

GENERAL AGREEMENT ON

TARIFFS AND TRADE

RESTRICTED

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on 10 May 1989

Chairman: Mr. John M. Weekes (Canada)

	<u>Page</u>
<u>Subjects discussed:</u> 1. Committee on Balance-of-Payments Restrictions (a) Consultation with Pakistan (b) Report on the meeting of April 1989	2
2. CARIBCAN - Communication from Canada	4
3. Technical Group on Quantitative Restrictions and Other Non-Tariff Measures - Report to the Council	4
4. Communication from the United States concerning the relationship of internationally-recognized labour standards to international trade	5
5. United States - Section 337 of the Tariff Act of 1930 - Panel report	6
6. Japan - Imports of spruce-pine-fir (SPF) dimension lumber - Panel report	9
7. Norway - Restrictions on imports of apples and pears - Panel report	12
8. European Economic Community - Restrictions on imports of dessert apples - Complaint by Chile - Panel report	14
9. United States - Restrictions on the importation of agricultural products applied under the 1955 Waiver and under the Headnote to the Schedule of tariff concessions (Schedule XX - United States) concerning Chapter 10 - Recourse to Article XXIII:2 by the European Economic Community	22

	<u>Page</u>
10. Export of domestically prohibited goods	22
11. Establishment of a streamlined mechanism for reconciling the interests of contracting parties in the event of trade-damaging acts	23
- Communication from Chile	
12. United States - Increase in the rates of duty on certain products of the European Economic Community (Presidential Proclamation No. 5759 of 24 December 1987)	29
- Communication from the European Communities	
- Recourse to Article XXIII:2 by the European Economic Community	
13. United States - Taxes on petroleum and certain imported substances	30
- Follow-up on the Panel report	
14. United States - Customs user fee	32
- Follow-up on the Panel report	
15. Committee on Budget, Finance, and Administration	33
- Report of the Committee	
16. Canada - Measures on exports of unprocessed salmon and herring	35
- Follow-up on the Panel report	
17. European Economic Community - Regulation on imports of parts and components	35
- Recourse to Article XXIII:2 by Japan	

1. Committee on Balance-of-Payments Restrictions

(a) Consultation with Pakistan (BOP/R/181)

Mr. Boittin (France), Chairman of the Committee on Balance-of-Payments Restrictions, said that in April, the Committee had held a full consultation with Pakistan in conformity with Article XVIII:12(b). He drew attention to the Committee's conclusions in paragraphs 27-30 of the report in BOP/R/181.

The Committee had recognized that Pakistan continued to face serious balance-of-payments difficulties which warranted the invocation of Article XVIII:B. It had also recognized that in the period under review, and particularly since 1987, Pakistan had taken major steps to adjust imbalances in its economy, reducing import restrictions and rationalizing its tariff structure. The Committee had welcomed the statements by Pakistan and the IMF concerning Pakistan's policy of continuing this process in the medium term. It had taken note of the justifications mentioned by Pakistan for the maintenance of remaining import restrictions.

The Committee had noted that Pakistan would notify to GATT, by 1 November 1989, an updated list of its import restrictions maintained for balance-of-payments purposes. With respect to import prohibitions, the Committee had recalled the provisions of Article XVIII:10 relating to minimum commercial quantities of imports, while also noting the provisions of paragraph 1 of the 1979 Declaration on Trade Measures Taken for Balance-of-Payments Purposes (BISD 26S/205).

The Committee had observed that Pakistan's high concentration of exports in the three sectors of rice, cotton, and textiles and clothing made its trade, growth and investment possibilities particularly vulnerable to external distortions and restrictions. The Committee had invited Pakistan to seek greater diversification of export products and markets, while, at the same time, recognizing the short-term difficulties involved. The Committee had noted that, for the longer term, the current negotiations in the Uruguay Round offered a significant opportunity for alleviating distortions and constraints in external markets. Pending that, and bearing in mind the provisions of the preamble and paragraph 12 of the 1979 Declaration, and taking into account the particular structure of Pakistan's exports, the Committee had recommended that contracting parties give particular attention to the possibilities of alleviating and correcting Pakistan's balance-of-payments problems through measures which they might take to facilitate an expansion of Pakistan's export earnings.

The Council took note of the statement and adopted the report in BOP/R/181.

The representative of Pakistan expressed satisfaction with the adoption of the report, particularly with reference to its recognition that Pakistan continued to face serious balance-of-payments difficulties warranting the invocation of Article XVIII:B. Pakistan was further gratified to note that the Committee appreciated the major steps taken by Pakistan in reducing its import restrictions and adjusting imbalances in the economy. He said that Pakistan particularly appreciated the Committee's recommendation that contracting parties give particular attention to the possibilities of alleviating and correcting Pakistan's balance-of-payments problems through measures necessary to facilitate an expansion of its export earnings. His delegation had wanted to make a detailed and substantive statement in relation to this aspect of the Committee's recommendation, but had not been able to prepare it in time for the present meeting. He therefore asked the Council to revert to this item at its next meeting so as to enable Pakistan to present its case.

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

(b) Report on the meeting in April 1989 (BOP/R/182)

The Chairman of the Committee drew attention to the points raised under "Other Questions" in BOP/R/182.

The Council took note of the information in BOP/R/182.

2. CARIBCAN
- Communication from Canada (L/6478)

The Chairman recalled that at its meeting in April, the Council had agreed to revert to this item at the present meeting.

The representative of the United States said that his delegation had provided Canada with questions concerning the latter's communication in L/6478. Assuming that Canada was prepared to provide answers promptly, the United States could join in the acceptance of this report.

The representative of the European Communities asked if other contracting parties might be made privy to the particular questions posed by the United States on CARIBCAN.

The representative of the United States said that his delegation would provide copies of the questions -- which were of a technical nature on the information in the report -- to interested delegations.

The representative of Canada said that his delegation had transmitted the United States' questions to his authorities and would provide answers promptly. Should other contracting parties be interested in these questions, Canada would provide them with the answers as well.

The Council took note of the statements and agreed that the biennial review of the operation of CARIBCAN had taken place.

3. Technical Group on Quantitative Restrictions and Other Non-Tariff Measures
- Report to the Council (L/6492)

The Chairman recalled that at its regular meeting on 19-20 October 1988, the Council had adopted the Interim Report of the Technical Group on Quantitative Restrictions and Other Non-Tariff Measures (L/6397). The Technical Group had at the time recommended an extension of the deadline for the biennial complete notifications of quantitative restrictions and, therefore, had agreed to pursue its multilateral review at a meeting in April 1989. The Group had met on 11 April and its report was before the Council in L/6492. At its meeting, the Group had completed its biennial multilateral review of the accuracy and adequacy of the documentation and the grounds on which measures had been maintained and their conformity with the General Agreement. He drew attention in particular to the decisions taken and recommendations made in paragraphs 13, 14, 17, 18 and 22 of the report, and to paragraph 21 which noted that the next multilateral review would be held in September 1990.

The representative of Australia asked what the basis was for the date of September 1990 for the next multilateral review.

The Chairman said that according to a CONTRACTING PARTIES' Decision in 1986 (BISD 33S/54), this review was to take place every two years.

The representative of Australia recalled that his delegation had been among those at the CONTRACTING PARTIES session in 1986 which were not convinced of the need for the Technical Group to continue during the course of the Uruguay Round. The report in L/6492 made it clear why, as the Group had had little to do. His delegation was not sure why the CONTRACTING PARTIES had been unable to take a clear decision to set normal work aside while overriding work was being undertaken. He suggested that in adopting this report, the Council decide that in the last quarter of 1990, the Council Chairman should hold informal consultations concerning when the Group should next meet, and not decide that the date of September 1990 be automatically endorsed.

The Chairman said he thought there was some merit in Australia's suggestion, and proposed that the Council take note of the statements, including Australia's, adopt the report in L/6492 and agree to ask the Council Chairman to undertake informal consultations concerning the date of the Group's next meeting.

The Council so agreed.

4. Communication from the United States concerning the relationship of internationally-recognized labour standards to international trade

The Chairman recalled that at its meeting on 20 December 1988, the Director-General had informed the Council that he was seeking possible approaches for dealing with this matter. He had also said that he and the Director General of the International Labour Organization (ILO) were in contact on it. He understood that the Director-General was still pursuing his endeavours, and suggested that the Council revert to this item when he had concluded them.

The representative of Nicaragua said that his delegation still saw no reason to consider the relationship between internationally-recognized labour standards and international trade, and was suspicious of the United States' defending labour relations in the GATT -- something it did not do in the competent organization, the ILO. The United States had belonged to the ILO since 1934, with the exception of a short interruption from 1977 to 1980, and in all that time had ratified only nine -- of which seven related to maritime labour relations -- out of the ILO's 168 conventions pertaining to various aspects of labour relations. Most other countries had ratified an average of 60 of those. He said that a list of the signatories showed that the United States had ratified the least number of conventions, except for the newly-independent countries. The US initiative in GATT was invalidating the competence of the ILO. He suggested that it would be useful to circulate the list to which he had referred, in the context of informal consultations.

