiary of the foregoing discussion.

The Council took note of the statements.

6. Japan - Imports of spruce-pine-fir (SPF) dimension lumber - Recourse to Article XXIII:2 by Canada (L/6315)

The Chairman drew attention to the communication from Canada in document L/6315.

The representative of Canada said that his authorities considered that spruce-pine-fir (SPF) dimension lumber, classified under favoured tariff item 44.07.10.110, was a like product under the meaning of Article I:1 when compared to dimension lumber made of other species of wood. Japan currently applied unbound tariffs of eight per cent to imports of SPF dimension lumber and zero to imports of dimension lumber made from other species of wood. Canada had raised this issue repeatedly on a bilateral basis over many years, but Japan was unwilling to give equal tariff treatment for SPF dimension lumber. In August 1987, Canada had requested consultations under Article XXIII which had been held on 8-9 October in Tokyo. Japan had requested a second round of consultations, which were held on 4-5 March 1988. It had not been possible to settle the issue on a bilateral basis during these negotiations. Canada considered that its exports of SPF dimension lumber were not receiving the m.f.n. treatment required by Article I:1. The key issue in this case would involve the interpretation of Article I and the non-discriminatory application of tariff concessions. Canada had decided therefore to request establishment of a panel under Article XXIII:2 to resolve this issue.

The representative of Japan said that since the time Canada had raised this matter, Japan had been engaged in a series of bilateral consultations with that country in an effort to find a speedy solution to the problem, keeping in mind the basic objective of GATT dispute settlement which favoured the settlement of disputes through consultations. Unfortunately, Canada was now invoking Article XXIII:2 on the ground that no satisfactory solution had been reached in those consultations. Concerning the

substance, he said that in Japan, as in many other countries, species classification was an important criterium in product classification for estalbishing customs tariff rates on lumber. A customs tariff rate was accordingly determined on the basis of a judgement on the necessity of importing lumbers made of a specific species of wood and of protecting relevant domestic industries. As a result, Canada was the largest exporter to Japan of coniferous wood products, for which customs duty was free. From this point of view, Japan did not agree with Canada's assertion because, among other things, SPF and other woods belonged to different species, and Japan considered that the measure at issue was fully consistent with Japan's GATT obligations. His Government did not oppose the establishment of a panel if that was the will of the Council. Should a panel be established, Japan would fully present its view on the GATT conformity of the measure at issue.

The representative of New Zealand said that his country had an important commercial interest in the exports of forestry products to the Japanese market and was looking forward to maintaining and expanding its future presence therein. Accordingly, New Zealand had an interest in an issue that could have implications for the conditions of competition for a range of forestry products in that market, and therefore supported Canada's request for a panel and reserved its right to make a submission to it.

The representatives of Finland and the European Communities reserved their delegations' rights to make a submission to the panel.

The representative of the European Communities added that this case could, in interpreting Article I, have very broad implications.

The Council took note of the statements, agreed to establish a panel and authorized the Council Chairman to draw up the terms of reference and to designate the Chairman and members of the Panel in consultation with the parties concerned.

7. Customs unions and free-trade areas; regional agreements - biennial reports
   (a) EEC - Cyprus Association Agreement (L/6313)
   (b) EEC - Malta Association Agreement (L/6314)

The Chairman drew attention to documents L/6313 and L/6314 containing information furnished by the parties to the agreements referred to in those biennial reports.

The representative of the United States said that his Government did not consider that the parties to these Agreements, notified to the CONTRACTING PARTIES in 1971, were adequately reporting on the progress being made toward fulfilment of the Agreements. The United States sought from those parties the following: more information on the specific terms of the new EEC-Cyprus Agreement and the Protocol adapting the Agreement to the 1986 enlargement of the Community; in light of the time that had passed since the most recent EEC-Cyprus Agreement had been examined, and noting that the transition period contemplated for the new one was equally long, a commitment that contracting parties might submit written questions

and expect written answers on this issue after receiving, through circulation to the CONTRACTING PARTIES, the broader information just requested; an indication in the report on the EEC-Malta Agreement as to how the EEC and Malta intended to implement the customs union notified in 1971. He said that the trade data provided in these reports were inadequate to inform contracting parties of the scope, progress and effects of the transition to a customs union. His Government requested that more comprehensive trade data be provided, specifically the trade conducted by Cyprus and Malta under each Agreement and with other contracting parties, and a breakout of such data by trading partners and product sectors for the period since the most recent report submitted in 1984. Pending fuller information on the points he had raised, his Government could not agree that the parties to these Agreements had adequately reported under the biennial reporting requirements, and reserved its rights to revert to this issue in future.

