

GENERAL AGREEMENT ON TARIFFS AND TRADE

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COUNCIL

COUNCIL OF REPRESENTATIVES

Draft Report on Work since the Thirty-Seventh Session

In accordance with the Decision of 4 June 1960 establishing the Council of Representatives, the Council is required to report to the CONTRACTING PARTIES on the matters considered between sessions of the CONTRACTING PARTIES.

In carrying out its task, the Council has held ... meetings since the thirty-seventh session in November 1981. The minutes of these meetings are contained in documents C/M/154-C/M/... Adoption of this report, which summarizes the action taken by the Council, will constitute approval by the CONTRACTING PARTIES of that action.

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1. Arrangments for the thirty-eighth session

- (a) Progress reports of the Preparatory Committee on preparations for the Ministerial meeting (C/M/154, 155, 156, 157, 159, 160, 161, ...)

At their thirty-seventh session the CONTRACTING PARTIES had decided that the next session in November 1982 should be convened at ministerial level and that the Council should be entrusted with the overall responsibility for the preparations of the meeting, including the institutional arrangements (L/5262). The Council would be assisted by a Preparatory Committee, open to all contracting parties, and it would also make arrangements for other GATT bodies to make appropriate contributions to the preparatory work.

At its meeting on 7-8 December 1981, the Council agreed to establish a Preparatory Committee, which would make proposals to the Council on the agenda and the documentation for the Ministerial meeting. Ambassador McPhail (Canada) was appointed Chairman of the Committee.

At each subsequent meeting of the Council on 22 February, 31 March, 7 May, 29-30 June, 21 July and 1 October 1982, the Chairman of the Preparatory Committee informed the Council about progress made by the Committee. The Council took note of these progress reports. At its meeting on 2 - ... November 1982, the Council considered the final report of the Preparatory Committee, to which was attached a draft of a Ministerial Declaration.

To be completed.

- (b) Attendance by People's Republic of China (C/M/160)

At its meeting on 21 July 1982 the Council approved a request by the People's Republic of China to be represented as observer at the thirty-eighth session of the CONTRACTING PARTIES.

2. Notification, Consultation, Dispute Settlement and Surveillance (C/M/156, 158)

At their thirty-fifth session in November 1979 the CONTRACTING PARTIES had adopted the Understanding Regarding Notification, Consultation, Dispute Settlement and Surveillance drawn up in the Multilateral Trade Negotiations (BISD 26S/210). In March 1980 the Council had adopted a proposal (BISD 27S/20) which provided, inter alia, for reviews in respect of developments in the trading system to be conducted by the Council at sessions specially held for that purpose. The Council had held three special meetings to review this matter in November 1980, May 1981 and November 1981.

At the meeting of the Council on 31 March 1982 the Chairman said that it was important to review recent GATT experience with the dispute settlement mechanism. He raised a number of questions, the answers to which he believed would be important in the context of adding further strength to GATT's legal and institutional framework and procedures.

The Council took note of the statement.

At the fourth special meeting of the Council on 29 June 1982 the Chairman drew attention to the updated factual note by the secretariat (C/W/385) and to a communication from Canada (C/W/385/Add.1). He stated that in addition to carrying out the periodic review of developments in the trading system, the Council might consider what could be placed before the forthcoming CONTRACTING PARTIES' session at ministerial level.

The representatives of Australia, Brazil, Canada, Chile, Czechoslovakia, European Communities, Hungary, India, Japan, Korea, Norway, Philippines, Poland, Romania, Spain, United States and Yugoslavia made statements on the matter under discussion.

Some representatives raised the matter of possible improvements in the Understanding itself. The view was expressed that it had not always been applied or utilized in the right spirit. It was also stated that it was too early to contemplate any such improvements because the Understanding was still in a running-in period. While making comments addressed to specific aspects of the matter under discussion, several representatives stressed that the essential element was the contracting parties' political will to make the system work.

In respect of the dispute settlement process generally, it was stated that clear-cut substantive trade rules made it easier to identify and solve trade disputes, and that contracting parties should seek a conciliation of their differences on the basis of a clear decision on their GATT rights and obligations. Contracting parties must nevertheless avoid arbitrary recourse to the dispute settlement mechanism. There could be no question of converting the CONTRACTING PARTIES into a court of justice; and the rôle of a panel was to assist in the search for a compromise. Rather than trying to introduce a rigid legal formulation, such as giving binding force to their conclusion based on a panel or working party report, reliance on the collective wisdom of the CONTRACTING PARTIES would be a more pragmatic and fruitful approach. Also, the problem of increasingly heavy workloads and the stress on the system should be dealt with at the Ministerial meeting.

In respect of the panel procedures, it was said that the CONTRACTING PARTIES should not establish successive panels for one and the same case. The work of panels should be accelerated, with reasonable time-limits being set for this. Greater use should be made of outside experts having

up-to-date knowledge of the functioning of GATT; and panel members' qualifications should be more clearly defined. In some cases legal assistance was needed, in addition to technical assistance on economics provided by the secretariat.

Some representatives considered that it was not mandatory for the Council to adopt panels' reports, while the view was also expressed that the recommendations of panels should be adopted by the CONTRACTING PARTIES since this was a guarantee that the entire GATT membership was in agreement. It was stated that instead of adopting a panel report in a routine manner, the Council should take a concrete decision and decide upon a particular line of action to be followed in the case of each panel report. The system could be strengthened if panels were to submit recommendations to the Council on how to act on their conclusions. Also, a cooling-off period between the time when the report was presented to the Council and the decision was taken by the Council would permit the concerned party to explain how it proposed to follow a panel's recommendations. A proposal was made for the introduction of a new procedural step between the adoption of a panel report and a decision concerning further action, in which the contracting party concerned would inform the Council of the compliance measures which it intended to take.

Improvements were suggested in respect of follow-up, it perhaps being necessary to set a period of time for the contracting party concerned to correct the matter. Council decisions should also be periodically reviewed; and a contracting party which did not comply with a decision might be precluded from using the dispute settlement procedures until it had done so. In this context, it was stated that it would be useful to have a commitment by Ministers on compliance by contracting parties with the conclusions and recommendations of panels.

It was suggested that greater use might be made of working parties and of good offices, including those of the Director-General.

With regard to conciliation, there was a proposal for an obligatory procedure to be triggered by the Council and not by the two contracting parties concerned, which would occur during the phase preceding a request for the establishment of a panel. The view was expressed that the process of conciliation should be subject to a certain quasi-legal discipline, and it was suggested that a special conciliation officer might be charged with reporting to the Council or with drawing up questions for a panel in cases where the conciliation had failed. Concern was expressed lest a strengthening of the conciliation process might dilute the dispute settlement mechanism to the disadvantage of weaker trading partners. It was stated that limiting the mechanism to a process of consultations and conciliation would lead to "one-sided" justice to the detriment of smaller contracting parties. It was also said in the context of conciliation that the power of persuasion of the weaker contracting party should not be underestimated.

In a broader context, it was stated that following the letter of the rules was of vital importance to smaller trading nations in disputes with their larger partners. Since the weaker trading partner was at a disadvantage, it was necessary to resolve disputes on the basis of purely judicial merits.

It was suggested that the secretariat make an analysis of the dispute settlement procedures. It was also suggested that the Ministers decide to establish a special group of experts to examine specific problem areas in the dispute settlement process.

With regard to notification, it was said that there was a need for contracting parties to honour their current obligations rather than to develop new ones. The view was also expressed that all notifications required under the General Agreement were essential for transparency, and that there should be more notifications and an improvement in their quality. There should also be a more elaborate discussion of this subject in the context of Part IV, in particular, concerning developed contracting parties' commitments under the provisions of Article XXXVII:1. There were suggestions that the secretariat might process notifications to a certain degree and also that it might consider summarizing its experiences in respect of notification of trade measures. A working party might examine the notification requirements and how the procedures could be improved and simplified in order to increase transparency.

Following the discussion, the Chairman noted that while reference had been made to the Council's rôle in overseeing the working of the GATT system generally, the discussion had quite properly been intensely focused on how the subject of dispute settlement should be brought to the forthcoming session of the CONTRACTING PARTIES at ministerial level and what might be the expectations therefrom.

He referred, inter alia, to representatives' statements and suggestions related to the Understanding itself, to the aspect of conciliation and the need to utilize this and adjudication in a balanced way, and to various aspects of the panel process, including the issue of follow-up, where it was generally felt that primarily the political will on the part of contracting parties was important.

He said that the points to which he referred were not exhaustive or comprehensive and that the Council looked forward to receiving written contributions from delegations on the subject under discussion.

In view of the importance of the matter and the very wide range of points which had been covered in the discussion, he considered it necessary that representatives reflect on them further, and said that, if the Council agreed, he intended to consult expeditiously on an informal basis with delegations in an effort to determine whether the Council was in a position to arrive at some broad conclusions which could be presented to Ministers at the forthcoming session in November.

The Council so agreed.

3. Consultative Group of Eighteen (C/M/...)

To be completed.

4. Tariff matters

- Committee on Tariff Concessions (C/M/154)

In January 1980 the Council had established the Committee on Tariff Concessions and had authorized the Chairman of the Council to designate the Chairman and Vice-Chairman of the Committee in consultation with interested delegations.

At its meeting on 7-8 December 1981 the Council was informed of the designation of the new Chairman of the Committee.

5. Trade in Textiles

- Reports of the Textiles Committee and Annual Report of the Textiles Surveillance Body (C/M/160)

At its meeting on 21 July 1982 the Council considered reports of the Textiles Committee (COM.TEX/26, COM.TEX/28) and the annual report of the Textiles Surveillance Body (COM.TEX/SB/742 and Add.1).

The Director-General said that in 1981 the Textiles Committee had adopted the Protocol extending the Arrangement Regarding International Trade in Textiles (MFA) to 31 July 1986 (L/5276). In May 1982 the Textiles Committee had appointed Ambassador Marcelo Raffaelli to the post of Chairman of the Textiles Surveillance Body. The Sub-Committee on Adjustment had held its first meeting in July 1982.

The representative of Egypt supported the adoption of the reports and appealed to importing countries to adhere to the basic principles contained in the MFA and the Protocol of Extension when entering into bilateral agreements.

The representative of the United Kingdom speaking for Hong Kong supported the appeal made by the representative of Egypt and asked that the subject of textiles be addressed in the forthcoming Ministerial meeting.

The representative of the European Communities said that his delegation had taken note of the appeals.

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

6. Sub-Committee on Protective Measures

- Report of the Sub-Committee (C/M/154)

The Committee on Trade and Development had established the Sub-Committee on Protective Measures in March 1980 (COM.TD/104) in accordance with the Decision of the CONTRACTING PARTIES of 28 November 1979 on the Examination of Protective Measures Affecting Imports from Developing Countries (BISD 26S/219).

At its meeting of 7-8 December 1981 the Council considered the report of the Sub-Committee on its fourth session (COM.TD/SCPM/4), which had been adopted by the Committee on Trade and Development in November 1981 and forwarded to the Council.