The representative of Nigeria said that his country had tried for many years in many international fora to awaken the conscience of the international community to the slave labourers who had been exploited for many centuries in certain parts of the African Continent. Nigeria's interest in this subject lay in that, when the subject would be fully discussed, attention would be focused on those workers who had been

condemned to a life of permanent servitude because of their race. His delegation hoped that the definition of internationally-recognized labour standards would include these workers.

The representative of Tanzania said that his delegation had from the start failed to see any connection between the so-called internationally-recognized labour standards and international trade, and it did not, as of the present moment, have any additional wisdom to offer on this subject. Indeed, if the international community did have such standards recognized by all concerned, there would have to be an institution in session seven days a week, addressing itself to problems, disputes, questions and answers cutting across the whole social spectrum, including questions other than international trade. He could not see how the GATT came into it at all in any circumstances.

The Council took note of the statements.

5. United States - Section 337 of the Tariff Act of 1930
- Panel report (L/6439, L/6487, L/6500)

The Chairman recalled that in October 1987, the Council had agreed to establish a panel to examine the complaint by the European Communities. At its meetings on 8-9 February, 6 March and 12 April, the Council had considered the Panel's report (L/6439), and on 12 April had agreed to revert to this item at the present meeting.

The representative of the European Communities noted that this report was now before the Council for the fourth time. The United States had so far delayed its adoption essentially by means of fairly lengthy comments which, in the Community's view, largely misrepresented the content of the report. The Community had endeavoured to set the record straight in L/6487 by drawing attention to what the report actually said. Beyond this, it saw no reason to re-argue the case. Strong and virtually unanimous support for the adoption of this report had been expressed by contracting parties, in particular at the Council meeting in April. By now, it had to be clear that this report was of considerable importance to the GATT as a whole, and not just to one or the other contracting party. The Community expected that the United States would no longer stand in the way of the adoption of this report at the present meeting.

The representatives of Japan, Canada, Korea, Brazil, Turkey, Nicaragua, Australia, Argentina, India, Pakistan, Mexico, Israel, Norway on behalf of the Nordic countries, Colombia, Hong Kong, Chile, Switzerland, Peru, Cameroon, Austria, Zaire, Uruguay and Yugoslavia supported adoption of the report at the present meeting.

The representative of Japan noted that it was very unusual for a Panel report to be before the Council for the fourth time. Japan was increasingly concerned over the United States' attitude towards the GATT dispute settlement mechanism. Its continued objection to adopting this Panel report and its failure to implement the Panel reports on the

"Superfund"¹ and on the Customs user fee² might give rise to serious doubts as to the credibility of the GATT dispute settlement process. Japan did not believe that it was the intention of the United States to discredit the GATT dispute settlement process, and strongly urged it to agree to the adoption of this Panel report at the present meeting.

The representative of Canada said that his delegation continued to support the adoption of this Panel report and noted, with others, that it was now before the Council for the fourth time. His delegation fully supported Japan's statement that the United States, in blocking the adoption of this report, was sending the wrong signal to the international trading system about the effectiveness of the GATT dispute settlement system.

The representative of Korea said that as this was the fourth time the report was before the Council, his delegation strongly urged the United States to agree to its adoption.

The representative of Brazil associated his delegation with the comments made on this item. It was time to take a decision on this matter, which had already been discussed at length.

The representative of Turkey said that his delegation maintained the view that the report, which contained a detailed analysis of a complex issue, was excellent. His delegation agreed with the Panel's findings and recommendations, and did not condone attempts to block the report's adoption. Taking into consideration statements made at previous Council meetings, and bearing in mind the Decision of 12 April 1989 on improvements in GATT dispute settlement rules (L/6489), especially Part G, paragraph 3, Turkey joined others in stressing that the adoption of this report was essential, particularly in view of effective dispute settlement in GATT.

The representative of Australia supported Japan's statement.

The representative of Argentina reiterated what his delegation had said on this matter at previous Council meetings. In order to maintain the credibility of GATT's dispute settlement mechanism, it was very important to adopt this report, which was before the Council for the fourth time.

The representative of India said it was high time to adopt this report in order to lend more credibility to the GATT and to the recently improved dispute settlement procedures.

The representative of Mexico joined the many delegations which had spoken and was pleased to see a consensus emerging for the adoption of the report.

The representative of Norway, on behalf of the Nordic countries, reiterated that they agreed with the Panel's conclusions and felt that the report should be adopted as soon as possible.

¹See item no. 13.

²See item no. 14.

The representative of Colombia said that his delegation agreed with the Panel's conclusions and that the credibility of the GATT dispute settlement system was at stake.

The representative of Hong Kong associated his delegation with Japan's statement.

The representative of Chile agreed that the credibility of the GATT dispute settlement system was at stake.

The representative of Switzerland associated his delegation with the statements by Japan and Canada.

The representative of Peru said that as a matter of principle, her delegation believed that panel reports should be adopted, particularly when it seemed that measures had been taken which were not in conformity with the General Agreement. The credibility of the multilateral system was at stake. This type of action ran counter to the objective of the work being done in the Negotiating Group on Dispute Settlement.

The representative of Austria said that his delegation found a discrepancy between asking, on the one hand, for a multilateral agreement on the trade-related aspects of intellectual property rights, and, on the other, not adopting this Panel report.

The representative of Zaire supported the Panel's conclusions. GATT's dispute settlement machinery was the prescribed means to come to an agreement between parties. His delegation felt that the United States, as one of the great defenders of GATT principles, should not object to the adoption of this report.

The representative of Uruguay said that the feeling of the Council seemed to be clear, and his delegation joined those which had spoken. Safeguarding the dispute settlement system of GATT required the adoption of this report without further delay.

The representative of Yugoslavia said that her delegation agreed with the Panel's conclusions and felt that it should be adopted quickly, for reasons stated by several delegations, starting with Japan's.

The representative of United States said that his delegation greatly appreciated the efforts of many delegations in giving careful consideration to this report. In a document which his delegation had asked the Secretariat to circulate, his authorities had responded in detail to several of the points made by the Community at the April Council meeting. He summarized the US response as follows: (1) Contrary to what the Community argued, the Panel report did require contracting parties to ensure de facto equality of treatment of imports in all circumstances. (2) The United States continued to believe that the focus should be on whether a complex measure as a whole provided less-favourable treatment to imports, not whether each of its many constituent parts did so. (3) The

United States disagreed with the Community that each element of a complex measure had to be examined to determine whether it was "necessary" for purposes of Article XX(d). That Article should apply if the measure as a whole met the standard of necessity. (4) The report did more than "note" practices of other countries, as the Community asserted. It assessed what measures could be considered "reasonably available" to the United States on the basis of the practice of others. He said that the United States' concerns, and those of the Congress, still had not been resolved. Thus, the United States was not prepared to accept adoption of the report at the present meeting.

The representative of the European Communities said that the US statement was a matter of concern not only to the Community but it should similarly be of concern to every contracting party. The United States claimed that it disagreed with points made by the Community, but in fact, its disagreement was with points made by the Panel, which was a very different situation. The United States carried a very heavy responsibility. There had just been another roll call -- twice as long as the previous one -- of those who opposed unilateral measures. It was not acceptable to the Community -- and should not be to other delegations -- that this performance be repeated again and again. For that reason, having heard that the United States still required more time to reflect, he now formally asked that at the next Council meeting, the United States unblock adoption of this report by the Council.

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

6. Japan - Imports of spruce-pine-fir (SPF) dimension lumber
- Panel report (L/6470)

The Chairman recalled that in March 1988, the Council had established a panel to examine the complaint by Canada related to Japan's restrictions on imports of spruce-pine-fir (SPF) dimension lumber. The Panel report was before the Council in L/6470.

Mr. Pescatore, Chairman of the Panel, introduced the report, which had been submitted to the parties on 5 April 1989 and, in the absence of a mutually agreed settlement, had been circulated to all contracting parties. He expressed appreciation to the third parties, whose most valuable contribution had left some mark on the Panel report.

He said that the Panel's terms of reference had given it a task which had turned out to be impossible to implement literally: establishing whether a certain range of products known as "dimension lumber" could be said to be "like products" according to Article I:1 of the General Agreement. Taking into consideration a preliminary objection by Japan, the Panel first had to determine the legal framework within which a claim for "likeness" of products could be raised under the most-favoured-nation (MFN) treatment principle embodied in Article I:1. This in turn had led the Panel to examine the principles relating to tariff classification.

The Panel had taken the view that, allowance being made for the broad categories fixed in the framework of the Harmonized System, contracting parties enjoyed a large measure of freedom in determining further details of their tariff classifications in the light of their trade policy interests. These comprised not only their national protection needs, but also the purposes of their tariff and trade negotiations. If a contracting party considered that an abusive use had been made of such discretion, so as to lead to discrimination among like products from different sources, it could lay a claim for equal treatment under Article I:1. As the customs tariffs referred to by the General Agreement were those of the individual contracting parties, it appeared normal that such a claim be brought, in the case of imported goods, on the basis of the classification of the importing country.

This was the point where it appeared that a claim put forward by Canada on the basis of a concept -- dimension lumber --, which did not correspond to any category of the Japanese tariff or to any internationally-recognized trade classification, could not provide a basis on which an infringement of the equal treatment rule of Article I:1 could be assessed. Thus, after determining the principles governing tariff structure and classification under the General Agreement, the Panel had been compelled to conclude that a claim brought on the basis of a comparison between different types of dimension lumber provided no basis on which an inconsistency of the tariff treatment accorded by Japan to Canadian lumber imports could be established.