The representative of the European Communities said that, with regard to the US request for information on the terms of the new Protocol of the EEC-Cyprus Agreement, the Community had made available to the Secretariat a limited number of copies of the full text. Should the Council request a more formal notification of the hundreds of pages of the Official Journals concerned, he was ready to undertake this although copies for all contracting parties could not be made available immediately. As to Malta, the Community took note of the US request concerning the transition to a customs union. However, the answer might be found in paragraph 4 of L/6314 which stated that for a number of reasons, the transition was still being negotiated; unfortunately it had not been possible to conclude that negotiation. The Community thus was not entirely sure what the United States was seeking by its request. As to additional trade data, his delegation would attempt to provide whatever information was available to meet the request.

The representative of Australia raised the question of the calendar of biennial reports on regional agreements, which he said had been in limbo for some time. The Council was to have adopted such a calendar in 1987, but problems had prevented agreement on this matter. The informal consultations had not been conclusive. Australia was concerned, and had raised this concern previously, because of the need to fulfil the transparency requirements of these arrangements which were significant departures from the basic principle of GATT. Australia hoped that a calendar could be implemented quickly so that reports would come in promptly and be fully examined by the Council.

The Council took note of the statements and of the reports in L/6313 and L/6314.

8. Indonesia - Establishment of a new Schedule XXI - Request for waiver (C/W/539, L/6310)

The Chairman drew attention to Indonesia's request in L/6310 for a waiver from the provisions of Article II of the General Agreement, and to the draft Decision in document C/W/539.

The representative of Indonesia said that his Government had recently completed the process of transposing its Customs Tariff from the Customs Cooperation Council Nomenclature (CCCN) to the Harmonized Commodity Description and Coding System (Harmonized System), and had decided that implementation of the Harmonized System would begin on 1 April 1988. The documentation required under the procedures of Article XXVIII had already been submitted to the Secretariat for circulation to contracting parties. He emphasized that in the conversion process, his Government had made no changes either in product descriptions, tariff rates of bound items or Initial Negotiating Rights; however, it was prepared to consult with any interested contracting parties. In view of the time constraint, it would not be possible for Indonesia to conduct consultations under the procedures of Article XXVIII before the scheduled date of implementation of the Harmonized System. Therefore, in order to enable Indonesia to implement the Harmonized System on 1 April 1988, Indonesia requested a temporary exemption from its obligations under Article II of the General Agreement until 31 December 1988.

The Council took note of the statement, approved the text of the draft Decision in C/W/539, and recommended its adoption by the CONTRACTING PARTIES by postal ballot.

9. Committee on Tariff Concessions
- Designation of Chairman and Vice-Chairman

The Chairman recalled that at its meeting in January 1980, the Council had established the Committee on Tariff Concessions and had authorized the Council Chairman to designate the Chairman and Vice-Chairman of the Committee in consultation with interested delegations. Such consultations having been conducted on his behalf, he informed the Council that Mr. J. Lau (Hong Kong) and Mr. A. De La Peña (Mexico) had been designated, and had agreed to serve, as Chairman and Vice-Chairman respectively for 1988.

The Council took note of this information.

10. United States - Taxes on petroleum and certain imported substances
- Follow-up on the Panel report (C/W/540, L/6175)

The Chairman recalled that in June 1987, the Council had adopted the Panel report in L/6175, and that it had been discussed at the February 1988 Council meeting. The matter was on the agenda of the present meeting at the request of Canada, the European Communities and Mexico. He drew attention to the communication from the European Communities in document C/W/540.