The Council adopted the report.

7. Structural adjustment and trade policy (C/M/...)

To be completed.

8. Balance-of-payments import restrictions

- Consultations on balance-of-payments restrictions

(a) Arrangements for consultations in 1982 (C/M/156)

Arrangements for consultations on balance-of-payments import restrictions in 1982 were presented to the Council on 31 March 1982 (C/W/379).

The Council took note of the arrangements.

(b) Consultation with Brazil (C/M/156)

In December 1981 the Committee on Balance-of-Payments Restrictions held a consultation with Brazil. The report (BOP/R/124) was presented to the Council on 31 March 1982. While noting that serious difficulties persisted in Brazil's current account, the Committee had regretted that the maintenance of multiple impediments to imports was considered necessary by the Brazilian authorities despite the relatively favourable overall balance-of-payments situation. The Committee had noted that Brazil applied simultaneously three restrictive measures for balance-of-payments purposes. The Committee had requested Brazil to announce a time-table for the

phasing-out of the application of the financial transaction tax to imports, to relax its import licensing suspension scheme, and to reduce the surcharges imposed for balance-of-payments purposes. The Committee had also asked Brazil to provide certain additional information on its import régime.

The Council adopted the report.

(c) Consultation with Greece (C/M/156)

In November 1981 the Committee held a consultation with Greece. The report (BOP/R/123) was presented to the Council on 31 March 1982. The Committee had welcomed the abolition by Greece of several measures taken for balance-of-payments purposes, in connection with its accession to the EEC. It had noted that a fixed time schedule had been established for the progressive removal of the system of advance import deposits for balance-of-payments purposes and for its termination on 1 January 1984.

The Council adopted the report.

(d) Consultation with Portugal (C/M/160)

In June 1982 the Committee held a consultation with Portugal. The report (BOP/R/125) was presented to the Council on 21 July 1982. The Committee had noted that Portugal's external position had deteriorated sharply in 1981. The Committee had encouraged Portugal to pursue monetary and fiscal policies which would foster an improvement in the current account, and had reiterated the recommendation made in previous consultations that Portugal announce a time-table for the removal of the restrictive import measures in the near future.

The Council adopted the report.

(e) Consultation with Yugoslavia (C/M/154)

In November 1981 the Committee held a consultation with Yugoslavia. The report (BOP/R/122) was presented to the Council on 7-8 December 1981. The Committee had welcomed the abolition of a temporary surcharge in June 1980 and had recommended a rationalization of the Yugoslav exchange allocation system.

The Council adopted the report.

(f) Examination under simplified procedures

(i) Consultation with Tunisia (C/M/154)

In November 1981 the Committee had examined a written statement supplied by Tunisia under the simplified procedures.

The report (BOP/R/121) was presented to the Council on 7-8 December 1981.

The Council adopted the report and agreed that Tunisia be deemed to have consulted with the CONTRACTING PARTIES and to have fulfilled its obligations under Article XVIII:12(b) for 1981.

(ii) Consultations with India and Pakistan (C/M/160)

In June 1982 the Committee had examined written statements supplied by India and Pakistan under the simplified procedures.

The report (BOP/R/126) was presented to the Council on 21 July 1982.

The Council adopted the report and agreed that India and Pakistan be deemed to have consulted with the CONTRACTING PARTIES and to have fulfilled their obligations under Article XVIII:12(b) for 1982.

9. Nigeria - Restrictive measures on imports (C/M/161)

At the meeting of the Council on 1 October 1982, the representative of the United States said that in April 1982 Nigeria had instituted a wide range of import restrictions, which he urged the authorities of Nigeria to notify promptly.

The representative of Nigeria said that the measures referred to were legitimate and that he would transmit the statement made by the representative of the United States to his authorities.

The Council took note of the statements.

10. Uruguay - Supplementary rebate on exports and supplementary surcharge on imports (C/M/161)

At the meeting of the Council on 1 October 1982 the representative of the United States said that in document L/5355 Uruguay had notified certain measures which his delegation did not consider to be authorized by the GATT provisions cited by Uruguay. He urged Uruguay to initiate consultations under the provisions of Article XVIII as soon as possible.

The Council took note of the statement.

11. Emergency action

- Australia - Article XIX actions on passenger motor vehicles and certain footwear (C/M/155, 156)

At the meeting of the Council on 22 February 1982 the representative of Australia referred to measures taken by Australia under Article XIX to restrict imports of passenger motor vehicles and certain footwear. Consultations between Australia and the European Economic Community had not led to an agreement; and the EEC had accordingly notified its intention to suspend certain tariff concessions with regard to Australia. In his view, the Council had a thirty-day period in which to decide whether or not to disapprove of the action proposed by the EEC. Australia did not dispute the right of a contracting party with a substantial interest in a product subject to Article XIX action to suspend substantially equivalent concessions or other obligations, provided that the Council did not disapprove. In the present case, however, Australia disputed the basis used by the EEC to justify the proposed action, as well as the nature and extent of the suspension of tariff concessions. Australia was of the opinion that the proposed action by the EEC raised many of the problems related to the GATT safeguard system. He requested the Council to disapprove the proposed action.

The representative of the European Communities said that the action decided on by his authorities in respect of motor vehicles and footwear had its origins in 1974/75, with some interruption in the application of the Australian measures in respect of motor vehicles during the previous seven years. The EEC had held several consultations with Australia since the restrictions were imposed, without a mutually satisfactory agreement being reached. The EEC recognized Australia's right to invoke the provisions of Article XIX, but in the absence of a mutually satisfactory agreement on compensation, the affected party could adopt retaliatory action, except if the CONTRACTING PARTIES disapproved. He said that the compensation offered by Australia had been insufficient and uncertain from a legal point of view. Using Australian statistics in calculating the injury, the EEC had made known its intention to retaliate by adopting a measure that was modest and covered only a few products with limited trade value. The EEC would respect the thirty-day period and, if the Council did not disapprove, would then be entitled to take action. However, the present case could be resolved by an Australian offer of compensation equivalent to the damage the EEC had suffered.

The representative of Australia said that there was also a serious question of principle as to how long the ninety-day periods could be extended by mutual agreement under Article XIX. His delegation did not dispute the right of a contracting party to take action, but disputed the nature and the extent of this action and whether or not there existed a substantial equivalence.

Several representatives spoke on this matter. While not contesting the right for the EEC to take retaliatory action, some delegations expressed concern as to the open-ended nature of the proposed EEC action. They also believed that the Council would need more time for an assessment of whether the countermeasures contemplated by the EEC consisted of substantially equivalent concessions. Proposals were made for the resolution of the matter before the expiry of the thirty-day period.

The Chairman suggested that the parties concerned might continue further consultations and provide more information for the Council to consider at its next meeting.

The representative of Australia said that if the EEC took the proposed action prior to the next meeting of the Council, Australia could not participate in further discussions because of the important issues of principle involved.

The representative of the European Communities said that his delegation was ready to discuss this matter with the delegation of Australia, with the help of the secretariat and with the Chairman's good offices. When the thirty-day delay had elapsed, the EEC would have the right to adopt the retaliatory action; but he stressed that any such action would have no real effect on imports from Australia.

The representative of Australia asked the Council for a temporary disapproval in order to provide time for the CONTRACTING PARTIES to determine whether the Community measures constituted an equivalent retaliation. He cited an earlier case and stressed that the EEC would require a specific decision by the CONTRACTING PARTIES not to disapprove of the contemplated retaliatory action.

The representative of the European Communities stressed that the provisions of Article XIX made it clear that without a disapproval by the CONTRACTING PARTIES, the Community measures could be taken after thirty days.

The representative of the United States expressed disagreement with Australia as to the rôle of the Council on approving or disapproving the action.

The Chairman said that the main issue before the Council was whether the action proposed by the EEC should be disapproved. A number of delegations needed additional information and time to reflect on this issue. If, in the meantime, any contracting party would take action which another contracting party considered not to be in conformity with the provisions of Article XIX or any other Article of the General Agreement, the Council would examine this. His proposal for further consultations and the provision of any further information by the parties involved no prejudging of the rights or obligations of any contracting party.

The representative of Australia said that if the Chairman's summing-up were to be interpreted as not prohibiting the EEC to act after the expiry of the thirty-day period, any such action would not be acceptable to Australia since the Council had taken no decision on the issue. Australia would regard any action taken by the EEC in this matter as invalid, and in that event reserved its right to take counter-retaliatory measures of a similar kind.

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

At its meeting on 31 March 1982 the Council was informed that both parties agreed that the issue remained quiescent and that there was no reason to press it to a resolution at that time, it being recognized that this was without prejudice to either contracting party's interpretation of its GATT rights.

The Council took note of this information.

12. Trade restrictions affecting Argentina applied for non-economic reasons (C/M/157, 159, 160, 161)

At its meeting on 7 May 1982 the Council considered a communication from the delegation of Argentina in respect of trade restrictions affecting Argentina applied for non-economic reasons (L/5317), together with a communication from the delegations of the European Communities, Australia and Canada (L/5319) related to the same subject.

The representative of Argentina said that the measures referred to in document L/5317 were not applied against Argentina for economic and trade reasons, that they were not covered by the normal rules of the General Agreement and that they involved principles for which no precedent existed in GATT. The measures had not been notified to the GATT. He said that they were based on reasons of a political nature and were meant to exert political pressure on the sovereign decisions of Argentina in order to intervene in a conflict in which only one of the countries concerned was involved. In his view, the measures were unjustifiable under the General Agreement, and were a new type of colonialism against a developing country which did not have any power of retaliation.

He then described in detail the declarations of solidarity which his country had received from governments and organizations. He characterized the situation as one of economic aggression, referring particularly to Article 32 of the Charter of Economic Rights and Duties of States, and felt that this constituted a precedent with severe consequences for the future of developing countries.

He therefore believed that the Council should act within the framework of its competence and react to a problem which could destabilize the credibility of the General Agreement itself. Accordingly, his delegation

requested the immediate suspension of the measures in order to resolve the situation and to prevent measures of this nature from being imposed in the future. He stressed that Resolution 502 of the Security Council had not asked or authorized, either implicitly or explicitly, the adoption of any measures such as the trade sanctions taken. Nor, in his view, were the measures justified under the provisions of Article XXI in respect of the countries mentioned in document L/5317.

The representative of Peru expressed full support for Argentina. He referred to resolutions and declarations in which the Latin American countries had rejected and deplored the economic sanctions taken by the EEC and other contracting parties against Argentina, considering that they constituted retaliatory economic sanctions which were counterproductive and would only aggravate the dispute in question.

The representative of Brazil said that his country's support for Argentina on the substance of its political dispute with the United Kingdom was known. While the motives for the trade sanctions against Argentina were clear, the justification was not; and this type of action set a dangerous precedent. The trade sanctions had no basis in either the Charter of the United Nations, the General Agreement or in Resolution 502 of the Security Council. He said that this criticism, however, did not apply to the United Kingdom. He then drew attention to specific portions of Article XXI, and stated that it was difficult for his delegation to accept that the countries in question, except one, were taking this action in protection of their essential security interests. His delegation would support any decision of the Council in support of Argentina's case in GATT.