While it might at first sight seem regrettable that the Panel had thus been prevented from considering the substance of this issue -- as would seem to be required by the terms of reference adopted by the Council -- it appeared finally that these problems could be solved adequately only in the light of facts ascertained and arguments developed in an appropriate framework.

The Panel realized at the end that determining the "like products" issue raised far-reaching problems: technical problems linked to the criteria for classification chosen by Japan in this section of its tariff -- in fact, issues going from biology to industrial uses of wood -- and legal questions relating to the interpretation of Article I:1, insofar as this provision combined country-related and product-related elements, these criteria having to be appreciated not only in a bilateral, but in a multilateral perspective.

Taking account of the central place of Article I:1 in the GATT system, the Panel was convinced that the limited issue of dimension lumber did not make it possible to define in an adequate way the parameters of this problem. At the end it became thus abundantly clear that the Canadian complaint could not succeed in the terms in which it had been introduced.

It was now for the parties concerned and for the Council to determine whether further steps were to be taken, once the legal framework of the issue had been defined by the adoption of the report.

The representative of Canada said that Canada had decided to bring this issue before the GATT after years of bilateral consultations had failed to resolve the discrimination against exports of Canadian SPF dimension lumber to Japan. Having exhausted all other avenues for resolving this issue, Canada had felt that its only recourse was to turn to the GATT dispute settlement system. Canada was disappointed with the outcome of the Panel's deliberations. The Panel had concluded that it was unable to establish that the tariff treatment of SPF dimension lumber was inconsistent with Japan's GATT obligations, on the basis that the concept "dimension lumber" was not an appropriate basis for establishing "likeness" under Article I:1. Canada's concern was that the Panel's interpretation of the MFN obligation in Article I gave precedence to the notion of tariff classification over the concept of "like product" referred to in the Article. Based on the Panel's findings, it would appear that where a contracting party chose to maintain a structure in its tariff classification which did not specifically identify a product as "a particular category" within that structure, there was no recourse under the GATT rules for a contracting party to address the problem of discrimination between like products falling within that country's tariff structure. Canada considered this finding could open the door to discrimination among like products originating in different contracting parties and thereby distort the MFN obligation. The Panel, in its conclusions, had left unanswered fundamental questions put forward by Canada. The Panel findings had not addressed the issue of de facto discrimination. That had just been acknowledged by the Panel's Chairman. Canada did not consider that the outcome of the Panel proceedings put this issue to rest, and removal of the discriminatory aspects of the tariff on SPF dimension lumber remained a high priority of his Government. Canada considered that the issues raised by this ruling were sufficiently serious that contracting parties should have further time to consider the implications of the Panel report.

The representative of Japan said that his Government was pleased to note that the Panel, having made an objective analysis of the implications of the tariff classification, had come to a clear and sound conclusion that Japan's tariff treatment of Canadian dimension lumber was not inconsistent with Article I:1. Japan supported the adoption of the report at the present meeting and found it regrettable that Canada was not in a position to agree to this. Canada, as complainant in this case, was not required to take any new measure in accordance with the Panel report, and Japan would urge Canada not to stand in the way of the adoption of the Panel report.

The representative of New Zealand said that while recognizing that the case brought by Canada had not been rejected by the Panel, his delegation was interested in the reasoning advanced for not positively upholding it. New Zealand was still studying the case in terms of the implications for the interpretation of the "like products" provision of Article I. It raised a question as to GATT's ability to interpret this key Article. His delegation would examine carefully the Panel Chairman's introductory remarks and would therefore request that this item remain on the Council's agenda for subsequent consideration.

The representative of Australia said that, like New Zealand, his delegation wanted more time to study the report, as Australia, too, was initially troubled by some of the lines of argument. While understanding the complexities referred to by the Panel Chairman, who had made complimentary remarks concerning the GATT system being able to be applied practically, he recalled an old saying that if something looked, tasted and smelled like an orange, it had to be an orange irrespective of what people might call it.

The representative of the European Communities said that while the Community did not have important commercial interests in the matter at hand, it had intervened in the proceedings because of the more fundamental questions of interpretation related to the MFN provision and the notion of "like products" of Article I. The Community's major concern was to have an interpretation of this principle which would not render a tariff negotiation more difficult and lead to instability and legal uncertainty. His delegation was pleased to note that the Panel had essentially confirmed the Community's own views, and thus agreed with the general conclusions of the report.

The representative of Argentina said that his delegation, too, wanted more time to examine the implications of some aspects of the report insofar as they related to the broader functioning of the General Agreement.

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

The representative of Japan expressed disappointment that the Panel report had not been adopted at the present meeting and hoped that it would be adopted at the next meeting.

The Council took note of the statement.

7. Norway - Restrictions on imports of apples and pears
- Panel report (L/6474)

The Chairman recalled that in March 1988, the Council had established a panel to examine the complaint by the United States related to Norway's restrictions on imports of apples and pears. The Panel report was before the Council in L/6474.

Mr. Pescatore, Chairman of the Panel, introduced the report, which had been submitted to the parties on 21 March and circulated on 19 April 1989. He said that it had not been contested that the Norwegian restrictions were inconsistent with Article XI:1 of the General Agreement. The sole issue to be resolved by the Panel had been whether these restrictions were covered by the "existing legislation clause" in paragraph 1(b) of the Protocol of Provisional Application (PPA) signed on 30 October 1947, commonly referred to as the "grandfather clause".

The Panel was able to rely here on a well-grounded range of precedents among which two were worth mentioning. The first, on the requirement relating to the "mandatory character" of legislation, went back to the very

early times of GATT, as it had appeared in a report of 10 August 1949, almost contemporaneous with the signature of the PPA. The second, relating to the case of the US Manufacturing Clause (BISD 31S/74), was noteworthy for a suggestive comparison on which it was centred: the image of a "one-way street" on which there was no way back. This street was designed to lead to an end, and this end was full and equal application of all GATT rules by all contracting parties. In other words, there was a continuous thrust in the system towards optimal efficacy of the rules of the General Agreement. The purpose of the Protocol was not to cover derogatory national measures ad vitam aeternam, but to help the General Agreement to get into operation as speedily as possible and to advance towards its maturity.

Considering the purpose of paragraph 1(b) of the PPA and taking account of the consistent chain of available precedents, the Panel held that maintenance of prior legislation inconsistent with the rules of the General Agreement could be recognized only if such legislation fulfilled certain well-defined conditions (paragraph 5.7 of L/6474): it had to be legislation in the formal sense of the word, predate the PPA and be mandatory by its terms or expressed intent.

In the light of these requirements, the many documents relied upon by Norway called for the following remarks: (1) The measures specifically complained of by the United States had been adopted only in 1958. Most of the documents put forward by Norway in order to justify these measures related to the period subsequent to the signature of the PPA and therefore could have no relevance to the dispute. Nor could these elements be relied upon in view of qualifying a posteriori the legal situation prevailing in 1947, which had to be appraised as it existed in its own time. (2) As for the scarce elements predating the signature of the PPA, apart from one statute which was a genuine act of legislation, the Panel had been presented with only two documents, of which none contained a reference to import restrictions and less so to restrictions relating to importation of apples and pears. These documents, at the best, had the character of political programs, but none could be qualified as a legislative act in the sense of the PPA. (3) The sole legislative act, in the strict sense of the term, was the 1934 Act on import controls. But this act was typically a piece of enabling legislation, leaving wide discretion to the Executive authority. It did not meet the criterion of "mandatory" legislation which had been the ratio of all precedents since the first determination in 1949.

It had thus appeared that there could be no hesitation on whether or not the import régime applied by Norway was covered by the "existing legislation" exception in the PPA. To allow the Council to check in detail the Panel's reasoning, all essential documents presented by Norway had been annexed to the report in a strictly chronological order, the dividing line drawn by the PPA lying between Annex IV (1947) and Annex V (1955).

The representative of the United States said that his Government found the report to be supportive of well-known GATT doctrine and well-reasoned. This issue had been discussed with the Norwegian officials for a number of years, and the United States urged to have it resolved by adopting the report at the present meeting.

The representative of Norway said that his Government had taken due note of the Panel's conclusions. His authorities considered the restrictions in question to be covered by the provisions regarding existing legislation in the PPA. Without entering into detailed comments on the substance of the report or on the Panel Chairman's introductory remarks, he said that his delegation was rather surprised by the Panel's findings and conclusions. It appeared that the Panel had taken a very narrow and, one could say, schematic view, and did not seem to have considered at all the extensive documentation provided by his authorities in order to substantiate their claim that the legislation concerned had been and was of a mandatory character. This raised questions with regard to the scope and application of the PPA which remained unanswered. However, he would not pursue this point any further at the present meeting, but would ask the Council for more time to study the report. When the case had been presented to the Council in March 1988, his delegation had underlined its importance to Norway; he could reaffirm this. He consequently hoped that the request for postponement would be considered as reasonable.

The representative of the European Communities said that his delegation understood Norway's request for additional time for reflection. The Community had made an oral and a written submission to the Panel. At a first reading of the report, the Community considered that the Panel had done a thorough job, but would agree with Norway that more time was needed for an in-depth study of the implications of the report.