The representative of the European Communities recalled that the Panel had found a clear and serious violation of one of the most fundamental principles of GATT, namely that of national treatment, and had recommended

that the United States bring the measure in question into conformity with its GATT obligations. During the eight months which had passed since then, the Community had been largely left in the dark regarding the implementation of the Panel's recommendation. The Community therefore had no choice, as it had announced at the February Council meeting, but to request the Council to authorize the withdrawal of equivalent concessions granted to the United States and to agree that the circumstances were serious enough to justify such action. His delegation was fully aware that there were few precedents in this matter and asked for advice from the Chairman or from the Director-General on the procedure to be followed. At the same time, the Community's primary objective continued to be the proper implementation of the Council's recommendation, and it would welcome more precise indications from the United States in this respect.

The representative of Canada recalled that his delegation had, on a number of occasions in the Council, pressed the United States to implement, at an early date, the recommendations of this Panel. The objective of GATT dispute settlement was to obtain the removal of GATT-inconsistent measures; in the event that such measures could not be modified or removed within a reasonable length of time, it was his Government's strong preference that any alternative solution be of a trade-liberalizing rather than trade-restricting nature. However, Canada acknowledged the Community's right under Article XXIII:2 -- if it followed the required procedures and received Council approval -- to suspend concessions or other obligations. Canada reserved its rights under Article XXIII in the event that the United States did not act expeditiously, and was considering options available to it under the General Agreement.

The representative of Mexico stressed that in spite of repeated calls by the Community, Canada and Mexico, the United States had yet to bring into conformity with its GATT obligations a tax that was not only contrary to the General Agreement, and in particular the provisions relating to national treatment, but was also incompatible with the Punta del Este standstill commitment. His delegation had to note that despite the initiatives taken by the US Administration, the Congress had not yet passed legislation which would bring the United States into conformity with its GATT obligations. In the meantime, Mexico's trade was still being hit by this discriminatory tax. His Government therefore reserved its right under Article XXIII:2 to seek a rapid and satisfactory solution when it deemed appropriate. This would include recourse to the procedures available to Mexico as a developing country, such as those adopted by the CONTRACTING PARTIES on 5 April 1966 (BISD 14S/18) and paragraphs 21-23 of the 1979 Understanding regarding Notification, Consultation, Dispute Settlement and Surveillance (BISD 26S/210).

The representative of the United States reaffirmed his delegation's continued support for this Panel report, which it had accepted when first presented to the Council. However, the United States believed that a move to retaliation at the present juncture would be premature. His delegation was fully aware of the 1979 Understanding, which stated that "in the absence of a mutually agreed solution, the first objective of the

CONTRACTING PARTIES is usually to secure the withdrawal of the measures concerned if these are found to be inconsistent with the General Agreement." With this injunction in mind, his Government had proposed in the fiscal year 1989 budget submitted on 18 February, that the Superfund tax on petroleum be changed so as to equalize the tax rates at the revenue-neutral point. This change would require legislation by the Congress; its enactment would eliminate any excise tax discrimination and bring the US tax into conformity with the Panel report. The US Administration had actively urged implementation of this change, and had proposed 9.65 cents per barrel as the applicable unified tax rate; it would continue to seek enactment of this change and had conveyed to the Congress the great importance of acting in accordance with the United States' GATT obligations. The views expressed at the present meeting would be reported to the responsible Senators and Congressmen in an effort to seek expeditious action on the proposed legislation. Furthermore, in the US view, action under Article XXIII:2 was premature because neither the Community nor any other contracting party had circulated information to the Council, or advised the United States informally, on the amount of trade damage believed to have been suffered or the US products to be subjected to retaliation. For both reasons, his delegation believed that the preferable course would be for the Council to return to this issue at its next meeting, at which it hoped to be able to report good news obviating further consideration of the Community's request for withdrawal of concessions.