The representative of Uruguay expressed his country's solidarity with Argentina in this matter. This case was important for countries with limited economic power; and the measures imposed in respect of Argentina were neither justified nor did they have a legal basis.

The representative of Zaire said that political matters should be dealt with in the appropriate fora and that it was up to the United Kingdom and Argentina to find an acceptable solution for these problems through discussions.

The representative of Colombia stressed that if the measures were not lifted by the countries concerned, the credibility of the General Agreement would be threatened, together with the value of commitments made by all contracting parties to the GATT.

The representative of Spain believed that the United Kingdom could find justification for its action under the provisions of Article XXI:b(iii) of the General Agreement, but expressed doubt concerning the action taken by other States. The present dispute constituted a very serious danger for future international economic relations and particularly in the North-South context.

The representative of the Dominican Republic expressed support for Argentina and appealed that the economic and trade measures taken for non-trade reasons by a group of developed contracting parties be lifted immediately.

The representative of Ecuador, speaking as an observer, said that her country had shown its solidarity with Argentina in the various international fora, and expressed the deep concern of her delegation against the trade measures, which violated specific provisions of the General Agreement.

The representative of Cuba said that the discussion of this matter in the Council challenged the credibility of GATT and the rôle for which it was designed. He expressed his support for any decision in the Council favourable to the position of Argentina.

The representative of the Philippines noted that Security Council Resolution 502 referred only to Argentina and the United Kingdom. He also wondered about the inherent rights of the EEC in the context of Article XXI.

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

The representative of Pakistan was of the opinion that the spirit of GATT regulations did not permit the suspension of obligations under the General Agreement, except in cases of extreme urgency. Pakistan could not support the action taken by some contracting parties in imposing trade sanctions against Argentina, and supported any steps that the Council would take for their removal.

The representative of Yugoslavia said that this matter raised questions of credibility of GATT obligations and merited the full attention of the Council, together with the use of the good offices of the Director-General.

The representative of Singapore said that this case should not be seen as an issue in North-South relations. The wording of Article XXI allowed a contracting party the right to determine the need for protection of its essential security interests. His delegation nonetheless saw a danger in the broad interpretation which Article XXI permitted.

The representative of Romania recalled that Romania had always taken a stand against trade restrictions applied for non-economic reasons. He reaffirmed his country's opinion that problems between States should be settled by means of negotiations.

The representative of Indonesia said that the problem of trade restrictions, as raised by Argentina in document L/5317, should be considered within the framework of the GATT provisions.

The representative of the United States said that the GATT had no power to resolve political or security disputes. Whether the parties were developed or developing countries did not change the basic character of the dispute or give GATT a rôle it would not otherwise have. By its own terms, the General Agreement wisely left it to each contracting party to judge what was necessary to protect its essential security interests in time of international crisis. He emphasized that the matter lay outside the GATT's competence, while reaffirming the United States' concern that a solution should be found as quickly as possible.

The representative of Hungary expressed his delegation's serious concern about this matter, stating that the security considerations under Article XXI of the General Agreement should be handled with great care, which had not been the case in the present instance as questionable measures had been taken.

The representative of Poland said that the use of economic sanctions, including trade restrictions, for reasons which were not of an economic nature could cause serious prejudice to international co-operation and could be adverse to the purposes of the GATT. The measures in question could not be justified by invoking the provisions of Article XXI. He also expressed the view that the provisions of Article XXI were subject to those of Article XXIII:2.

The representative of New Zealand expressed doubts whether the GATT was the appropriate body in which the circumstances which had led to the imposition of economic sanctions should be debated. New Zealand had imposed economic sanctions upon Argentina for reasons similar to those advanced in document L/5319, in conformity with New Zealand's rights and obligations under the General Agreement.

The representative of Czechoslovakia felt that in GATT, as a matter of principle, political considerations should not outweigh economic and trade considerations.

The representative of Japan said that the interjection of political elements into GATT activities would not facilitate the carrying out of its entrusted tasks. He expressed the wish that, based upon its tradition of a pragmatic and businesslike approach, the spirit of co-operation would prevail in GATT.

The representative of the European Communities said that the EEC and its member States had taken certain measures on the basis of their inherent rights, of which Article XXI of the General Agreement was a reflection, and required neither notification, justification, nor approval. Every

contracting party was - in the last resort - the judge of its exercise of these rights. He stressed that the measures were not an issue in the relations between developing and developed countries. It should therefore be the main wish of the Council to avoid political discussions. In this spirit, he repeated the hope of the EEC and its member States that appropriate negotiations elsewhere would soon allow a satisfactory outcome to the situation which had led them to take the measures in question.

The representative of Norway said that his authorities were of the opinion that under the circumstances the EEC and its member States, together with Australia and Canada, did not act in contravention of the General Agreement.

The representative of Canada said that his Government had taken certain action, including trade action, affecting Argentina in the light of Resolution 502 of the Security Council. These actions were consistent with Canada's international obligations, including those under the General Agreement. Canada's sovereign action was to be seen as a political response to a political issue and not as a North-South issue. The situation which had necessitated the measures had to be satisfactorily resolved by appropriate action elsewhere, as the GATT had neither the competence nor the responsibility to deal with the political issue which had been raised. He referred to specific aspects of Security Council Resolution 502 and of Article XXI of the General Agreement, and said that many contracting parties had taken the same and similar actions for political reasons. Article XXI did not mention notification. It appeared to him that the fact that the action had been taken was not really unprecedented, whereas the examination of the action in GATT was without precedent.

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

The representative of Australia associated his delegation with the statements made by the representatives of the European Communities and Canada, and expressed serious concern and great regret at the situation that had resulted in the measures under consideration. It was inappropriate to enter into a debate on the political aspect of the issue. The Australian measures were in conformity with the provisions of Article XXI:(c), which did not require notification or justification. He emphasized that this issue had no bearing on North-South relations. He expressed the view that it might better be dealt with elsewhere, and the fervent wish that the problems would be peacefully resolved as soon as possible.

The representative of Argentina was of the view that the failure to notify trade restrictions was not only a failure to respect fundamental obligations stemming from the General Agreement, but also a failure of respect for the CONTRACTING PARTIES. He underlined that the measures also violated the Charter of the United Nations and the provisions adopted by the Security Council. Argentina had attempted to submit to GATT only the trade aspects of this case. His delegation intended to hold consultations with the countries holding views similar to those of his Government in order to orientate effective action. In the light of the statements that had been made by representatives, he suggested that the Council revert to this matter at its next meeting in order to find suitable solutions to the problem.

The representative of Brazil expressed reservations about what the representative of the European Communities had called "natural rights" to justify its actions, and to the interpretation given by Australia to the provisions of Article XXI:(c). The Council should reflect more deeply about the interpretation of Article XXI. He raised in this connection the question of whether other natural rights were reflected in other Articles of the General Agreement, and whether actions taken under Article XXI were outside the scope of Article XXIII.

Following the discussion, the Chairman said that a wide range of opinions had been expressed on the subject under consideration. He noted that there were differing views as to whether the trade measures in question violated GATT obligations, whether the measures were based on inherent or natural rights, whether justification, notification and/or approval were necessary, whether this was a North/South issue, and whether the matter under consideration was purely political and not within the competence of GATT. He noted one particular strain of opinion running nearly throughout, viz, the expression of a wish and the keen desire that the matter be settled as quickly as possible. Technical questions had also been raised regarding the parts of the General Agreement containing natural rights, and the relationship between Articles XXI and XXIII.

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

It was so decided.

At the meeting of the Council on 29-30 June 1982 the representative of Argentina referred again to document L/5317, which cited the basic provisions of the General Agreement which had been violated by the measures in question. He said that as of 25 May 1982, the EEC had extended the measures without giving a date of expiry. He said that on 21 June 1982 the EEC had decided to suspend conditionally these measures, but Argentina had rejected the conditions attached to the lifting of the measures. He said that the conflict continued to exist on a diplomatic-political level and

that negotiations between the two parties to allow for a peaceful solution, as requested by Security Council Resolution 502, had not begun. He spoke of the moral support Argentina had received from other developing countries, from the non-aligned countries, and particularly from other Latin American countries, and pointed to the consequences which would flow from the sanctions in respect of the relations between the European Communities and Latin America, and which would require thorough reflection. He then turned to the specific obligations under the General Agreement and the impact of the sanctions on the trade of Argentina, and said that his delegation reserved all its rights under the General Agreement and the possibility to invoke in due course the provisions of Article XXIII in order to determine the prejudice caused by the sanctions. He also said that in the first notification he had requested the good offices of the Director-General as a preparatory stage in the dispute settlement mechanism leading to the establishment of a panel or working party.

He then turned to Article XXI, and noted that the contracting parties applying the sanctions had stated that it gave them a "natural right" to adopt restrictions without the need for notification, justification and compensation. He described in some detail the results of research undertaken by his delegation on this question, and said that it was necessary to examine in greater detail what the CONTRACTING PARTIES could do in such a case. His delegation considered it appropriate that the Council, acting by consensus, should pronounce itself in the form of a note interpreting Article XXI so that all contracting parties would know their rights and obligations under the provision of the General Agreement.

He then proposed that the Chairman of the Council, assisted by the Director-General, be asked to make an exhaustive analysis of all the relevant elements in connection with Article XXI. This should be done in a way which was specifically divorced from the present case. If the draft note were not adopted by consensus, then the Council would have the second alternative of establishing a working party or panel in order to clarify different points of view. If this alternative were used, the decision for such a procedure would have to be adopted at the level of the CONTRACTING PARTIES under the provisions of Article XXV.

In turning to various possible solutions he said that for the time being, he preferred that the CONTRACTING PARTIES interpret the GATT laws. His delegation, therefore, requested formally that a note interpreting Article XXI be drawn up, covering four specific points related to this matter.

The representative of the European Communities recalled his statement at the Council meeting on 7 May 1982 in which he had spoken of "natural rights" under the provisions of Article XXI, the fact that the measures were not taken in the context of relations amongst industrialized and developing countries, and the wish that the Council abstain from political discussions. He said that while firmly reiterating that wish, the EEC and its member States wished to point out that the Council of the European

Communities had decided to suspend the measures in question vis-à-vis Argentina as from 22 June 1982, on the assumption that no act of force would be committed in the South Atlantic in future.

Support for the proposal by Argentina was expressed by the representatives of Venezuela, Brazil, Cuba, India, Uruguay, Colombia, Ecuador, Spain, Peru, Romania, Nigeria, Yugoslavia, Philippines and Dominican Republic.

The representative of Canada said that while a number of contracting parties had expressed support for Argentina, his count was that an even larger number had another opinion and that many did not take a definite position. Canada's action was consistent with its obligations under international law and under the General Agreement. He then turned to questions raised in connection with the use of Article XXI, and said that there was a record of interpretation of that Article, which still stood. As for the latest proposal by the representative of Argentina, he said that any decision on the drafting of a note interpreting Article XXI had to be taken in the much broader context of the current priorities in GATT.