The representative of Canada said that Canada, too, had also made a submission to the Panel. Canada had examined the report, agreed with its findings and could support its adoption.

The representative of the United States said that his delegation understood Norway's response but urged that the report be adopted at the next Council meeting.

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

8. European Economic Community - Restrictions on imports of dessert apples - Complaint by Chile
- Panel report (L/6491)

The Chairman recalled that in May 1988, the Council had established a panel to examine the complaint by Chile. The Panel report was now before the Council in L/6491.

Miss Liang, a member of the Panel, introduced the report on behalf of the Chairman of the Panel. She said that the Panel's report had been presented to the parties on 23 March 1989 and circulated to all contracting parties on 18 April 1989. The main conclusions were that: the EEC restrictions on apples were inconsistent with Article XI:1 and were not justified by Article XI:2; the administration of the quotas resulted in a discriminatory application of import restrictions contrary to Article XIII; and the operation of a back-dated import restriction in respect of Chile

was inconsistent with Articles X and XIII. She drew the Council's attention to the fact that the measures examined by the Panel had expired on 31 August 1988. She stressed that these conclusions, and the reasoning set out in the Panel's findings, had been arrived at and adopted unanimously by the members of the Panel.

The representative of Chile said that the report was clear, complete and precise. Chile agreed with the conclusion that the restrictions applied in 1988 by the Community to imports of dessert apples were inconsistent with Article XI:1 and could not be justified as an exception under Article XI:2. It was therefore a case of discrimination against Chile in contravention of the provisions of Articles X and XIII. The circumstances surrounding this case had been amply described and analysed by Chile. Chile understood that in order to abridge its report, the Panel had not set out all those facts and circumstances; however, these were important to recall for GATT jurisprudence, and Chile asked the Secretariat to preserve all the documentary evidence submitted by Chile and made available to the Panel.

The Panel had not found it necessary to decide on the compatibility of the Community measures with respect to other criteria contained in Article XI:2(c), especially in connection with the pre-requisite that there be a need to apply import restrictions. However, the lack of such a need was demonstrated by the statement in the report that the measures applied by the Community by virtue of its intervention system were not the type of restriction on sales that could justify imposition of import restrictions covered by Article XI:2(c). Chile wanted to make it clear that the report of the earlier Panel set up to resolve a conflict between Chile and the Community in 1979 and 1980 had not concluded that the restrictions on the imports of apples applied by the Community were "necessary" for the application of government measures (BISD 27S/98). It was therefore possible to conclude that at that time, as at present, the necessity requirement did not prevail and that the Community measure had become even more illegal. The report of the 1976 Panel entitled "EC Programme of Minimum Import Prices, Licences and Surety Deposits for Certain Fruits and Vegetables" (BISD 25S/68), had argued along the same line. In connection with Article X, the differences between the administrations of Community member States were not minimal as the report suggested, but in fact substantive. Indeed, this system in practice did not work as an automatic licensing system despite what the Community had said at the Council meeting in March 1988. To the contrary, the system was not impartial since some importers in some member States and individual exporters that traded through them were in a better position to obtain licences than others. For these reasons, Chile expressly reserved its right to raise this issue in the Committee on Import Licensing in whatever form was most relevant.

In conclusion, he drew the Council's attention to the extremely long time that the dispute settlement process had taken. The Panel had been established at the Council meeting in May 1988 -- exactly one year earlier, and three months after the measures had been taken by the Community. In a matter concerning perishable goods such as apples, this was almost absurd,

since in practice there was a double detriment to the exporting country. This type of delay could not but promote impunity. Chile recommended that the Council adopt the Panel report.

The representative of the European Communities said that during the course of the Panel's work, the Community had cooperated closely with all the parties concerned. The Panel report was before the Council for the first time and had been out for only a few weeks. The Community had noted the Panel's findings, which appeared to go beyond the matters put before it in the arguments which had been developed during the proceedings. For these reasons, his delegation thought that the report required more study and asked that the Council revert to it at the next meeting. The Community did not exclude the possibility of making more substantive comments on the Panel's findings at that stage.

The representative of New Zealand said that his Government considered the report's findings to be clear, well argued and firmly grounded in the text and drafting history of the relevant provisions of the General Agreement. The Panel had provided its reasoning in a detailed and persuasive manner so that the way in which it had reached its respective conclusions was available for all to see. His delegation found that particularly important and valuable, and for these reasons, supported adoption of this report. Precisely because the Panel had done its job so decisively and lucidly, he saw little point in repeating the legal arguments. It would suffice to say that the Panel's findings on the criteria to be met for satisfying permission to apply quantitative restrictions under Article XI:2:c(i) were, in New Zealand's view, completely sound. They were based on the clear wording of the General Agreement regarding the requirement that governmental measures had to include an effective limitation on the quantity that domestic producers were authorized or allowed to sell. His delegation could not but endorse the point that such provisions had to be interpreted precisely in order, among other things, to protect fully the validity and viability of negotiated tariff concessions. A sound legal finding such as this contributed greatly to restoring importers and exporters security of expectations, which was vital for the conduct of international trade. He had used the word "restoring" for good reasons: there was nothing particularly novel in this legal finding which had, in fact, scrupulously adhered to the very clear, original intent of the drafters of the General Agreement in limiting carefully the conditions under which resort could be made to quantitative restrictions under Article XI. Such a clear confirmation of GATT's provisions was extremely valuable, not simply for restoring security to trade in apples over a negotiated GATT concession -- where, he added, such restoration was particularly needed -- but more broadly, too.

The representative of South Africa said that his delegation, like other contracting parties whose commercial and contractual interests had been directly affected by the measure which had been the subject of this complaint, had been awaiting the findings of this Panel with particular interest. In his delegation's view, both parties had advanced good arguments under Article XI, and the Panel had arrived at sound and well

reasoned conclusions. The Panel's interpretation of the provisions of that Article was particularly helpful for the CONTRACTING PARTIES to give a ruling on this particular matter.

South Africa was, however, disappointed that the Panel had not expressed an opinion on some of the arguments put before it, for example on the consultation requirements of Article XIII:2(d) and 4, but realised that those had not been central issues argued by the principal complainant. In his delegation's view, the application of a quota regime to imports had the same trade-disruptive effect as a so-called voluntary export restraint (VER), the major difference being that the notion existed that the latter had never effectively been challenged under existing GATT provisions, and was, therefore, without any legal basis. While this uncertainty prevailed, it was his delegation's opinion that, at least for the purposes of Article XIII, exporting countries subjected to VERs should be given the benefit of the doubt in the appraisal of "special factors" as foreseen in Article XIII:2(d) and 4 for the purposes of selecting a representative period to determine each supplying country's share in a global quota. This view had prevailed in the report of the earlier Panel (BISD 27S/98), adopted by the CONTRACTING PARTIES in November 1980, on a similar complaint involving the same parties. For this reason, his delegation was not entirely in agreement with the present Panel's findings in paragraph 12.24, where it was stated in relation to the selection of a representative period, that the Panel could find no basis in the General Agreement for the Community taking into account, as special factors, the restraint in exports alleged to have been exercised by certain suppliers. The Panel had accorded too narrow an interpretation to the concept of "special factors", and on this particular point, South Africa registered a reservation. Not all situations which could qualify as "special factors" could be foreseen for all circumstances; in this regard, South Africa shared the Community's point of view to the effect that it should be up to the party which wished to invoke special factors to convince the country applying quantitative restrictions that such factors were relevant and should be considered. This was indeed a complex and difficult issue which merited further reflection.

Still on the subject of Article XIII, the two sets of statistical evidence supplied by the two parties in substantiation of their respective positions regarding the evolution of the "relative" productive efficiency or capacity of the various Southern Hemisphere suppliers (paragraphs 4.23 and 4.30), were not only in some respects incorrect, but also so contradictory that they could hardly serve as a basis for any objective assessment of "special factors" as elaborated in the note Ad Article XI:2. In retrospect, the Panel having found the measure to be inconsistent with Article XI:1 and not justified by Article XI:2, it would appear that testing the manner in which it had been applied against only some of the provisions of Article XIII really seemed to be superfluous. In conclusion he repeated that his delegation found the Panel's interpretation of Article XI very useful, but Article XIII, and in particular the concept of "special factors" and the appraisal thereof, required a more thorough interpretation. With this proviso, South Africa would not oppose adoption of the Panel report in its entirety.

The representatives of Nicaragua, Brazil, Uruguay, Argentina, Australia, Canada, Thailand, Colombia, Hungary, United States, Korea, India, Pakistan, Indonesia, Peru and Turkey also supported adoption of the Panel report.