Mr. Lindén, Legal Adviser to the Director-General, in replying to the European Communities' request for advice on the procedural aspects of this matter, said that there had been only one case in the history of GATT of a request for a right to retaliate under Article XXIII:2. In 1951, the United States had introduced import restrictions on dairy products, which the CONTRACTING PARTIES had found to be inconsistent with the United States' GATT obligations (BISD 1S/31). The United States had not been in a position to follow the CONTRACTING PARTIES' recommendations to remove these restrictions, and the Netherlands had asked at the following CONTRACTING PARTIES session for authority to retaliate in the form of imposing a quota on imports of wheat flour from the United States at 57,000 tons per year. The CONTRACTING PARTIES had set up a working party to examine that request. The two parties to the dispute had not been members of this Working Party, which had found that it was appropriate for the Netherlands to retaliate but at the level of 60,000 tons (BISD 1S/62). The CONTRACTING PARTIES had approved the Working Party's recommendations and had determined that the Netherlands could impose such a quota (BISD 1S/32).

The representative of the European Communities said that the Community would be willing to follow the principle of the earlier precedent and to have a working party established at the present meeting to examine its request. It would submit to this working party more precise information regarding its estimate of the amount of damage suffered and the products that should be covered by such an authorization. His delegation hoped that the United States could agree to this and would not use any procedural tactics to delay consideration of this matter. The Community remained attached to the principle that the primary objective was, and continued to

be, the removal of the tax discrimination, and hoped that the procedure proposed would help the internal process in the United States. The first step was to establish the working party and then to examine in detail the issues involved.

The representative of the United States said that his delegation did not consider the Community's suggestion to be serious. It was clear that the Community had not met the terms of the precedent described by the Legal Adviser, and had neither given the United States proof that serious damage had been suffered nor provided a list of the products proposed for retaliation and in what amount.

The representative of the European Communities said the Community regretted that the United States did not agree to establish a working party at the present meeting, and considered that to be a delaying tactic. His delegation had hoped the United States would see that the Community was trying to help its internal process; establishment of a working party could only help bring the process forward.

The representative of Canada said that any matter involving the suspension of concessions had to be treated very carefully. His delegation noted that the Community's request at the present stage did not specify the sort of suspension proposed, or the manner in which it would be effected. However, the Community had indicated that it would provide such precise information to a working party. Before taking a decision on this matter, the CONTRACTING PARTIES would have to know precisely what was being proposed. Regarding the procedure to be followed, Canada could agree to establish a working party to examine the Community's request.

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

11. Japan - Customs duties, taxes and labelling practices on imported wines and alcoholic beverages
- Follow-up on the Panel report (L/6216)

The Chairman recalled that in November 1987, the Council had adopted the Panel report in document L/6216. This matter had been discussed at the February Council meeting and was on the agenda of the present meeting at the request of the European Communities.

The representative of the European Communities said that the Community had not been satisfied with Japan's replies at the February Council meeting with respect to the time frame and content of its intended implementation of the Council's recommendation. The Community accordingly reiterated its request for more precise information, particularly regarding the time frame, i.e., when did the Japanese Government intend to approve a project to recall the discriminatory liquor taxes, when would such a proposal be put to the Diet, and when would it enter into force? The Community was also concerned with Japan's reply regarding the content of such reform,

because it was vague in a number of areas and did not seem to take into account the necessity to implement the recommendation fully. The Community would appreciate more information on the reduction of the tax differentials of various alcoholic beverages to conform to the provisions of Article III:2, first and second sentences.

The representative of Finland, on behalf of Finland and Sweden, reiterated their interest in this matter. Their exports of vodka had met with obstacles in Japan because of the discriminatory features of the internal taxes. They urged Japan to take speedy steps to bring the tax system into conformity with GATT, and sought indications from Japan about the time frame envisaged for implementation of the recommendation.

The representative of Canada said his country also had a continuing interest in Japan's implementation of the Panel's recommendation.

The representative of Japan said that the Community's statement might have given the impression that the Japanese Government was not making any efforts whatsoever. On the contrary, as he had explained in some detail at the February Council meeting, his Government was engaged in necessary internal procedures with a view to making a fundamental revision of the Liquor Tax Law, called for by the Panel's recommendation. As part of such efforts, the principle of the abolition of the grading system for whiskeys/brandies had been already decided. His Government was engaged in intense deliberations with the political organs concerned, with a view to tackling outstanding policy objectives, including the narrowing of the difference in tax rates applied to distilled liquors. It was natural that more time was needed before drawing the final conclusion, due to the legislative and accompanying political process involved. Therefore, his delegation was not in a position to answer the Community's questions, but had taken note of its statement as well as those of Finland and Canada and would convey them to his Government.