The representative of the United States stressed that the GATT had no rôle in a crisis of military force, and that the effort to inject GATT into political and security issues for which it had neither competence nor expertise could only undermine the ability of GATT to deal with the important problems and challenges facing this economic organization for trade. As to the proposal to draft a note interpreting Article XXI, his delegation had doubts as to the utility of such an examination, given the nature and language of that Article. The proposal would be examined by his authorities before a final position could be taken by his delegation.

The representative of Australia informed the Council that, on the same basis as the EEC and Canada, the Australian Government had decided on 29 June 1982 to lift, with immediate effect, the economic restrictions applied against Argentina since 8 April 1982. In respect of the request made by Argentina, he agreed with the views of the representative of Canada, who had raised the question of priorities.

The representative of the United Kingdom, speaking for Hong Kong, shared the concern expressed by the representative of the European Communities that the Council should avoid political discussions which could put at risk the non-political nature of the GATT.

The representative of Japan expressed doubt as to the advisability of embarking upon discussions of a political nature. His delegation had to refer this matter to its Government for a final decision.

The representative of Argentina expressed appreciation to those delegations which had supported his proposal, and replied to specific points raised by the representatives of Japan, Australia, United States and European Communities.

The representative of New Zealand said that the Argentinian proposal for a note interpreting Article XXI required further reflection.

The representative of Norway expressed doubt that providing for the preparation of a note interpreting Article XXI would lead to useful results.

The representative of the European Communities said that not only in respect of Article XXI, the practice in GATT over the years had been that each contracting party was the sole judge of the exercise of its rights and obligations. He felt that in this case, which was a decision of great importance, it was wise to take time for reflection.

The Chairman noted, inter alia, that the representative of Argentina had reserved his country's rights under Article XXIII, and had also made a specific proposal for the preparation of a note interpreting Article XXI which would be unrelated to the specific matter under discussion. There had been some statements by representatives supporting the proposal and according particular importance to it, as well as some statements casting doubt on the utility of embarking on such an exercise of interpretation, and on whether the timing was opportune. Some representatives had stated that since the proposal was of far-reaching importance, they would have to seek guidance from their respective capitals.

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

The Council so agreed.

At the meeting of the Council on 21 July 1982, the representative of Argentina asked that this matter be considered at the next meeting of the Council.

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

At the meeting of the Council on 1 October 1982 the Council agreed that the Chairman might hold informal consultations with the interested delegations starting in the near future with a view to arriving at some suggestions as to how this matter might be resolved.

13. Documentation on non-tariff measures (C/M/154)

At the meeting of the Council on 7-8 December 1981, the Chairman recalled that in 1980 the Council had adopted procedures for the updating of the Inventories of Non-Tariff Measures (BISD, 27S/18). The revised Inventory containing notifications relating to industrial products had already been circulated and work on the Inventory relating to agricultural products was in progress. In the context of implementing UNCTAD Resolution 131(v), the UNCTAD Secretariat had approached the GATT with the request that the revised Inventories be made available to that organization.

The Council agreed to the transmittal of the GATT Inventories to UNCTAD, subject to a number of qualifications.

14. Recourse to Articles XXII and XXIII

(a) Canada - Foreign Investment Review Act (FIRA) (C/M/156, 160)

At the meeting of the Council on 31 March 1982 the representative of the United States requested the Council to establish a panel under Article XXIII:2 to examine certain trade-distorting practices in the implementation of Canada's Foreign Investment Review Act (FIRA), or other Canadian Acts, policies or practices. The practices in question required that commercial enterprises utilize in their production Canadian products or equipment, or required that they export a percentage or quantity of production.

The representative of Canada said that the administration of FIRA had remained basically unchanged since its entry into force in 1974. His Government was of the view that the practices in question were not inconsistent with Canada's GATT obligations and did not constitute a nullification or impairment of benefits accruing to the United States. He noted that a number of countries with a lower degree of foreign-controlled firms had instituted policies to regulate foreign investment, and said that Canada's policy was a necessary response to a particular problem. His delegation was aware that the General Agreement did not pertain to investment per se. However, foreign investment did have an impact on international trade. His delegation was therefore prepared to agree to the establishment of a panel to examine this matter, subject to agreement on the terms of reference.

The representative of the European Communities reserved the right to make a contribution to the work of the panel, if such a panel were established.

The representative of Brazil enquired as to the relevant GATT provisions affected by the Canadian practices, and expressed the opinion that the Council should be informed as to the trade practices which should be examined by the Panel.

The representative of the United States replied that his Government challenged trade-distorting practices imposed under the umbrella of investment acts. In his view, Articles III, XI, XVII and XXIII were relevant to this case.

The representative of Brazil asked that his delegation be consulted on the terms of reference for the panel.

The Council took note of the statements and agreed to establish a panel and authorized the Chairman of the Council, in consultation with the two parties concerned and with other interested contracting parties, to decide on appropriate terms of reference and, in consultation with the two parties concerned, to designate the Chairman and the members of the panel.

At the meeting of the Council on 21 July 1982, the representative of the United States said that it had not been possible for the Canadian authorities to agree on the composition and terms of reference for the panel.

The representative of Canada said that his Government attached great importance to this question and therefore wished to proceed with care in framing the panel's terms of reference.

The Council took note of the statements.

(b) European Economic Community

(i) Imports of citrus fruit and products (C/M/159, 160, 161)

At the meeting of the Council on 29-30 June 1982 the representative of the United States said that the United States had requested the establishment of a panel under Article XXIII:2 to examine the matter of tariff preferences granted by the EEC on certain citrus products from certain Mediterranean countries (L/5337). His delegation did not agree with the statement of the EEC in document L/5339 that the request for a panel was "inadmissible", and believed that any contracting party had the right to request a panel with regard to a dispute under the General Agreement. He expressed the hope that the EEC would not object to this request for a panel in this matter.

The representative of the European Communities said that he wished to give the United States representative the opportunity to reflect fully on the communication from the EEC (L/5339).

The representative of Israel expressed the view that the Agreement between his country and the European Communities had been found by a working party to be fully consistent with Article XXIV. There was accordingly no need or purpose for the Council to reopen this matter nor, a fortiori, for the establishment of a panel.

The representative of Australia did not agree that the Agreement between Israel and the European Communities had been found to be fully in accordance with the provisions of the General Agreement. He also said that Australia had always regarded it as an inalienable right to seek the establishment of a panel when bilateral settlement of a dispute had not been possible.

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

The representative of Tunisia expressed his delegation's concern over the gravity of the problem being examined and its serious implications for GATT's contribution to expanding the trade of developing countries. He appealed to the United States delegation to withdraw its complaint, which Tunisia considered unfounded.

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

The representative of Chile said that this matter was also of concern to his country, which had considerably increased its exports of citrus fruits mainly to the EEC, even though Chile was not benefiting from any preferences on the EEC market for these products. He commended to the EEC the idea of including citrus fruit in the Generalized System of Preferences.

The representative of Yugoslavia shared the opinion expressed by other representatives to the effect that the preferential arrangements in question were in conformity with the relevant GATT provisions.

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

The representative of Senegal expressed deep concern at the establishment of a panel which would be challenging special preferences and agreements which had already proved their efficiency as concerned trade between the EEC and certain developing countries. He recommended that this problem be re-examined during the forthcoming Ministerial meeting.

The representative of Spain said that this subject was of the greatest importance for Spain, whose bilateral agreement with the European Economic Community included mutual tariff cuts for a series of products.

The representative of Pakistan said that the EEC should grant preferences to all developing countries on a non-reciprocal and non-discriminatory basis.

The representative of the European Communities said that the previous statements made it possible to foresee the size of the problems raised by the request of the United States. The request was technically unjustified and politically inadvisable, and was not merely a matter of citrus fruit but rather a question of principle.

The representative of Jamaica said that this matter did not constitute a complaint indicating that damage had been done to a particular country.

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

At the meeting of the Council on 21 July 1982 the representative of the United States said that for the past several years the objective of the United States had been a reduction of barriers in the EEC market for United States citrus exports. The United States did not agree with the views expressed at the earlier Council meeting that the citrus preferences in question were legal under Article XXIV, or the view that the absence of recommendations after a working party review of an agreement somehow exempted any aspect or effect of such an agreement from all GATT provisions, or that because there had been an inconclusive examination of an agreement by a working party, contracting parties had somehow lost the right to challenge any aspect or effect of that agreement in an Article XXIII proceeding. Several contracting parties, including the United States, had reserved their GATT rights during the review of the agreements in question. He reiterated that the United States' interest and objective were not to attack the principle of preference for developing countries, and that it was only because the EEC had refused a practical accommodation on this matter that the United States had brought this issue to the GATT at all, after exhausting bilateral means over a number of years.

A great number of representatives spoke on this matter. Some representatives supported the request for a panel which was a general right of a contracting party which should be respected. Some representatives recalled that in the working parties which had examined the various agreements doubts had been expressed as to the full compatibility of the agreements with the General Agreement, or views had been expressed that the agreements were not fully compatible with the provisions of Article XXIV. Some representatives appealed to the parties to make a renewed effort to seek conciliation, which might involve the good offices of the Director-General. Some representatives expressed their deep concern at the way the matter was to be handled, in view of their great interest as exporters of citrus fruits.

The representative of the United States expressed his readiness to enter into consultations under the Director-General's leadership.

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

At the meeting of the Council on 1 October 1982 the Director-General stated that he had met with the delegations of the United States and European Communities, separately and jointly, in August 1982. Pursuant to these discussions, it had been agreed that the good offices of the Director-General would be carried out "with a view to the conciliation of the outstanding differences between the parties", and that, during at least the initial stage of the good offices, the Director-General would be working only with the two delegations. It had further been agreed that both delegations would concentrate for the time being on the possibility of working out a practical solution to the matter. He had met with the parties in September in order to clarify the technical factors affecting the access of US citrus exports into the EEC market, and had made a proposal on the basis of which the parties might open negotiations. On the basis of the response to his proposal, the Director-General had concluded that it would serve no purpose to continue the process of good offices, as it did not appear to be possible to conciliate the outstanding differences between the parties.

The representative of the United States requested that the Council establish a panel forthwith.

The representative of the European Communities said that in principle, the Community had no basic objection to the establishment of a panel if that was the wish of the United States. The Community would, however, have to hold consultations with other parties interested in the case.

The representative of Tunisia said that his country remained convinced that there was no basis for the United States complaint. His delegation did not oppose the principle of establishing a panel to examine the question. Nevertheless, some time was needed for consultations.

The representative of Spain requested the establishment of a working party, instead of a panel, to examine this matter, which had far-reaching and in-depth consequences as it concerned agreements which had already been examined under Article XXIV.