The representative of Nicaragua said that the dispute settlement mechanism based on the General Agreement had evolved. This was displayed in various texts, such as the one adopted in 1966 for a special régime when the claimant was from a developing country⁴, and the Decision on improvements of standards and procedures for dispute settlement adopted on 12 April 1989 (L/6489). Moreover, the Ministerial Declaration of November 1982 (BISD 29S/9) had set out that any obstruction in the dispute settlement procedure should be avoided. Although the legal nature of the conclusions was an "avis consultatif", the dispute settlement mechanism had been strengthened in its quasi-judicial nature. Nevertheless when a developing complainant had brought a claim and been found right, it was unable to apply retaliatory measures as provided for in Article XXIII; in past GATT practice, there had been very few examples of such sanctions and those had been applied between developed countries, such as the measures related to wheat taken by the Netherlands against the United States, which had been authorized by the CONTRACTING PARTIES (BISD 1S/3). Such retaliatory measures were not taken because they could not be applied effectively when a small developing country was found to be in the right, as in the case of the unilateral and unjustified reduction of Nicaragua's sugar quota for the US market. This was clear and precise proof of the unjust nature of some of the mechanisms that existed in GATT. By not adopting the Panel report at hand, the Council would be violating the spirit and the letter of the GATT dispute settlement provisions. This placed in jeopardy the very essence of the General Agreement. It was common knowledge that the mechanisms did not function when a small developing country was right and a large developed country was wrong. His delegation felt therefore, that this report, which was well drafted and soundly based, should be adopted without any delay.

The representative of Brazil said that as a matter of principle his delegation was in favour of adopting panel reports. In this case, it was a very eloquent and clear document. His delegation fully supported the Panel's findings and the conclusions. He emphasized that although the panelists had not felt it necessary to develop the question under Part IV of the General Agreement, their finding that the Community had not complied with provisions under Part IV was proof of the scant consideration that these provisions had received from the industrialized countries throughout their history. His delegation considered that there had been a clear cut violation of the Uruguay Round standstill undertaking, but understood that the panelists had not had a mandate sufficient to cover that question.

⁴BISD 14S/18 - Procedures under Article XXIII - Decision of 5 April 1966.

The representative of Uruguay said that from the moment that Chile had raised this matter in the Council, Uruguay had felt that a panel could reach only one conclusion in this matter; that had indeed been the case. He congratulated the Panel for the balanced way in which it had discharged its mandate. Uruguay considered that the Panel's conclusions were unassailable. Consequently he hoped that, for once, the Council would establish a sound precedent and not wait to adopt this report.

The representative of Argentina considered that the report was clear and precise. Argentina had made statements to the Panel concerning its position on the matter, and agreed with the findings and conclusions. The report should be adopted promptly.

The representative of Australia found that the report was thorough and professional, and that it provided a very clear basis for an interpretation of parts of the General Agreement that would be very important for the future.

The representative of Canada said that Canada had made a submission to the Panel and agreed with its findings.

The representative of Thailand considered the report to be significant and well reasoned. The Panel's findings were valid, and pointed out a tendency to use protectionist measures inconsistent with GATT rules and disciplines. Such measures were undertaken by some larger and stronger economies against imports from smaller and weaker ones. Thailand supported adoption of the report, having in mind the urgent need to strengthen the GATT dispute settlement mechanism.

The representative of Colombia agreed that the Panel's conclusions were clear, concise and well substantiated. His delegation endorsed Brazil's statement concerning Part IV. He recalled that when the measures had been taken by the Community against Chile in February 1988, two sets of consultations had been held before the Panel had been established. The Panel's terms of reference had not been drawn up until August 1988; the submission of the report to the parties had taken place on 23 March 1989 and the report had been circulated on 18 April. Almost a year and a half had passed. His delegation urged the Council to adopt the report at the present meeting. This was the only way to build up credibility in GATT's dispute settlement mechanism.

The representative of Hungary said that his delegation had studied the report carefully, found it well-reasoned and fully shared its conclusions.

The representative of the United States said that this matter was of concern to his Government and had affected US trade interests. His delegation found the report to be comprehensive, well-reasoned and well presented, and therefore joined Chile in urging that it be adopted. The United States also urged the Community to complete its review of the report promptly in order to be able to accept it at the next Council meeting.

The representative of Korea found the Panel's findings and conclusions logical, correct and well structured. He recalled that in 1980, a previous panel had already examined a similar complaint involving the same product and the same parties. Though there were some differences in detail between the two cases, both Panels, in essence, had arrived at the same conclusion.

The representative of India believed that the report was well written and balanced and that its conclusions were clear and unequivocal.

The representative of Pakistan said that like Brazil and Colombia, his delegation had noted with considerable interest that the Panel had not considered it necessary to pursue the matter referred to by Chile under Part IV, because it had already found that the Community measures were inconsistent with other provisions of the General Agreement. His delegation had taken special note of the opinion expressed in paragraph 12.32 that the Community had not "made appropriate efforts to avoid taking protective measures on apples originating in Chile", a developing country to which the benefits of Part IV would have accrued. Nevertheless, his delegation found the report clear, complete, precise and well reasoned.

The representative of Indonesia said that his delegation, too, found the report clear and agreed with the Panel's conclusions.

The representative of Peru said that as a matter of principle, her delegation supported adoption of panel reports. The Panel's conclusions were quite clear, as pointed out by a number of previous speakers, and were in conformity with Peru's interpretation of contracting parties' GATT obligations. She stressed the importance of paragraph 12.32 concerning less-developed contracting parties' interests under Part IV.

The representative of Turkey said that in examining the report, his delegation had noted the Panel's conclusion that the Community's system of restrictive licensing applied to imports of apples from Chile for part of 1988 constituted an import prohibition inconsistent with Article XI.1 which could not be justified by Article XI.2. His delegation also shared the views expressed by the Panel in its other findings.

The representative of Zaire said that all import restricting measures were contrary to the spirit of the General Agreement, and more specifically to Article XI. Consequently, his delegation supported the Panel's conclusion.

The representative of Finland, speaking on behalf of the Nordic countries, said that they were convinced that more time was needed to study the report and its implications. Like Korea, they had noted that the present Panel's conclusions sometimes differed from, and in some respects contradicted, the earlier Panel's conclusions. That raised fundamental questions with broader implications.

The representative of Austria said that he found Korea's statement very interesting and agreed that more time was needed for reflection.

The representative of the European Communities said that his delegation had found the debate which had just taken place instructive, and had taken note of the points made. Some of the points that had been raised during the debate, notably by Korea, had also struck his delegation. In response to Colombia, he recalled that in this particular case there were no measures in force and no measures had been in force for nearly a year. The urgency of this issue had to be judged accordingly. It was incumbent on his delegation to study very carefully all that was said in the report, together with the statements by representatives, and to return with its more fully considered position at the next Council meeting.

The representative of Chile noted that a large majority of delegations had taken a position which he considered as just. His delegation regretted that the Community could not join a consensus on the adoption of the report at the present meeting. This weakened the GATT dispute settlement procedure, as had been pointed out by a number of delegations. Furthermore, the delay in the approval of the report meant serious prejudice for a developing country. At stake were the problems of apples and fruit in general at this period of time; whatever was to be or not to be approved by the Council would have an impact in terms of creating an uncertainty for Chilean producers and exporters concerning the Community measure during the next season, hence, the danger of any delay in adopting the report. That meant that a developing country, which needed to export to meet its international obligations and to finance its development, was kept in a situation of uncertainty. Perhaps when the Panel report was finally adopted, measures would already have been taken on exports for the current year. Chile believed that parties to a dispute could not be both judge and party at the same time, because this threatened the balance of rights and obligations. He had no doubt that if there were a vote on this question at the present meeting, there would be wide support for the Panel's conclusions. Therefore, his delegation hoped that the Community would not follow the example of delaying the approval of panel reports, and that at the next Council meeting, the Community would be able to accept the report.

The representative of Nicaragua asked the representative of the Community what he had meant by stating that before being able to take a decision the Community would need additional time to study this matter.

The representative of the European Communities replied that the implications of findings which swept quite widely beyond the arguments which had been developed in the course of the proceedings needed to be evaluated. These were considerable, and a certain amount of time was needed to examine them. For that purpose, the interval between this and the June Council meeting was perfectly proper, and it was also in the tradition of the Council's work. In the light of the comments made and the debate at the present meeting, the Community would be in a better position to judge the report and its conclusions in their totality.

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

9. United States - Restrictions on the importation of agricultural products applied under the 1955 Waiver and under the Headnote to the Schedule of tariff concessions (Schedule XX - United States) concerning Chapter 10
- Recourse to Article XXIII:2 by the European Economic Community (L/6393)

The Chairman recalled that the Council had considered this item at several earlier meetings, and on 6 March had agreed to revert to it at a future meeting. It was on the Agenda of the present meeting at the request of the European Communities.

The representative of the European Communities referred to the Community's complaint against the United States regarding the 1955 Waiver (BISD 3S/32). The Community had explained the complaint on a number of occasions and had, in its view, undertaken all the procedural steps necessary for the establishment of a panel under Article XXIII:2. The Community could see nothing in the GATT procedures which prescribed how a complaint should be either formulated or presented. Nevertheless, in response to requests made to it, the Community had been specific as to how it wanted this case to be treated. In the Community's view, it was now up to a panel to decide whether that complaint and the form in which it was presented were justified or not, and to report its findings accordingly. Therefore, the Community once again requested the United States to respond positively to its demands for recourse to Article XXIII:2 on this issue.

The representative of the United States expressed his delegation's disappointment that this item was on the Council's Agenda once again and at the present time, because the United States still believed that the Community had failed to provide the necessary details regarding the object of its complaint in this particular case. The United States, and probably other contracting parties, were therefore unable to evaluate the need for a panel. The United States could not consider this request until the Community provided more specific information regarding the basis for its concerns.

The Council took note of the statements and agreed to revert to this matter at a future meeting.