The representative of the United States said that his delegation also had an interest in this matter and hoped that a specific tax increase on wines would not be part of the reform package. He recalled that the United States had been dissatisfied with the December 1986 package with respect to distilled spirits, because it had maintained the absolute tax advantage for products that were uniquely Japanese. The United States did not believe that such a measure would adequately respond to the Panel's recommendation.

The representative of the European Communities expressed his delegation's disappointment at not getting the requested information either on scheduling or on the content of the reform. The Community was concerned in particular with the mere narrowing of the tax differences, which it considered totally inadequate. The Community expected to receive the requested information very shortly and reserved its right to revert to this matter in the near future, unless it received information on the full implementation of the recommendation.

The Council took note of the statements.

12. United States - Customs user fee
- Request for derestriction of the Panel report (L/6264, L/6312)

The Chairman recalled that the Panel report (L/6264) on the United States customs user fee had been adopted at the February 1988 Council meeting. He drew attention to the communication from the United States (L/6312) requesting derestriction of that report.

The representative of the United States said that his Government had drafted legislation to bring the US customs user fee into conformity with the Panel report, and would propose this legislation to the Congress within the next few weeks. While the Panel report had already been proposed for derestriction on 19 April, derestriction at the present meeting would allow his authorities to be able to show the Congress and the US trade community why the present user fee needed to be changed, and thus enable the United States to abide by the Panel report. He understood that the other parties to this case, Canada and the Community, did not object to this action.

The representative of the European Communities confirmed that the Community did not object to the derestriction of this report. The Community believed that as a matter of principle, it was useful to derestrict panel reports soon after their adoption by the Council, in order to facilitate the process of implementation and perhaps also facilitate a correct understanding by the public of the Council's action.

The representative of Canada said that in this case, his delegation would support the immediate derestriction of this Panel report.

The representative of Australia said that his delegation could agree to the derestriction request in this particular case, and further suggested that the Council agree to derestrict, in future, all panel reports as soon as they were adopted by the Council.

The Director-General agreed that panel reports should be derestricted as soon as adopted by the Council. In this context, he referred to the present unsatisfactory situation when even during the time period given to the parties to disputes to consider a panel's draft report, a great number of leaks had occurred. He disliked having to ask delegations, members of panels and the Secretariat to exert maximum discretion regarding the work going on in panels, only to read in the daily press advance versions of panel reports even before they had been sent to contracting parties. He suggested that the Council decide that they be immediately derestricted once adopted by the Council.

The representative of Canada said that the Director-General had put forward strong reasons for derestriction of panel reports as soon as they were adopted by the Council. While Canada was not in a position at the present meeting to agree to this suggestion and needed further time for consultation on the issue, his delegation believed that the suggestion was a good one and would recommend it to the Canadian authorities.

The representative of the United States said that his delegation had itself intended to raise this issue and was grateful to the Director-General for having supported Australia's suggestion. The United States believed that it would be easier for contracting parties to adopt panel reports if they could be released at the time of Council adoption. His delegation hoped that the Secretariat could suggest appropriate wording so that the Council could take such a decision at its next meeting.

The representative of Mexico said that his delegation was not in a position at the present meeting to take a decision on Australia's suggestion. While this was a very interesting proposal, it might also be appropriate to look at it in the negotiating group on dispute settlement procedures, since it was not clear at the present stage what the result of those negotiations or the formats of the reports would be.

The Council took note of the statements, agreed to the immediate derestriction of document L/6264, and agreed to revert at its next meeting to the suggestion concerning automatic derestriction of panel reports upon their adoption.

13. Committee on Budget, Finance and Administration
- Current cash situation; progress report by the Committee Chairman

The Chairman recalled that the Committee on Budget, Finance and Administration had been asked by the Council in November 1987 to make an urgent review of GATT's cash situation and to report back with recommendations not later than 31 March 1988. This matter had also been discussed at the 43rd Session of the CONTRACTING PARTIES.