The representative of Israel said that the Agreement between Israel and the EEC had been accepted, recognized, and approved by the CONTRACTING PARTIES. The purpose of a panel was to give assistance to the CONTRACTING PARTIES in making recommendations or in giving rulings as envisaged in Article XXIII:2, and not, for instance, Article XXIV. For Israel, the terms of reference of the panel would have to conform strictly to the provisions of the Understanding.

The representative of Turkey expressed the view that it was too early to proceed to the establishment of either a panel or a working party.

The representative of the United States stated that the Understanding as well as standing GATT practice gave to the complaining party the choice of requesting either a panel or a working party. Any contracting party having an interest in the matter would have an opportunity to present its views to the panel.

The representative of Malta supported the suggestion that the interested parties should be given time for consultations.

The representative of Canada supported the establishment of a panel in this case. The fact that no recommendations had been made by the earlier working parties which had looked at the successive preferential arrangements entered into by the EEC, did not indicate the unconditional acceptance of the agreements by the CONTRACTING PARTIES.

The representative of Australia supported the request for a panel as well as the statement by the representative of Canada.

The representative of Brazil recalled that at the Council meeting on 29-30 June 1982 his delegation had supported the request for a panel.

The representative of Switzerland said that what a panel should look into was the treatment given to a specific tariff heading under a liberalization agreement already examined in GATT. If the EEC had withdrawn a tariff reduction accorded under such an agreement, he would understand the United States request, for that could call into question the degree of conformity of the agreement with Article XXIV. If, on the other hand, following the conclusions that might be arrived at by a panel, the EEC were led to withdraw the tariff reduction in question, the agreement covering that reduction might well no longer cover substantially all the trade and therefore be rendered questionable under the General Agreement and more precisely Article XXIV. The representative of Switzerland wondered whether that was what had motivated the United States.

The representative of Chile supported the request for a panel to examine the matter.

The representative of Austria said that there could be no confidence in an international agreement if it were questioned afterwards. Any injury claimed by one party would be a matter for negotiation and not for a panel.

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

¹ Understanding regarding Notification, Consultation, Dispute Settlement and Surveillance (BISD 26S/210).

(ii) Subsidies on canned peaches, canned pears and raisins
(C/M/156, 159)

At the meeting of the Council on 31 March 1982 the representative of the United States said that his Government was requesting the Council to establish a panel under Article XXIII:2 in order to examine the matter of subsidies granted by the European Economic Community on the production of canned peaches, canned pears and raisins (L/5306).

The representative of the European Communities said that the procedure in this case had been quite hasty and expressed regret that such brief consultations were increasingly becoming general practice. The EEC did not, however, refuse the request for the establishment of a panel. As raisins had not been included in the consultations, he asked that the consultations on this product be continued with the United States.

The representative of Australia asked that any further consultations on raisins take into consideration the interest of some other contracting parties.

The representative of the United States said the United States was ready to continue the consultations on this product. If during the consultations, it appeared that the question of raisins should not be covered by the panel, that item could be taken off the terms of reference.

The Council took note of the statements, and agreed to establish a panel as requested and authorized the Chairman, in consultation with the parties concerned, to decide on appropriate terms of reference and to designate the Chairman and members of the Panel.

At its meeting on 29-30 June 1982 the Council was informed of the composition and the terms of reference of the Panel.

The representative of the European Communities said that for the EEC, the reference to the "relevant GATT provisions" essentially meant Article XXIV.

The representative of Australia said that his delegation wished to reserve its right to make a presentation to the Panel.

The Council took note of the statements.

(iii) Quantitative restrictions on imports of certain products from Hong Kong (C/M/154, 161)

At the meeting of the Council on 7-8 December 1981, the representative of the United Kingdom, speaking on behalf of Hong Kong, said that his authorities considered that benefits accruing to Hong Kong under Articles I, XI and XIII were being impaired by quantitative restrictions maintained by

France in respect of a number of products. His delegation had made proposals to France and to the European Communities for urgent consultations under Article XXIII:1.

The representative of the European Communities said that his delegation was prepared to consult with Hong Kong.

The Council took note of the statements.

At the meeting of the Council on 1 October 1982 the representative of the United Kingdom, speaking on behalf of Hong Kong, said that the consultations had shown that there was no possibility for a satisfactory adjustment to the matter. His authorities therefore requested the Council to establish a panel under the provisions of Article XXIII:2 (L/5362).

The representative of the European Communities said that his delegation was not opposed to setting up a panel.

A number of representatives supported the request for the establishment of a panel.

The Council agreed to establish a panel and authorized the Chairman of the Council to designate the Chairman and members of the Panel, in consultation with the parties concerned.

(iv) Sugar régime (C/M/161)

At the meeting of the Council on 1 October 1982, the representative of Colombia recalled that Argentina, Australia, Brazil, Colombia, Cuba, Dominican Republic, India, Nicaragua, Peru and Philippines had sought recourse to Article XXIII in respect of the EEC common sugar régime (L/5309). On behalf of the joint complainants, he reported that the consultation in September 1982 had not resulted in a satisfactory adjustment. Accordingly, they wished to reserve their rights under the General Agreement.

The representative of the European Communities expressed the hope that the Director-General would be able to hold consultations with all countries interested in the world sugar market in order to remedy the situation.

The Council took note of the statements.

(c) Finland - Internal regulations having an effect on imports of certain parts for footwear (C/M/161)

At the meeting of the Council on 1 October 1982, the representative of the European Communities referred to a decision in January 1982 by the Board on Export and Import Licensing of Finland that for 1983 the leather soles used for footwear to be exported to the Soviet Union had to be of Finnish origin. This was, in his view, a violation of certain provisions of the General Agreement, particularly Article III. Bilateral consultations had not

led to satisfactory results, and the possibilities for bilateral contacts appeared to have been exhausted. The EEC reserved all its rights and requested the establishment of a panel.

The representative of Finland stated that Finland considered the EEC claim to be without legal justification. The consultations held so far had not been sufficient to settle the dispute. Although Finland did not agree that the matter in question fell within the competence of the GATT, Finland was prepared to accept the establishment of a panel.

The representative of the European Communities hoped that further reflection on the part of Finland would make it possible to arrive at a solution for this matter.

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

(d) United States

(i) Imports of certain automotive spring assemblies (C/M/154, 155, 159, 160, 161)

At its meeting on 3 November 1981 the Council had considered the complaint by Canada and had agreed that if further consultations between the two parties did not quickly lead to a mutually satisfactory solution, a panel would be established with the composition and terms of reference to be determined in consultation with the two parties concerned.

At its meeting on 7-8 December 1981 the Council was informed that a panel had been established, but that it had not been possible to reach agreement on the terms of reference.

The representative of Canada said that in his view it was for the complainant to define the terms of the complaint, provided they fell within the parameters of the General Agreement. Canada had not simply brought one case before the Panel, but also the principle of possible use in the future of Section 337 of the U.S. Tariff Act of 1930.

The representative of the United States said that the two parties were not too far apart as regards the terms of reference, but he believed that a defending party should not be forced to accept terms of reference which were open-ended. He suggested that the secretariat bring the two parties together to see if the remaining difficulties could be bridged.

Following a recess, the Council was informed that the parties had reached agreement on the terms of reference for the Panel.

The Council took note of the terms of reference and of the statements.

At its meeting on 22 February 1982 the Council was informed of the composition of the Panel.

At its meeting on 29-30 June 1982 the Council considered the report of the Panel (L/5333). The Panel had come to the conclusion that the exclusion order issued by the U.S. International Trade Commission (USITC) against the importation of automotive spring assemblies fell within the provisions of Article XX(d) and was, therefore, consistent with the General Agreement. Accordingly, the Panel considered that an examination of the United States action in the light of other GATT provisions was not required. As regards the general issue of the use of Section 337 by the United States in cases of alleged patent infringement, the Panel had focused its attention on the possible conclusions it could draw from its examination of the automotive spring assemblies case.

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

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

At the meeting of the Council on 21 July 1982 the representative of the United States said that the Council should adopt the report. Since Article XX was an exception from other GATT obligations, it was hardly surprising that the Panel had not provided any opinion on the Article III arguments made by Canada. The Panel had rendered an opinion on the specific case before it and had left open the GATT question with respect to the application of the subject United States law to other cases.

The representative of Canada disagreed with a number of the elements in the statement by the representative of the United States. The Panel had not ruled on the question put to it, and the Canadian complaint was not against the exclusion order issued under Section 337, the use of which appeared to be increasing. He requested that in the light of the unusually short period since the previous Council meeting, consideration of the report be deferred until the next meeting.

The representative of the United States said that the United States would expect the Council to take definitive action on the matter at the next meeting.

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

At the meeting of the Council on 1 October 1982 the representative of Canada said that his authorities considered that the Panel had erred fundamentally in interpreting its terms of reference, and as a result had not directly addressed the real issue put to it. The essence of the Canadian complaint had been that the use by the United States of the special adjudicative process under Section 337 for determining patent infringement by imports, as well as any exclusion order emanating from this process, represented treatment of imported products clearly less favourable than that accorded to products of national origin and was "not necessary" in terms of the relevant GATT exception. However, the Panel had focused its examination on the GATT status of an exclusion order per se.

He then explained in detail why his authorities were concerned by the Panel's findings and conclusions, and said that Canada considered it important for the contracting parties to have a fuller assessment of the implications of general exclusion orders before approving a conclusion which could constitute an unfortunate precedent. He gave the reasons why Canada believed that it was neither necessary nor desirable for the Council to adopt the report or to take a substantive decision on this item. In these circumstances, he said that it would suffice for the record to show that the Council had taken no decision in the matter, and this particular item would be dropped from the agenda.

The representative of Brazil stated that the Panel's terms of reference appeared to have been too broad and that as a result, a number of aspects of this case, as presented in the report, had not been entirely clarified. His authorities also questioned the methodology described in the report, and then explained in some detail why, even accepting the Panel's methodology, Brazil found it hard to accept the Panel's view that the US measure was necessary under the terms of Article XX(d). Brazil considered that an examination of the measure in the light of the other GATT provisions referred to in paragraph 49 of the Panel's report should have been carried out. In that case, the conclusion would have been that the measure represented a denial of national treatment under Article III of the General Agreement.

The representative of the United States said that his authorities disagreed with Canada's views concerning the report of the Panel. He explained why the United States believed the report was correct in its essential legal findings and should be adopted. The Panel had followed an analysis that was logical and in the GATT tradition, examining first whether the application of Section 337 in the specific case of spring assemblies was contrary to the General Agreement. It had concluded that the United States had not contravened its obligations in that case, since the United States action fell within the delineated Article XX(d) exception. He noted that Canada sought to shelve this case precisely so that it could bring the same sort of case again to a panel. However, the United States was of the view that it should not be harassed by cases that presented no materially different GATT issues and requested, therefore, the adoption of the Panel's report.

The representative of the European Communities agreed that the Panel had failed to address the question of whether it was essential or necessary for the United States to maintain a discriminatory adjudicative process. His authorities considered that the USITC procedure was arbitrary, and shared Canada's concern regarding the use of a general exclusion order.