10. Export of Domestically Prohibited Goods (C/W/580, L/6459, L/6467)

The Chairman said that following the April Council meeting, he had discussed the situation with the Director-General and with a number of delegations. On the basis of those discussions, he had come to the conclusion that agreement could not be reached on this matter at the present meeting. It seemed that the best way to proceed would be for him to organize informal consultations open to all interested delegations in the week of 22 May.

The representative of Nigeria welcomed the Chairman's statement and reminded the Council that this issue had been in the GATT since 1982. For the past seven years there had been no significant progress on it. Nigeria hoped that the forthcoming consultations would bring something useful so that this issue could be considered and concluded once and for all.

The representative of Tanzania said his delegation wanted to stress, once again, that it remained anxious about this matter. A satisfactory resolution would greatly facilitate the understanding by many developing countries that account had been taken of their very real concerns in this area. Tanzania joined Nigeria in the hope that there would be an expeditious resolution of this question.

The representative of Nicaragua said that his delegation had noted with satisfaction the Chairman's proposal to hold consultations. Nicaragua supported the draft decision in C/W/580 and believed that a working group should be established as soon as possible to examine this question, bearing in mind the work being carried out by other international organizations. Populations in the developing countries were seriously endangered by the importation of hazardous substances produced by the developed countries.

The representative of Morocco said that the importance of this item had been significantly highlighted by a number of countries. He recalled that at the April Council meeting, an overwhelming majority had spoken out in favour of the establishment of a working group to examine the trade-related aspects of this question. He appealed to those delegations which had thus far shown some reticence in going along with the consensus and asked them to consider this in the course of the forthcoming consultations.

The representative of Côte d'Ivoire expressed her delegation's satisfaction with the Chairman's proposal and fully supported the statements by Nigeria and Tanzania.

The Council took note of the statements and agreed to proceed with the consultations as proposed by the Chairman.

11. Establishment of a streamlined mechanism for reconciling the interests of contracting parties in the event of trade-damaging acts
- Communication from Chile (C/W/587)

The Chairman recalled that this item had been introduced by Chile at the April Council meeting under "Other Business". Since then, Chile had circulated a draft decision concerning this matter in C/W/587.

The representative of Chile recalled that at the Council meeting in April, he had drawn attention to the problem recently faced by his country regarding the United States' suspension of imports of Chilean fruit as a result of the discovery of two grapes contaminated with toxic products --

the effects of terrorist sabotage. Canada had adopted a similar measure, which had been extended to all fruits and vegetables from Chile. Other importing countries had adopted similar measures, and Chile had thus been suddenly confronted with an almost total interruption of its fruit exports. He recalled that Article XX(b) of the General Agreement allowed countries to apply measures to protect human life or health whenever necessary, when such measures did not constitute arbitrary and unjustifiable discrimination or a disguised restriction on international trade. The measures in question had now ended, and GATT had a good opportunity to take some type of decision as to how the CONTRACTING PARTIES could make compatible the right of every contracting party to defend the health of its consumers, and the right of the exporter to rely on stable and unrestricted international trade, and thus try to avoid measures which, because they were taken hastily or without consultation, ran the risk of being disproportionate. In the case at hand, the victim had been Chile. In the past, other countries had suffered. In the future, the world might witness other equally criminal acts, such as the recent tampering of processed baby food in the United Kingdom. Chile felt that GATT, the guardian of free trade, should not remain indifferent when confronted with this type of situation.

The question was one of collective security with respect to isolated acts of sabotage or economic terrorism. In Chile's view, the reaction in the grape case was excessive as compared to the objective facts identified. The measures taken had affected Chile in a way that was difficult to quantify, but involved hundreds of millions of dollars of fruit and vegetables which had had to be destroyed or re-exported, confiscated or prohibited from entry because two grapes had been found to contain toxic substances. This situation had led Chile to believe that contracting parties should have a permanent expeditious system to hold consultations speedily, to exchange information and to arrive jointly at decisions -- in short, a crisis management body to balance the interests of all contracting parties, and, most importantly, to ensure that measures adopted would be in keeping with the dimension of the threat.

Chile had circulated a draft decision in C/W/587 and hoped that the Council could adopt it at the present meeting. In essence, Chile was suggesting that the Council Chairman convene informal consultations among interested contracting parties to analyse alternative modes of international cooperation designed to set up machinery which would guarantee the rights of contracting parties while minimizing the damage caused by trade-damaging acts. It was hoped that this could be done in such a way that the Chairman could inform the Council of the results at the next Council meeting.

The representative of Uruguay said that his delegation had followed carefully the matter involving Chile's grapes and was impressed by that country's moderation in the face of the immense damage caused to it. How many concessions would Chile have to seek in the Uruguay Round to make up for the hundreds of millions of dollars it had lost because of this single act? Uruguay had experienced the imposition of hastily taken measures

related to phytosanitary regulations which had caused serious damage, and thus was particularly sensitive to Chile's proposal. Looking just at the facts, it had to be noted that there was something lacking in GATT machinery. All the resources available to Chile had failed to be of any use in cases such as the one at hand. Chile's proposal seemed to be very balanced and extraordinarily cautious: all it asked was that the Chairman convene informal consultations so that contracting parties might study ways of setting up machinery which, while protecting the interests of contracting parties, minimized the damage caused by acts similar to the one described. Uruguay supported Chile's proposal and urged delegations present to support it as well.

The representative of Australia said that the issues raised by Chile were very serious for all food exporters. This was an extremely important matter and Australia had full sympathy with the concerns and proposals put forward. His delegation supported Chile's proposal that the Council Chairman convene informal consultations to study possible forms of international cooperation in cases such as this.

The representative of Mexico fully supported Chile's communication to the effect that informal consultations be held among the interested parties to set up a mechanism to minimize the damage caused to international trade by acts of sabotage. The measures taken by certain countries that felt affected represented a risk for countries such as Chile. Many countries with limited export coverage did not have the means to respond or react to unjustified acts by their trading partners. This kind of situation was detrimental to GATT's credibility, and it was important to find measures that would offer an immediate way of correcting this type of situation.

The representative of Nicaragua supported the draft decision in C/W/587.

The representative of Canada said that his delegation recognized Chile's right to have this issue reviewed by the Council, and could agree to have the Council Chairman undertake informal consultations on this issue. However, Canada had serious difficulties with the wording of Chile's draft decision. In Canada's view, governments had to be free to act expeditiously where, in their view, human health was endangered. In this regard, his delegation did not accept that actions taken in response to the particular incident referred to by Chile had been excessive. While efforts could and should be made to minimize, to the extent possible, the trade effects of such actions, governments could not be expected to consult extensively on the trade impact of their actions before responding to an urgent threat to human health.

The representative of Colombia said that his delegation, too, had followed with great attention the case raised by Chile, and was aware that in a number of cases, there had been excessive reactions which did not take into account a balance of contracting parties' interests. His country had suffered from a situation similar to that described by Chile, and thus

supported Chile's proposal that the Council Chairman organize informal consultations to study possible forms of international cooperation with a view to the establishment of a mechanism which, while guaranteeing the rights of contracting parties, would minimize the injury resulting from trade-damaging acts. That proposal seemed to be very moderate and well thought out. His delegation did not share Canada's objections, because the consultations would focus on the establishment of the kind of mechanism that would ensure more balanced reactions in cases such as the one at hand. His delegation hoped that in future, such unbalanced reactions could be corrected while, as Chile's proposal stated, guaranteeing respect for the rights of all contracting parties.

The representative of Hong Kong said that his delegation shared much of the sentiment underlying Chile's request and therefore supported the proposal that the Council Chairman carry out informal consultations to see whether such situations might be handled at the multilateral level.

The representative of Brazil said that the very serious matter raised by Chile seemed to be of great interest to all contracting parties and deserved the full attention of the Council. The point made by Canada was the type of question which should be discussed in informal consultations on this matter. Chile's proposal was both moderate and simple, and should be accepted by the Council.

The Chairman said that it would be his intention at the end of the discussion to suggest that the Council take note of the statements and authorize him to organize informal consultations on this matter further and to report to the Council.

The representative of Israel said that his country's exports of fruits and vegetables had also suffered in the past, to a certain extent from the same actions or same threats. For this reason, his delegation was very interested in the proposal to establish machinery to handle such crises in a responsible manner and in quick consultations. Israel supported the idea of the Council Chairman holding informal consultations on this matter.

The representative of Pakistan said that the problem raised by Chile was an important one. His delegation supported Chile's proposal which was simple, balanced and moderate, and did not prejudice the outcome of the consultations.

The representative of Turkey said that there was a need for GATT to take a decision concerning how to reconcile the right of every contracting party to protect the health of its consumers, with the legitimate right of exporters to be able to rely on unrestricted and stable international trade. The procedure outlined by Chile in C/W/587 was a good one which could render positive results, and Turkey supported its adoption.

The representative of Peru said that her delegation had examined with great attention the draft decision submitted by Chile and felt that the proposal to adopt a flexible mechanism of consultations would be a good

guarantee that in future, the effects of excessive unilateral measures damaging to the trade interests of contracting parties -- and in particular, the developing countries incapable of reacting to measures taken by their large trading partners -- could be avoided or minimized. Peru firmly supported the draft decision in C/W/587.