The Director-General recalled that the GATT Secretariat had faced a severe cash problem the previous autumn. As of 22 March 1988, cash in hand amounted to Sw F 15,810,000, enough to meet the needs of the Secretariat up to approximately the end of June. Since 1 January 1988, Sw F 1,350,000 had been received on outstanding contributions for 1987 and previous years, from eight contracting parties. For 1988 assessments, Sw F 24,530,000 had been received from 25 contracting parties to date. 71 contracting parties and one provisional contracting party still owed Sw F 35,660,000 for 1988 and 43 contracting parties owed Sw F 21,305,000 for 1987 and previous years. Thus, outstanding contributions totalled Sw F 56,965,000. As things stood, and if contributions were received at a rate similar to that of 1987, GATT could survive until October. He strongly urged contracting parties whose contributions were outstanding, to do their utmost to meet their financial obligations promptly in order to avoid a recurrence of the previous year's crisis.

Mr. Hill (Jamaica), Chairman of the Committee on Budget, Finance and Administration, recalled that at its meeting in November 1987, the Council had approved the 1988 income budget on the basis of the Chairman's Understanding which requested the Committee "to examine the three measures cited in paragraph 63 of the Budget Committee's Report (L/6248), including

in this examination any other proposals thereon, and make recommendations on these measures, separately or otherwise, to the Council, not later than 31 March 1988". This recommendation had arisen from the concern expressed in the Committee regarding "a probable cash deficit" and also resulting from the difficult cash situation experienced by GATT at the end of 1987, and with the perspective of a probable cash deficit at the end of 1988. He referred to the Director-General's statement in this respect. The text of the Understanding was contained in document L/6267. He recalled further that the three measures which, on the basis of the Chairman's Understanding, were to be examined by the Committee concerned: (1) the level of the minimum contribution; (2) implementation of an incentive scheme to encourage prompt payment of assessed contributions; and (3) an increase in the Working Capital Fund.

In the light of the Council's decision, the Committee had met in an informal session on 5 February and in formal sessions on 25 February and 15 March. The discussions had focused on the following points: the treatment of long-outstanding arrears; an incentive scheme for the early payment of contributions; and the introduction of new ideas, namely disincentives for the late payment of contributions. In addition, some preliminary views had been exchanged on the level of the minimum contribution and the level of the Working Capital Fund. A consensus on the matter had not yet been reached. Discussions would be pursued in the Committee and it was the Committee's hope to be in a position to make its recommendations at the Council's meeting in May.

The representative of Jamaica recalled that at the November 1987 Council meeting, his delegation had submitted a proposal (L/6249) that the contributions to the GATT budget be assessed, for all contracting parties, on the basis of their actual share in world trade. At present, some contracting parties were assessed on that basis while others were assessed at a minimum percentage of 0.12 per cent of GATT's total assessments. He recalled that in appraising the 1988 income budget, the Council had requested the Committee to examine and make recommendations, separately or otherwise, on several measures including the level of the minimum contribution. The Committee had been requested to include in this examination "any other proposals thereon". In that context, Jamaica's proposal remained on the table.

The Council took note of the statements and of the information given by the Director-General on the current cash situation, and agreed to extend the time period for the Budget Committee's deliberations in the light of the statement by the Chairman of that Committee.

14. Generalized System of Preferences - United States' removal of Chile from GSP scheme
- Recourse to Article XXII:1 by Chile (L/6298, C/W/541)

The representative of Chile, speaking under "Other Business", referred to his country's request that this matter be kept on the Council's agenda (C/W/541). He said that consultations had reached the stage where

respective opinions had been conveyed to capitals. Chile reserved the right to inform the Council when, in its opinion, results had been achieved.

The Council took note of the statement.

15. India - Import restrictions on almonds
- Panel terms of reference

The representative of the United States, speaking under "Other Business", said that his delegation had just been informed that India had agreed to standard terms of reference for the Panel established in November 1987 to examine the US complaint. He recalled that the matter had come before the Council many times and expressed his delegation's satisfaction that this Panel, which it had requested in July 1987, would soon be able to begin work.