The representative of Norway, speaking for the Nordic countries, said that those countries also considered that the report could not be taken as a precedent in future concrete cases nor as concerned the consistency of the US procedures with the General Agreement.

The representative of Australia explained why, in the view of his authorities, the Panel report provided an acceptable interpretation of Article XX(d) and, to that extent, was a useful precedent for future cases involving the use of Section 337 or similar legislation. Australia supported the adoption of the report.

The representatives of Chile and Japan said that some more time was needed for reflection.

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

(ii) Prohibition of imports of tuna and tuna products from Canada
(C/M/154, 155, 156, 157, 159)

In March 1980 the Council had agreed to establish a panel to examine the complaint by Canada relating to the prohibition by the United States of imports of tuna and tuna products from Canada.

At the meeting of the Council on 7-8 December 1981 the representative of Canada said that it was his understanding that the Panel would issue its report in the near future, and expressed the wish of his delegation that it be adopted at the next meeting of the Council.

The Council took note of the statement.

At its meeting on 22 February 1982 the Council considered the report of the Panel (L/5198). The Panel had stressed that its findings and conclusions were relevant only for the trade aspects of the matter under dispute and were not intended to have any bearing whatsoever on other aspects, including those concerning questions of fishery jurisdiction.

The Council adopted the report.

The representative of Canada said that his Government continued to be concerned as to any possible future action by the United States. Canada would therefore ask the Council at its next meeting to recommend to the United States to ensure that Section 205 of the law in question was implemented in a manner consistent with United States GATT obligations.

The representative of the United States said that the import embargo against Canadian tuna had been one action in a much wider context of fisheries policies and disputes. During the course of the Panel's deliberations, in September 1980 the United States had lifted the embargo, which was followed in July 1981 by a treaty preventing recurrence of the situation. He noted that prevailing GATT practice in such circumstances was for a panel to issue a report summarizing the case and noting that the parties had reached a settlement. He said that the dispute involved particularly difficult issues related to Article XX. It would be inappropriate and gratuitous for the Council to make a recommendation concerning a measure lifted a year and a half earlier and the recurrence of which was subsequently prevented by a treaty.

The representative of Peru welcomed the Council's adoption of the Panel Report, which had implications for other contracting parties prejudiced by arbitrary measures by the United States of a similar nature, including Peru. For this reason Peru supported the request by Canada that the CONTRACTING PARTIES make a recommendation to the effect that the U.S. law in question be implemented in conformity with the provisions of the General Agreement.

The representative of Canada considered that the continued existence of the law in question could affect other products in similar circumstances.

The Council took note of the statements.

At its meeting on 31 March 1982 the Council had before it the text of a draft decision submitted by the delegation of Canada (C/W/378).

The representative of Canada recalled that the Panel had concluded that the United States embargo on tuna and tuna products, as applied from 31 August 1979 to 4 September 1980, did not comply with the requirements of Article XX(g) and was not consistent with the provisions of Article XI. Canada was therefore requesting the Council to recommend that the United States ensure that the law in question would be implemented in a manner consistent with its GATT obligations. While Canada was hoping that the circumstances which had led to the imposition of the tuna embargo would not recur, his Government believed that there still existed the potential for this to happen with respect to other fisheries.

The representative of Ecuador, speaking as an observer, said that this problem had also confronted other countries, including Ecuador, which had suffered severe prejudice from similar measures adopted by the United States.

The representative of the United States said that the Panel had continued to examine this case at Canadian insistence, even after the United States had completely eliminated the challenged embargo and had entered into a formal treaty with Canada that prevented a recurrence of the embargo. In adopting the report, the Council had made a ruling that the tuna embargo in question was contrary to the United States' GATT obligations. Accordingly, the terms of Article XXIII had been met. The recommendation requested by Canada went beyond the scope of the dispute and the findings of the Panel, and would create the impression that Section 205 of the law in question broadly had been assessed by the Panel. He urged the Council to conclude its consideration of this matter by noting Canada's assumption that the United States would administer the law in the light of the Council's decision adopting the Panel's report.

The representative of Peru said that the Canada-United States treaty had not settled the question for other countries like Peru.

The representative of Brazil said that the problems between the United States and Canada concerning the law in question were mostly a question of general international law and especially of the law of the sea.

The representative of Australia said that the present matter raised the question of what should happen when a bilateral agreement was reached on the very specific point at issue. The Panel had decided to proceed with its work and to establish a complete report, setting an important precedent in relation to dispute settlement. He said that panels and the Council could, and in many cases should, proceed to make recommendations going beyond the specific issue in dispute. A recommendation along the lines of the Canadian suggestion would thus strengthen the GATT dispute settlement procedure.

The representative of New Zealand said that New Zealand endorsed the findings of the Panel. If a decision was considered necessary, it should be cast in somewhat more general terms and might emphasize that care should be taken by the United States, as well as by other contracting parties, to ensure that implementation of national fisheries legislation was always in accordance with GATT obligations.

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

At its meeting on 7 May 1982 the Council was informed that the two principally interested parties wished to reflect further on this matter.

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

At the meeting of the Council on 29-30 June 1982 the representative of Canada said that Canada had held further discussions with representatives of the United States. It was not Canada's intention to pursue this matter further at the present time, bearing in mind the responsibility of the CONTRACTING PARTIES to keep under surveillance any matter on which they had given rulings. Canada reserved the right to return to this question in the future.

The representatives of India, Peru and Australia reserved their rights in this regard.

The representative of the United States said that his delegation maintained the position expressed at earlier Council meetings.

The Council took note of the statements.

(iii) Import duty on vitamin B12 (C/M/159, 160, 161)

In June 1981 the Council had established a panel to examine the complaint by the European Economic Community relating to the United States import duty on vitamin B12.

At its meeting on 11 June 1982 the Council considered the report of the Panel (L/5331).

The representative of the European Communities drew attention to the danger of using a weighted average of tariffs for certain headings in a process of tariff modification, in cases of renegotiations under Article XXVIII. He also stated that the EEC had been surprised that the Panel, notwithstanding its finding that the United States had not infringed its commitments, had nevertheless recommended to the Council to invite the United States to advance the implementation of the Tokyo Round concession rate on feed-grade vitamin B12. He proposed that the Council revert to this item at its next meeting.

The representative of the United States said that his delegation did not object to the deferral to the next meeting.

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

At the meeting of the Council on 21 July 1982 the representative of the European Communities recalled his statement at the preceding meeting and asked whether the United States was ready to accept the Panel report as a whole, including the recommendation to accelerate the staging of tariff reductions.

The representative of the United States said that the report had been framed narrowly and carefully to meet the particular and rather peculiar matter that the EEC had brought before the Panel. He pointed out that any change in the duty, including acceleration of staging, would require new legislation. He also pointed out that the EEC seemed largely to have resumed its former position in the United States market for the product in question. The United States would be willing to discuss any proposal the EEC might make for the negotiation of a further acceleration of the staging of the concession on this item, with the understanding that any agreement that might be reached would be subject to obtaining implementing legislation from the U.S. Congress.

The representative of the European Communities expressed the view that the conditions posed by the United States were virtually impossible to meet. He said that it was surprising that the Panel had not given some thought to the rights, analogous to those under Article XXVIII, which the EEC could exercise when no mutually acceptable solution could be found to specific cases raised by the EEC under the ASP Understanding. In the EEC view, rights equivalent to those in Article XXVIII were appropriate in such a case. The EEC had also been surprised by the Panel's conclusions that the method used by the United States for the conversion of the previous common bound rate had been qualified as "neutral" and "in principle fair and equitable". There were contradictions in the Panel conclusions which were virtually inadmissible to the EEC and only served to explain the Panel's final conclusion that the United States had not infringed its commitments but nevertheless should be invited to make good the damage it had caused. He

said that the Panel report also raised a matter of principle, because if future tariff negotiations under Article XXVIII were to be based on the utilization of a system of weighted averages in the renegotiation of tariff duties, this would revise a good part of the results of the Tokyo Round as well as of earlier tariff rounds. The EEC had also raised this matter in the Committee on Tariff Concessions.

The representative of the United States said that the relatively small item under dispute had been part of a very large negotiated package which had been overwhelmingly favourable to the EEC. He pointed out that the EEC had accepted the technique of trade-weighted averages for the ASP conversions with ample reasons to be pleased with the results. He confirmed that this technique did not in any way prejudice the system the United States would use in adopting the Harmonized System.

The representative of the European Communities said that the statement of the representative of the United States did not contain any commitment and assurance that the conversion method applied for vitamin B12 would not also be used for the Harmonized System. Since the United States rejected a part of the Panel's conclusions which would satisfy the EEC, his delegation also had to reserve its rights and could not agree to the adoption of the Panel report at that meeting.

The representative of the United States stated that the United States was willing to accept the Panel report in its entirety and he urged other contracting parties to adopt the Panel report. As regards the Panel's invitation to the United States to advance the implementation of the Tokyo Round concession rate on feed-grade vitamin B12 to such an extent that imported vitamins could again attain their traditional position in the United States market, his earlier reference to the fact that the exporters from the EEC had meanwhile regained their share in the United States market was relevant.

The Chairman emphasized the urgency for the Council to take conclusive action relating to panel reports submitted to it. He invited the interested delegations to engage in serious consultations on this matter and suggested that the Council revert to this matter at its next meeting with the hope of being able to resolve this issue conclusively.

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

At the meeting of the Council on 1 October 1982 the representative of the United States recalled that the report had been discussed in detail at a previous meeting, and said that it should now be adopted.

The representative of Brazil supported the adoption of the report. He believed that it could serve as an example in which the Council would take a clear-cut decision, and that sub-paragraph 22(h) of the report would be the ruling or recommendation by the Council.

The representative of the European Communities asked whether the United States was ready to reply to the invitation of the Panel to accelerate the results of the Tokyo Round.

The representative of Australia drew attention to the Panel's having exhorted the United States to accelerate the implementation of its Tokyo Round concessions on feedgrade vitamin B12, despite the conclusions in its favour. His delegation also questioned the use in this case of a weighted average of tariffs in terms of its conformity with the provisions of Article II, paragraph 1(a) and (b), and paragraph 3, and noted the non-use of Article XXVIII. His delegation was of the view that the particular procedures outside Article XXVIII adopted by the parties concerned should not constitute a precedent in future cases.

The representative of Canada supported the adoption of the report on the understanding that the use of trade-weighted averages would not constitute a precedent for, inter alia, the incorporation of the Harmonized System nomenclature into GATT bindings.

The representative of the United States pointed out that the Panel had clearly found that the United States had not infringed its commitments under the General Agreement or under the ASP Chemical Products Understanding, and that the United States was under no obligation to do anything. His delegation would not be prepared to request the Congress to accelerate the staging on this item as a unilateral action by the United States, but in a spirit of conciliation, was prepared to discuss a possible deal with the EEC if it wished to make concessions in return.

The representative of the European Communities stated that his delegation would also be prepared to accept the adoption of the report, but, in so doing, reserved its GATT rights.