The representative of Sri Lanka said that his delegation strongly supported Chile's proposal. Sri Lanka too had suffered retaliation against its exports. It was in the best interests of all trading partners that there be some kind of mechanism to settle matters involving sabotage or terrorism regarding products for sale or trade, instead of taking unilateral action. He cited the example of a disaster in an Eastern European country in 1986, in the aftermath of which a Western European country had set certain standards which were much higher than the level necessary for the safety of human and other life. As a consequence, much livestock and food had been destroyed unnecessarily. In light of these examples, the international community should try to set up a mechanism which would establish systematic procedures to deal with such cases.

The representative of the United States said that his Government understood and respected Chile's reasons for requesting efforts in GATT to address the issues raised in C/W/587. However, like Canada, his delegation did not believe that the formal Council decision proposed in that document was either necessary or desirable to initiate the consultations sought by Chile. Therefore, the United States supported the Chairman's intended response to this discussion.

The representative of the European Communities said that his delegation fully understood Chile's motivation in raising this issue, and the Community would willingly participate in informal consultations to see what might be done about it. At the present stage, the Community was not sure whether a streamlined mechanism would or could respond in future to the diversity of cases that might fall under this heading. Indeed, there had just been a reference to a different type of case altogether, which had been caused by an accident rather than by terrorism. His delegation was not at all sure that contracting parties wanted to stray as wide as that, but could agree to informal consultations on the basis suggested by the Council Chairman.

The representative of India said that the issue raised by Chile was very important and timely. GATT had an important responsibility and rôle to play in such circumstances. His delegation supported Chile's proposal that the Council Chairman undertake informal consultations aimed at reaching conclusions which would be considered by the Council.

The representative of Indonesia said that this was a serious and difficult issue. His delegation was in full sympathy with Chile, and supported its balanced and moderate proposal.

The representative of Japan said that his delegation, too, fully understood Chile's concerns, but felt that informal discussions could be

held among interested parties on the general nature of the problem rather than focusing on the establishment of a mechanism. Japan agreed with the statements by Canada and the United States.

The representative of Cameroon said that his delegation had no doubt as to the legitimacy of Chile's request and its importance and appropriateness, and fully supported the well-balanced draft decision in C/W/587.

The representative of Jamaica supported the proposal for consultations on this issue.

The representative of Hungary supported Chile's proposal. Hungary, too, had experienced the excessive and discriminatory trade response of certain contracting parties to some unfortunate events, notably that referred to by Sri Lanka.

The representative of Morocco said that his delegation recognized the legitimacy of Chile's concern, and supported its proposal that the Council Chairman hold informal consultations to study possible forms of international cooperation with a view to the establishment of a mechanism.

The representative of Argentina said that his delegation agreed with Chile's concerns, and believed there was a consensus in the Council on the appropriateness of having informal consultations to find a solution to this problem quickly. Argentina recognized that the General Agreement, in particular the Articles concerning dispute settlement, provided machinery to deal with such problems, but in the case at hand, and given its nature, it would be a good idea to seek an appropriate solution through informal consultations.

The representative of Yugoslavia supported Chile's proposal for informal consultations to review this problem and to seek an appropriate and balanced solution. The legitimate rights of contracting parties to safeguard the health of their populations had to be taken into account, at the same time as the need to reduce the trade-damaging effects of such measures.

The representative of Zaire said that his delegation supported Chile's proposal, which was balanced and well-grounded. GATT had to play its rôle to help countries to avoid trade catastrophes of this type.

The representative of Côte d'Ivoire supported the proposal for consultations in order to find a solution meeting the interests of all parties. This could only strengthen the credibility of the international trading system.

The Chairman said that while there seemed to be a broad measure of support for having the Council Chairman conduct informal consultations on this matter, it did not appear that all delegations were prepared to adopt the draft decision in C/W/587. He therefore proposed that the Council take

note of the statements and authorize him to organize informal consultations to consider this matter further and to report to the Council. These consultations would be open to all interested contracting parties.

The Council so agreed.

12. United States - Increase in the rates of duty on certain products of the European Economic Community (Presidential Proclamation No. 5759 of 24 December 1987)
- Communication from the European Communities (L/6438)
- Recourse to Article XXIII:2 by the European Economic Community

The Chairman recalled that at its meeting in April, the Council had considered this item and had agreed to revert to it at a future meeting. It was on the Agenda of the present meeting at the request of the European Communities.

The representative of the European Communities said that the US Presidential Proclamation of 24 December 1987 remained one of the Community's continuing frustrations. The Community was now in the fourth month of unilateral measures which had been taken against it. It had asked the Council for a ruling on this matter, and had also asked for the establishment of a panel, but to no avail. The Community regrettably had no option but to have the matter brought to the Council again and again and to ask anew and with insistence for the removal of the unilateral measures in question.

The representative of the United States found it unusual that the Community had said it had no option, considering that the two sides had been engaged in bilateral negotiations on this subject for the past several months. This option had always been favoured by the Community as a way to resolve disputes, and was one in which the United States had some hope as well. The United States and the Community had reached tentative agreement on an interim measure in the beef hormones dispute to allow partial resumption of trade. The two sides had agreed to accept the initial recommendations of the US-EEC Hormones Task Force, including an interim measure that would enable US producers to ship to Europe meat not treated with hormones. To the extent that US beef and beef products were shipped to the Community under this measure, the United States would reduce its countermeasures on imports from the Community.

While this interim measure represented a step in the right direction, it would not resolve the trade problem or the larger issue of principle. Therefore, the United States and the Community had also agreed to have the Task Force continue its work beyond 4 May, and to review its progress before 15 June. Hopefully, future Task Force discussions would produce additional measures that would allow a full resumption in trade between the two parties, and his delegation did not consider it useful -- during a period in which the two parties were actively engaged in seeking a bilateral resolution to the problem giving rise to the US countermeasures -- to engage in a discussion in the Council of only the latter.

The representative of the European Communities acknowledged that there were efforts being made outside GATT to find a solution to the wider problem, and that these discussions had begun to bear some fruit. However, in the interim, the Community remained in the same situation in the GATT framework as earlier. Measures had been taken against the Community for which there had been no authorization by the Council. It would be remiss of the Community not to keep this matter before the Council. For that reason, anything less than a positive response either by the United States to accept a panel or by the Council to give a ruling as originally requested would not satisfy the Community.

The representative of Canada expressed his country's interest in the US statement regarding progress made in the Task Force on this matter, and reminded the Council and the two parties to this dispute that his country had an important trade interest in the products in question. Canada would be interested in any results, interim or otherwise, that emerged from this Task Force.

The representative of the European Communities said that he would like nothing more than to have this item removed from the Council's agenda. As consultations would be continuing for another 45 days, there might be developments which would assist the resolution of this dispute within the GATT, but there was at least a possibility that the Community would have to ask the Council to consider this matter again.

The Council took note of the statements and agreed to revert to this matter at a future meeting.

13. United States - Taxes on petroleum and certain imported substances
- Follow-up on the Panel report (L/6175)

The Chairman recalled that at its meetings on 8-9 February and 12 April, the Council had considered this matter, sometimes referred to as the "Superfund" Panel report. It was on the Agenda of the present meeting at the request of Canada.

The representative of Canada said that his delegation was disappointed that it had to raise this issue again in the Council. The United States had had nearly two years to implement the Panel's recommendations, and had yet to take concrete steps either to amend the legislation or to compensate the affected parties. Canada's preference was for the United States to implement the Panel's recommendations; however, if it could not do this immediately, it should provide compensation. At the April Council meeting, Canada had indicated its intention, failing any action by the United States, to request authority to withdraw substantially equivalent concessions from that country. He informed the Council that steps had been taken to draw up a list of items on which Canada intended to request authority to withdraw concessions from the United States, in the continuing absence of any action on its part to eliminate the discriminatory aspects of the tax or to provide compensation. An initial list of possible

products for trade action was being prepared. His Government intended to publish this list in Canada and to allow a suitable period for public comment, after which the final list would be submitted for consideration by the Council. It remained Canada's hope that the United States would respect the decision of the CONTRACTING PARTIES in this matter.

The representative of the European Communities recalled that at the time of the adoption of this Panel report nearly two years earlier, the United States had prided itself that it had agreed to the adoption of the report when it had first been presented to the Council. He quoted from the US statement at that meeting to the effect that the process in this dispute had been exemplary -- efficient, expeditious and the result of cooperation from all parties concerned -- and that hopefully it would be followed as a model of procedure. The United States had apparently done this because the case had been relatively simple and straightforward. In fact, it had been such an obvious case of violation of the national treatment principle that the Council might well have made a ruling without going through the panel procedure at all. Nearly two years later, this matter was now back at square one. Of what use was a speedy and efficient dispute settlement procedure up to the point of adoption, if nothing happened thereafter, and if a contracting party not only simply refused to implement the Panel's recommendations but refused to offer compensation or to accept the operation of the only GATT-consistent sanctions available, namely the withdrawal of equivalent concessions in accordance with the procedures under Article XXIII:2? The Community had requested the latter some time earlier, and a similar request was forthcoming from Canada. The United States had always been a strong supporter of an effective dispute settlement mechanism in GATT, but at the same time was preventing that mechanism from being effective where it really counted -- at the stage of removing GATT-inconsistent measures. The Community strongly urged the US Government finally to do something and to take the mortgage of this matter off the GATT dispute settlement mechanism.