The representative of India said that his delegation had always responded positively in order to facilitate the dispute settlement process. A departure from standard terms of reference had never been at issue in discussions with the United States; consultations had taken place only to accommodate additionally, through a neutral reflection, the concern expressed in the Council by a number of developing countries regarding the procedures of Article XVIII:12(d) and their relevance and relationship to the matter raised. He wanted to dispel any impression that India had not been mindful of its dispute settlement obligations.

The representatives of Yugoslavia, Brazil and Egypt reserved their delegations' rights to make a submission to the Panel.

The representative of Yugoslavia said that the interpretation and implementation of Article XVIII and the principle of special and differential treatment for developing countries were of essential importance to her country's interest in GATT.

The representative of Mexico said that if, in the course of the Panel's work, there was some relation to contracting parties' rights under Article XVIII, his delegation reserved its rights to make a submission to the Panel.

The Council took note of the statements.

16. European Economic Community - Prohibition on imports of almonds by Greece
- Recourse to Article XXIII:1 by the United States

The representative of the United States, speaking under "Other Business", said that since early November 1987 Greece had banned almond imports. This action was a clear violation of Article XI and the Community's binding on that product. Due to an anticipated poor almond crop, Greece was expected to import nearly US$19 million worth of almonds

in the current marketing year, most of which was expected to be supplied by the United States, but as a result of the ban would import significantly less. Since Greece, normally self-sufficient for almonds, had a small crop, and the US crop was unusually large, that represented a one-time opportunity for substantial US sales to Greece. As a result of the Greek action, this opportunity had been lost. Therefore, the United States considered the import ban to be particularly damaging to its interests. Despite numerous representations to both the Greek and Community authorities, the ban remained in place. Therefore the United States requested consultations with the Community on this issue under Article XXIII:1.

The representative of the European Communities said that he had listened with interest to the US statement, in particular with regard to the measure's compatibility with the Community's GATT obligations. His delegation was prepared to hold, in the latter part of the current week if possible, the Article XXIII:1 consultations requested; on that occasion, the justification of the measure would be discussed.

The Council took note of the statements.

17. Japan - Import restrictions on additional agricultural products - Recourse to Article XXIII:1 by the United States

The representative of the United States, speaking under "Other Business", said that it was his Government's intention to request an additional Council meeting as early as possible in April to discuss the serious issue of Japan's import restrictions on certain agricultural products.

The representative of Australia said that his country shared the concerns which underlay the US statement, and had regularly expressed its concern over Japan's import restrictions on agricultural products, particularly beef. This trade was extremely important to Australia, which was currently engaged in negotiations with Japan on beef access arrangements. Australia would take or support whatever action was necessary to achieve liberalization of this trade.

The representative of Nicaragua said that if the Council were to hold an additional meeting, it should consider all pending matters and not only a particular matter which had given rise to its having been convened.

The representative of Japan said that his Government had been trying for some time to hold a bilateral consultation with the United States on this issue. It was therefore regrettable that the United States had not responded to Japan's request for such consultations and now intended to ask for a panel in an additional meeting of the Council, as if prejudging the result of a bilateral consultation. Moreover, it was well established that bilateral consultations under Article XXIII:1 should precede recourse to a panel; thus the US announcement totally ignored established GATT practice.

While it was the legitimate right of any contracting party to request an additional Council meeting, Japan doubted the necessity of such action in the present case and considered it essential that the two parties hold consultations as soon as possible without any precondition. Japan was determined to continue its best efforts to reach a mutually satisfactory solution through such talks.

The representative of the United States said that bilateral consultations on the restrictions in question had been taking place with Japan for some time. The present agreement, which had been necessary to maintain some access to Japan's market, was to expire on 31 March, and it was time to look at the GATT-conformity of these restrictions. His delegation felt that the Council should be apprised of its intention, which resulted from delays it had encountered in trying to pursue its legitimate GATT rights.

The representative of Argentina said that his delegation believed it was the right of any contracting party to request a Council meeting to deal with subjects which it felt affected the multilateral trading system. It was necessary to take into consideration the efforts being undertaken to reinforce that system, in particular GATT, where surveillance was of major importance. The holding of an additional Council meeting to examine an issue of importance to many contracting parties did not seem to be out of context with regard to those efforts. Therefore, Argentina supported the US request.