The Chairman stated that in adopting the report, the Council might agree to follow its prevailing practice regarding the consequences of the adoption of panel reports, and that at any stage a contracting party could bring to the notice of the Council any suggestion or any fact in respect of the decision by the Council.

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

(iv) Copyright legislation, manufacturing clause (C/M/160)

At the meeting of the Council on 21 July 1982 the representative of the European Communities said that the United States copyright and manufacturing clause legislation was contrary to the provisions of Articles III:1, XI and XII of the General Agreement. The EEC reserved the right to revert to this matter at a future meeting of the Council.

The representative of the United States stated that the United States was willing to discuss this matter and that discussions had already taken place under the provisions of Article XXII. Any trade effects resulting from this legislation were slight and temporary.

The Council took note of the statements.

(e) Tax legislation (C/M/154)

- (i) United States tax legislation (DISC)
- (ii) Income tax practices maintained by France
- (iii) Income tax practices maintained by Belgium
- (iv) Income tax practices maintained by the Netherlands

In July 1973 the Council had established four Panels following the recourse to Article XXIII:2 by the European Communities with regard to United States tax legislation (DISC) and by the United States with regard to income tax practices maintained by France, Belgium and the Netherlands respectively. In November 1976 the four Panels had presented their reports to the Council, which had taken note of them. Subsequently these matters had been discussed at meetings of the Council in 1977, 1978, 1980 and 1981. At the meetings of 3 and 6 November 1981 there had been discussion of a proposed understanding submitted by the principally concerned delegations, which, following informal meetings with other delegations, had resulted in a revised text.

At its meeting on 7-8 December 1981 the Council considered the revised proposal (C/W/376/Rev.1).

The representative of Canada said that as the contracting party which continued to be the most affected by DISC, Canada was pleased that the Council would finally be adopting the Panel report. He said that Canada also had a more general concern, namely, that delays such as those which occurred in handling these four reports did not serve well either the GATT or contracting parties in the resolution of trade disputes. He noted that the proposed understanding stated that the adoption of the reports, including the DISC Panel report, would not diminish rights and obligations under Article XVI:4. He asked that note be taken of Canada's expectation that with the adoption of the reports together with the proposed understanding, the United States would take the necessary action, in the light of the conclusions in the Panel report, to meet its obligations under the General Agreement. Finally, he recalled, that in the negotiations on an agreement elaborating further on Article XVI, during which tax deferral had been identified as a prohibited export subsidy under Item (e) of the Illustrative List, the United States had acknowledged that DISC fell within this category.

The representative of the United States agreed that the adoption of these reports did not diminish rights and obligations under Article XVI:4. Furthermore, the United States recognized that nothing in the Panel reports, as proposed for adoption by the Council, barred Canada from challenging or

contesting any of the tax practices at issue in these cases if Canada believed that any of these practices were not in compliance with the Panel reports as adopted by the Council with this understanding.

The representative of the European Communities pointed out that in document C/W/376/Rev.1 it was explicitly mentioned that the adoption of these reports, together with the proposed understanding, did not affect the rights and obligations of contracting parties under the General Agreement.

The Council took note of the statements.

The Council adopted the four Panel reports in documents L/4422, L/4423, L/4424 and L/4425 on the following understanding:

"The Council adopts these Reports on the understanding that with respect to these cases, and in general, economic processes (including transactions involving exported goods) located outside the territorial limits of the exporting country need not be subject to taxation by the exporting country and should not be regarded as export activities in terms of Article XVI:4 of the General Agreement. It is further understood that Article XVI:4 requires that arm's-length pricing be observed, i.e., prices for goods in transactions between exporting enterprises and foreign buyers under their or the same control should for tax purposes be the prices which would be charged between independent enterprises acting at arm's-length. Furthermore, Article XVI:4 does not prohibit the adoption of measures to avoid double taxation of foreign source income."

Following the adoption of these reports the Chairman noted that the Council's decision and understanding did not mean that the parties adhering to Article XVI:4 were forbidden from taxing the profits on transactions beyond their borders, it only meant that they were not required to do so. He noted further that the decision did not modify the existing GATT rules in Article XVI:4 as they related to the taxation of exported goods. He noted also that this decision did not affect and was not affected by the Agreement on the Interpretation and Application of Articles VI, XVI and XXIII (BISD 26S/56). Finally, he noted that the adoption of these reports together with the understanding did not affect the rights and obligations of contracting parties under the General Agreement.

The Council took note of the Chairman's statement.

The representative of Belgium, speaking for France, the Netherlands and Belgium, stated that irrespective of the understanding, tax practices which did not observe arm's-length pricing and which resulted in bilevel pricing continued to be contrary to Article XVI:4. Furthermore, it was confirmed that the understanding did not have any bearing on the position under Article XVI to tax incentives relating to the establishment and maintenance of foreign branches for export sales as discussed by the Panel. Similarly, the understanding did not exclude from the provisions of Article XVI the operation of differential tax practices based on the establishment of

fictitious companies located abroad, but where all their activities were directed from within the border of the country of the parent company and where the tax legislation of the country of the parent company did not provide for full taxation of these activities.

The representative of Brazil said that his delegation had not opposed the consensus, but could not support it because the understanding was too cryptic and because the decision purported to give an interpretation that was of a general character. He reserved all his country's rights under the General Agreement and the MTN agreements to which Brazil was a signatory.

The representative of Australia said that his delegation had taken note of the Chairman's statement that the decision was not affected by the Agreement on Interpretation and Application of Articles VI, XVI and XXIII. His authorities understood that, accordingly, the adoption of the Panel reports was not modified by the special accommodation reached in respect of certain tax practices in that Agreement.

The representative of Argentina stated that the conclusions reached by the Council were not sufficiently clear as to their effects, in spite of the clarifications given by the Chairman. His delegation reserved all its rights under the General Agreement and under the MTN Codes applicable to this question.

The representative of Chile said that his delegation had taken note that rights and obligations under the General Agreement had in no way been affected or reduced by the understanding and by the Panel reports which had been adopted.

The representative of the United States said that it was the view of his Government that the rules applicable to cases involving Article XVI:4 required that the level of taxation to be assessed upon exported products be at least equal to that level which would apply in the event that a territorial system of taxation were adopted by the country in question.

The representative of the European Communities noted that the statement by the United States representative expressed only the United States views on this issue. The Community considered that the question raised by the United States representative was not relevant to problems arising from the DISC system, since the latter had been clearly recognized as being prohibited subsidization of exports.

The representative of Canada said that the understanding rested on its own and did not necessarily modify the contents of the reports in any particular way. His delegation would presumably wish to return at some future date in pursuit of Canada's rights in connection with the report of the DISC panel.

The Council took note of the statements.

15. United States tax legislation (DISC)

- Follow-up on the report of the Panel (C/M/157, 159, 160, 161)

At its meeting on 7 May 1982 the Council considered a draft decision submitted by the European Communities (C/W/384).

The representative of the European Communities said that in view of the clearly recognized incompatibility of the DISC legislation with the provisions of the General Agreement, the EEC requested in particular that the CONTRACTING PARTIES should recommend, pursuant to Article XXIII:2, that the United States rapidly take appropriate measures in order to bring the DISC legislation into conformity with the GATT provisions.

The representative of Canada expressed concern that the United States appeared to be taking the position that it neither had the obligation to notify the DISC under Article XVI:1 nor that it must do anything to bring the DISC into conformity with the GATT rules pertaining to export subsidies.

The representative of the United States said that his delegation could not agree to the adoption of the draft decision in document C/W/384. He recalled that while the Panel report did conclude that the DISC in some cases had effects which were not consistent with United States obligations under Article XVI:4, the same panelists had come to the identical conclusion with respect to the examined tax practices of France, Belgium and the Netherlands. He said that the understanding of December 1981 (L/5271) was fundamentally different in important respects from the basis on which the Panels had examined the four sets of tax practices and had come to their conclusions. He said that the economic approach on which the Panel had based its conclusions in each case was not the same as the legal interpretation contained in the first sentence of the understanding. In the United States view, the Panels had come to fundamentally flawed conclusions under the General Agreement because they had analysed the practices in question on an incorrect juridical basis. He referred in detail to a number of relevant issues and said that his delegation would be prepared to discuss them in detail at the next Council meeting or at any other time. The United States believed that the DISC was in conformity with its GATT obligations.

The representative of the European Communities recalled the development of the case over nearly eleven years. He said that during long discussions and negotiations, the United States had itself recognized the incompatibility of the DISC legislation with the General Agreement. He pointed out that an understanding had been reached in June 1979 between the EEC negotiators and the United States negotiators, which confirmed the situation. The EEC regretted that the United States administration had not pursued the appropriate efforts undertaken in the past with a view to

repealing the DISC or bringing it into conformity with the General Agreement. He explained why the Council's Decision of December 1981 in no way affected the content of the DISC Panel's report, and requested that the Council adopt the decision proposed in document C/W/384.

A number of representatives spoke in support of a recommendation along the lines proposed by the EEC. Some representatives stated specifically that they did not interpret the understanding of December 1981 as an acceptance of the DISC system, nor did they consider that it changed the substantive conclusions of the Panel report on the DISC legislation.

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

At the meeting of the Council on 29-30 June 1982 the representative of the European Communities proposed that the Council adopt the decision proposed by his delegation. He pointed out that the Panel had found "that the DISC legislation in some cases had effects which were not in accordance with ... Article XVI:4" and that this finding had not been altered in any respect by the Council Decision of December 1981. He recalled that the Council Chairman had noted at the December 1981 meeting that the Decision did not modify existing GATT rules in Article XVI:4 in so far as they related to the taxation of exported goods; consequently, the Panel finding was still valid. He then cited specific examples showing that the United States' view had not always been that the DISC was consistent with GATT. He said that while the United States continued to argue as if the DISC system were no different in form from the other practices examined by the Panels, he believed that they were substantially different and that the impact of the December 1981 Decision would vary, depending on the relevance of its content to the different practices concerned. It was clear that the effect of the December 1981 Decision was to remove the basis upon which certain European tax practices were found by the Panels to be, in some cases, not in accordance with Article XVI:4. It was the EEC's view that DISC was the only practice which remained inconsistent with GATT.

The representative of the United States said that his Government opposed the adoption of the draft decision in the belief that the DISC programme operated in a manner which was consistent with the obligations of the United States under Article XVI:4. He said that the United States had never agreed that the DISC was not in conformity with the General Agreement. The December 1981 Decision applied to all four Panel Reports, while any contracting party could question the DISC under Article XVI:4, the programme could not be condemned under that GATT provision in the light of the qualifier contained in the Decision, and would be found to be in conformity with the GATT obligations of the United States. He then turned to the specific elements in the United States federal taxation system which had led to the establishment of the DISC programme and described in detail

the percentage allocations in the programme. He said that the net effect of the DISC was to place U.S. exporters in the same comparable position as exporters operating under a territorial tax system. He said that whatever the validity of the Panel's analysis as a matter of economic theory, it was evident in the understanding adopted by the Council in December 1981 that this analysis had been incorrect as to the interpretation which should be given to Article XVI:4. He recognized that other countries' taxation systems were not at issue, but said that his authorities had some questions in this respect, and he referred to specific paragraphs in the Reports of the three other Panels which had examined the French, Belgian and Netherlands tax systems. In his view, the appropriate standard, with respect to which the DISC should be considered under GATT, was whether the United States global system, as modified by the DISC, resulted in taxation of export income equivalent to that which would result under the principles of a territorial system.