The representative of Mexico said that Mexico's first preference in this matter had always been, and remained, the United States' implementation of the Panel's recommendations. However, almost two years had passed since those recommendations had been adopted by consensus. At the April Council meeting, his delegation had noted that there might be some difficulties in the United States regarding the immediate implementation of the recommendations. Mexico had asked the United States for bilateral consultations on the issue of compensation, and was following closely the positions of the Community and Canada on this matter. Mexico reserved its right under the General Agreement to re-establish the balance of advantages that had existed prior to the imposition of the GATT-inconsistent measures, and was also considering other means of compensation, as provided for developing contracting parties.

The representative of the United States said his Government agreed that the Panel had done a good job, but that in certain cases, implementing panel recommendations was not easy. There might be occasions in the future

for the United States to quote other contracting parties' statements. His Government regretted the delay in responding to the Panel's recommendations and had been extremely clear about its intent in this matter: the preferred remedy was to remove the GATT-inconsistent practice, e.g., to equalize the tax. A Government proposal to do that was in the final stages of preparation and would be forwarded very soon to the Congress, in the expectation that the legislation could be voted and signed into law. As his delegation had stated in the Council several times in the past, if it appeared that his authorities would be unable to secure legislation to bring the "Superfund" tax into conformity with the General Agreement, they intended to try to negotiate appropriate compensation.

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

14. United States - Customs user fee
- Follow-up on the Panel report (L/6264)

The Chairman recalled that at its meeting on 8-9 February, the Council had considered this matter. It was on the Agenda of the present meeting at the request of the European Communities.

The representative of the European Communities said that the record of implementation, or rather non-implementation, of Council decisions in this matter was hardly any better than the record for the "Superfund" case.⁵ Most of what he had said under that item, he could have repeated under the present item. However, the Community would limit itself to asking the United States once again, as it had done at the CONTRACTING PARTIES' session in 1988, what the United States Government had done or intended to do to implement finally this long-outstanding Panel report.

The representative of Canada said that his delegation supported the Community's concern and its question. Canada, too, wanted to know and felt it was important for the Council to know what the United States' intentions were for the implementation of the Panel's recommendations.

The representative of the United States said that as contracting parties were aware from previous discussions on this matter, his Government had developed and had attempted to promote legislation in 1988 to bring the US customs user fee into GATT conformity in the context of the Panel's recommendations. The US Congress had found the proposal unacceptable, and it had not been possible to send an amended proposal forward at that time. His Government now had a new proposal in circulation for internal consideration. At Congressional hearings in January 1989, the need to implement a GATT-consistent customs user fee had been addressed, and his

⁵ See item no. 13.

authorities believed that there would be support in Congress in 1989 for legislation to obtain this objective. To a large extent, the delays encountered in responding to the Panel's recommendations illustrated the practical problems associated with designing a system consistent with those recommendations that was also transparent and did not unduly burden trade. His authorities were very close to making a formal legislative proposal, and expected it to be implemented. As the United States brought its customs fee implementation into conformity with GATT, it expected that other contracting parties with similar customs charges would bring their own régimes into conformity with the Panel's reasoning. The United States did not intend to be the only contracting party subject to the principles upon which the Panel's decision was based.

The Council took note of the statements and agreed to revert to this matter at a future meeting.

15. Committee on Budget, Finance, and Administration
- Report of the Committee (L/6497)

Mr. Broadbridge (Hong Kong), Chairman of the Committee on Budget, Finance and Administration, introduced its report in L/6497. The Committee had met on 26 and 27 April. Document L/6497 reported on some of the items considered and sought decisions by the Council on three of them: (1) the Director-General's report on the 1987 accounts and the subsequent report by the External Auditor; (2) the final position of the 1988 Budget; and (3) the financial implications of the introduction of a new sickness insurance scheme for GATT staff.

Regarding the 1987 accounts, paragraph 5 of the report noted the worsening of the contributions in arrears position compared with 1986. He recalled that this was an issue the Committee and its former Chairman had wrestled with in 1988 and that as a result, the Council had approved a comprehensive package of measures designed to produce further improvements in this area. He pointed out that the position at the end of 1988 showed that contracting parties were moving in the right direction. Regarding the final position of the 1988 budget, the Committee had noted that over-expenditure on some sections of the budget had been covered by savings on other sections. Having examined the documentation and heard the Secretariat develop points of detail, the Committee recommended that transfers between budgetary sections amounting to SwF 698,871 be approved.

Regarding the provision of sickness insurance for serving and retired GATT staff, the Director-General had decided to transfer from the United Nations scheme to one run by the Caisse Maladie Suisse d'Entreprise. The Committee recommended the acceptance of the financial implications and recommended that the Director-General be authorized to overspend the provision for "other common staff costs" in the 1989 budget by SwF 132,000. The Director-General would make every effort to cover this overspending by savings in other budgetary sections, but if this were not possible, the Committee recommended that the additional expenditure be met by a withdrawal from the Working Capital Fund.

The Committee's report also drew attention to several other items. The problem of transfers between budgetary sections in the main turned on the difficulty of forecasting expenditure with sufficient precision, in particular in areas where control lay essentially outside the Secretariat. However, there was clearly advantage in the Committee being more fully informed of the developing situation throughout the year, and from now onwards, it would get a monthly statement in respect of items where over- and under-expenditure was likely. Regarding the financial implications of the number of meetings and the volume of documentation, the Committee had again gone through the argumentation and concluded that it had nothing new to offer. It was an inescapable fact that, in part, the GATT existed to exchange ideas, and that meetings and documents provided the means for this exchange. The Committee preferred to leave it to the good sense of the various chairmen and the Secretariat to exercise an appropriate economy when scheduling meetings and calling for documentation. On mailing procedures, the Secretariat had put to the Committee some initial proposals that could produce some useful savings, and the Committee had held a constructive first discussion on these. The Committee would return to this later, but would be grateful if contracting parties would on their own initiative review their document mailing requirements to be sure these were still valid and pitched at an appropriate level. On the cash situation, the Committee appreciated the cooperation of those contracting parties paying their dues early, and also thanked those observers who had made a contribution. Overall, there seemed to be movement in the right direction. The Committee had also given initial consideration to proposals from Bangladesh and Czechoslovakia about their contribution, and also to certain accommodation issues and to the provision of funds in 1989 for starting the Trade Policy Review Mechanism. The Committee would be coming to the Council with these items later.

The representative of Tanzania informed the Council that since the decision had been taken to restructure the financing of the GATT, his country had already begun to comply with its commitments. Tanzania was having some difficulties regarding the understanding according to which its contributions were being made and the assessment as at 21 April 1989 of Tanzania's outstanding contributions, and was in correspondence with the Secretariat on this matter. Regarding the package that had been agreed regarding developing countries in arrears, Tanzania and other contracting parties had made very serious efforts to comply with their obligations. It was hoped that, in due course, the Director-General would be in a position to make some kind of report on those efforts so that those contracting parties would not find themselves in the position of having to meet current obligations simultaneously with those in arrears for an indefinite period of time.

The Council took note of the statements, approved the Committee's recommendations in Paragraphs 6, 10 and 26 of its report (L/6497), and adopted the report.

16. Canada - Measures on exports of unprocessed salmon and herring
- Follow-up on the Panel report (L/6268)

The representative of Canada, speaking under "Other Business", informed the Council that on 25 April, his Government had taken steps to remove the export prohibitions on Pacific salmon and herring in compliance with the recommendation of the Panel report (L/6268) adopted in March 1988. At the same time, Canada had introduced a GATT-consistent landing requirement for all commercially caught Pacific salmon and herring to be delivered and off-loaded at shore-based provincially licensed buying stations for fisheries conservation and management information collection. Under this system, foreign buyers would have access to purchase unprocessed fish caught in Canadian waters.

The representative of the United States recalled that his delegation had expressed concern at recent Council meetings about the program Canada had proposed earlier to replace the restrictions which were the subject of the Panel finding in this case. The United States reserved its rights regarding the program just announced by Canada.

The Council took note of the statements.

17. European Economic Community - Regulation on imports of parts and components
- Recourse to Article XXIII:2 by Japan (L/6410)

The Chairman, speaking under "Other Business", recalled that at its meeting on 19-20 October 1988, the Council had established a panel to examine the complaint by Japan in L/6410 and had authorized the Chairman to draw up the terms of reference and to designate the members of the Panel in consultation with the parties concerned. He informed the Council that agreement had been reached as follows:

Terms of reference

"To examine, in the light of the relevant provisions of the General Agreement, the matter referred to the CONTRACTING PARTIES by Japan in document L/6410 and to make such findings as will assist the CONTRACTING PARTIES in making the recommendations or in giving the rulings provided for in Article XXIII:2 of the General Agreement."

It was the understanding of the parties to the dispute that the standard terms of reference did not preclude any party from arguing before the Panel that Article VI of the GATT should be interpreted in light of the Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade (BISD 26S/171), nor did they preclude other parties from arguing differently.

Composition:

Chairman: Mr. Joseph A. Greenwald

Members: Mr. Timothy Groser
Mr. Christopher Thomas

The Council took note of this information⁶.

⁶See C/165.