The representative of Japan said that for the past several weeks Japan had been asking for bilateral consultations with the United States on this subject without any precondition, and that the United States had not responded.

The Council took note of the statements.

18. Communication from the United States concerning the relationship of internationally-recognized labour standards to international trade
- Request for a working party (L/6196, L/6243)

The representative of the United States, speaking under "Other Business", said that following a number of informal meetings on this subject, most recently on 7 March, his delegation was encouraged that a useful exchange of views had taken place and expected that this dialogue would continue. His delegation hoped that in the near future, the Council would have a full discussion on this issue.

The Council took note of the statement.

19. European Economic Community - Import licences for dessert apples

The representative of Chile, speaking under "Other Business", recalled that at the most recent meeting of the Uruguay Round Surveillance Body, her delegation had expressed concern over the Community's establishment of a system of import licences for dessert apples which was to survey, over the period 22 February - 31 August 1988, those imports from third countries. That period coincided with that of apple exports in the southern hemisphere. Apples in the Community already enjoyed protection through a minimum price mechanism. Imports from the southern hemisphere, which were now subject to surveillance, represented 6.33 per cent of the Community's apple consumption and stocks in 1987, and were projected slightly higher at 7.7 per cent in 1988. Chile did not see how such a small volume of imports at relatively high prices could endanger or perturb the Community's market. Therefore, her delegation believed that the licensing system was not established for surveillance purposes but constituted a hidden restriction which imposed additional costs to apple exporters thus creating uncertainties for them. Her delegation would follow closely the operation of this system and would avail itself of all relevant GATT provisions, should it be necessary.

The representative of the United States said that the Community's surveillance system for apples was a new protectionist measure which discouraged trade and violated the spirit, if not the letter, of the Community's standstill commitment. These measures had a significant impact on US apple exports, because approximately 55 per cent of those exports to the Community occurred between February and August when the surveillance system would be in effect. Apples were bound in the Community's GATT schedule; to the extent that this system discouraged or blocked trade, it was a violation of the Community's bindings.

The representative of New Zealand said that the rights of southern hemisphere suppliers were clearly defined; they had enjoyed a binding on dessert apples for 15 years, and the only condition on that binding was that the benefits of unrestricted trade were limited to the period set out in the Community's schedule. As the licensing system was to remain a monitoring system only, it was sufficient, in New Zealand's view, to note the very solid GATT basis of southern hemisphere suppliers' rights.

The representative of Argentina said that his delegation shared the concerns expressed by Chile, the United States and New Zealand. The system in question was in contradiction to the Community's GATT commitments, including that on standstill. The operation of this system created uncertainties and did not permit normal trade in this product to the Community. Argentina hoped that the measure would be removed quickly.

The representative of Australia said that his delegation joined those voicing concern over this licensing scheme, which was merely a continuation of years of effort to control what was a relatively small trade in proportion to total Community consumption.

The representative of South Africa said that as the major southern hemisphere supplier of dessert apples to the Community, his country had an interest in this matter. South Africa did not deny the Community the right to introduce a surveillance mechanism on imports; it did expect it to be administered in such a manner as not to represent an impediment to trade or to be converted into a protective instrument.

The representative of Canada said that for reasons similar to those of the United States, his delegation, too, had an interest in this matter and was concerned that the measure in question could constitute a barrier to traditional trade flows.

The representative of the European Communities said that his delegation had taken note of the statements, in which some representatives had alluded to the existence of a concession for the southern hemisphere countries during their period of production. He stressed that the measure in question in no way represented an import restriction. The Community faced difficulties regarding apple imports, which had increased, but to date it had not had recourse to the protective measures available to it under the General Agreement. To the contrary, it had simply set up a surveillance mechanism which had no influence on trade. This was an automatic licensing system which delivered the licence in five days; the refundable deposit required represented two percent of the value of the imports and was intended simply to avoid frivolous requests which would disorganize surveillance. The Community considered as perfectly legitimate in such circumstances to foresee surveillance measures which had no influence on imports.

The Council took note of the statements.