The representative of Canada said that the United States had an obligation to commit itself to appropriate action without delay to bring the DISC legislation into conformity with its GATT obligations, and that the only open question related to the timing. His delegation, therefore, supported the draft decision submitted by the EEC and could not accept the United States argument that the provisions of Article XVI:4 required that the level of taxation to be assessed upon exported products be at least equal to that level which would apply in the event that a territorial system of taxation were to be adopted. He emphasized that the Decision taken by the Council in December 1981 did not have any relevance to the DISC.

The representative of Belgium said that it was incorrect to put on an equal footing the United States legislation on DISC with the French, Netherlands and Belgian legislations. His country's tax legislation did not involve export activities and it therefore did not violate the provisions of Article XVI:4. The United States tax legislation on DISC, on the other hand, did involve export activities under Article XVI:4 and did violate this Article. The qualification did not alter this fact.

The representative of France said the notion of general level of taxation was unknown to the General Agreement. The qualification adopted by the Council in December 1981 covered export activities beyond the national borders and not activities within the national territory.

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

The representative of Finland said that the Nordic countries were of the opinion that the DISC system was an export subsidy contrary to the provisions of Article XVI:4. Furthermore, he did not consider that the Decision taken by the Council in December 1981 had legalized the DISC system. The Nordic delegations therefore fully supported the draft decision.

The representative of Brazil associated his delegation's views on DISC with those expressed by the representative of Canada.

The representative of India recalled that his delegation had already supported the draft decision at the meeting of the Council in May 1982. His delegation believed that the DISC legislation and practices should be brought into conformity with the United States' GATT obligations.

The representative of Australia said the DISC was not in conformity with the United States obligations under Article XVI:4 and was subject to the notification requirement of Article XVI:1. The adoption of the Panel report had in no way qualified the findings of the Panel. Australia could support the adoption of the draft decision.

The representative of the United States felt that the real issue in this matter was whether the United States assessed a sufficient amount of tax on the export income of corporations. He said that the United States was not the only country to measure the entire amount of taxes of a transaction in order to determine whether there existed a subsidy or not.

The representative of Spain said that the discussion showed that the dispute settlement system did not seem to work, and that his delegation was beginning to have doubts about its effectiveness. His delegation associated itself with the Canadian statement and he supported the adoption of the draft decision.

The representative of Canada said that the time had now come for action by the United States.

The representative of the European Communities said that his delegation had the support of a large number of delegations in this matter and was in agreement with other delegations in respect of the impact this matter could have on dispute settlement in general, on rules on subsidies and on the Ministerial meeting, whose objective was to reinforce and strengthen the GATT system. If the Council could not reach a decision in this matter, the contracting parties themselves could decide to take appropriate action.

The representative of the United States reiterated that the United States had acted in compliance with its GATT obligations.

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

At the meeting of the Council on 21 July 1982 the representative of the European Communities referred to his statement at the 29-30 June meeting in which he had explained why the DISC legislation was inconsistent with the provisions of Article XVI:4.

The representative of the United States referred to his statement at the 29-30 June meeting in which he had explained why the DISC system was not inconsistent with the General Agreement. He explained the effect of the Council Decision of December 1981. He said that the Panel had found territorial tax systems, such as maintained by Belgium, France and the Netherlands, to be inconsistent with GATT, and had also found DISC to be GATT-inconsistent. However, the Council Decision of December 1981 provided that it was not necessary to tax export income beyond what would be required under a territorial tax system. He explained how the United States global tax system, even as modified for DISC, resulted in overall taxation of export income at a level higher than would be imposed under a territorial system. Since the December 1981 Decision meant that taxation under the territorial system was consistent with GATT, the higher level of taxation under DISC was also consistent with GATT. He stated that under these circumstances, the Panel's conclusions no longer held after the December 1981 Decision, since each of the Panel's conclusions was based on the erroneous assumption that taxation under a purely global system was required by GATT.

The representative of Argentina said he could not accept the argument of the representative of the United States that the Council had not accepted parts of the conclusions of the DISC Panel. He considered that the adopted conclusions of a panel became an obligation on the part of a contracting party to take the necessary steps involved, and that a discussion on technical matters should not be reopened in the Council.

The representative of the European Communities agreed that the Council was not the place to reopen, on a technical level, a matter on which it had already taken a decision. He said that the Council should now move to ensure compliance with its earlier decision. He considered irrelevant the United States argument that the level of taxation in the United States was not lower than that under a territorial system. The only point at issue before the Council was the fact that Article XVI:4 did not permit the level of taxation on exported goods to be lower than that applied to domestic goods. In the light of the discussions thus far, the EEC had decided to withdraw the draft decision in document C/W/384 and to introduce a new draft decision contained in document C/W/392, which proposed that the Council recognize the serious circumstances present in this case and authorize the EEC to proceed with appropriate compensatory measures. He then described in detail the economic importance of the subsidy to

United States exports under the DISC system. He stated that the EEC preferred that the United States recognize its obligations in respect of DISC and undertake to modify or eliminate this legislation in order to make it consistent with the General Agreement. If assurances to this effect were not forthcoming, however, he hoped that the Council would take a decision of principle in relation to the compensating action requested in document C/W/392.

The representative of Canada recalled that specific provisions had been made in the Subsidies and Countervailing Measures Code¹ to give the United States a reasonable period of time to make whatever changes were necessary to the DISC legislation in order to abide by its international obligations. His authorities did not agree that the qualification which accompanied the Council adoption of the four Panel reports exonerated the DISC from being an export subsidy contrary to the provisions of Article XVI:4 of the General Agreement. Nor could his delegation accept the United States argument that Article XVI:4 rules require that the level of taxation to be assessed upon export activities be at least equal to the level which would be applied if a territorial system of taxation were in effect. The new proposal made by the European Communities (C/W/392) raised a number of questions, including whether other contracting parties affected by the DISC should also be permitted to make compensatory withdrawals.

The representative of Brazil stated that the Council was entitled to know what the United States would do to conform the DISC legislation to the GATT rules. He recalled that his delegation had expressed its reservations on the issue of whether the December 1981 understanding modified substantially the conclusions arrived at by the DISC Panel because it could not accept that the understanding derogated from the conclusions of the Panel, or from the adoption of that report by the Council. He asked several specific questions to the United States, and stressed that there could not be any double standards in the matters under consideration. His delegation would have supported the draft decision contained in document C/W/384 but preferred that the United States bring its DISC legislation into conformity with the General Agreement.

The representative of Colombia asked that the text of the 1979 bilateral agreement on DISC between the United States and the EEC be distributed to contracting parties. He noted that this had facilitated United States adherence to the Subsidies and Countervailing Measures Code. In the view of his delegation, this was a double standard which should not be permitted.

¹ Agreement on Interpretation and Application of Articles VI, XVI and XXIII of the General Agreement on Tariffs and Trade (BISD, 26S/56).

The representative of the United States reiterated that the December 1981 Decision applied to the DISC Panel report just as much as it applied to the reports on the tax legislation of France, Belgium and the Netherlands. He said that the 1979 bilateral agreement had been entered into by the previous administration but had been disavowed in 1980 by that same administration. He noted that the signatories to the Subsidies and Countervailing Measures Code had further recognized that nothing in that text prejudged the disposition by the CONTRACTING PARTIES of the specific issues raised in the DISC report. The matter has thus been reserved by the United States at that time and in subsequent discussions.

The representative of Switzerland said that his Government expected that the United States would bring the DISC system into conformity with the provisions of the General Agreement.

The representative of the European Communities asked whether the United States delegation would admit that the level of taxation on exports was less than on domestically sold goods as a consequence of the DISC system, and whether in respect of the understanding adopted by the Council in December 1981, the United States maintained that the DISC system applied to export activities outside the United States, and if so how was it being applied? He said that his delegation had withdrawn its previous proposal and substituted it by a new one in order to underline the seriousness of the situation and to facilitate a rethinking in respect of this issue on the part of the United States, which was blocking a GATT decision.

The representative of Canada stressed that the Council was not the place to debate the detailed technical points raised by the representative of the United States, and that it was irrelevant under this item to discuss the three other Panel reports.

The representative of New Zealand said that the United States should take appropriate action with a minimum delay to bring the DISC system into conformity with the General Agreement.

The representative of the Netherlands did not dispute that any contracting party had the right to raise points about the Netherlands tax practices, but pointed out that similar systems were applied by a number of other contracting parties and that the Council's understanding of December 1981 had a direct bearing on territorial tax systems.

The representative of the United States said that in economic terms the effect of the DISC legislation was to immunize part of the income on export transactions which was attributable to foreign source earnings, i.e., export activities outside the United States. He then said that at the time the four Panel reports were adopted, as qualified, his delegation had stated that it was the view of his Government that the rules applicable

in cases involving Article XVI:4 required that the level of taxation to be assessed on exported products be at least equal to that level which would apply in the event that a territorial system of taxation were adopted by the country in question. He recalled that he had also stated in other meetings at the GATT that the qualification had exonerated the DISC.

The representative of the European Communities pointed out that the conclusions of the three other Panels referred specifically to export activities outside the country, while this was not the case in the DISC report. He considered what was relevant was that the qualifications applied only to the other conclusions and not to the DISC.

The representative of India said that his delegation could not accept the view that the qualification had altered the DISC as an export subsidy; and he supported the draft decision in document C/W/384.

The representative of the United States said in respect of the statement by the representative of the European Communities that he saw no substantial difference between the language in the DISC Panel's and the three other Panels' reports.

Following consultations among the delegations principally concerned the Chairman said that it was the opinion of the majority of the Council members that the United States should take appropriate action to ensure that the DISC legislation was brought into conformity with the provisions of the General Agreement. He also noted that the United States was of the opinion that, against the background of the Panel report (L/4422) and the Council understanding of 7 December 1981 (L/5271) the DISC legislation was in conformity with the General Agreement. He understood that it was the intention of a large number of contracting parties to pursue this matter further in the Council.

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

At the meeting of the Council on 1 October 1982 the representative of the European Communities reaffirmed that if the Council authorized the countermeasures proposed in one of the draft decisions put forward by his delegation, the EEC had no intention to act in a precipitous manner.

The representative of the United States said that the U.S. Government had decided to propose to the Congress an amendment to its DISC legislation to address the concerns which had been expressed by the members of the GATT Council. The necessary governmental processes for such action had been initiated.

A number of representatives welcomed the statement by the representative of the United States. It was urged that the United States action be taken expeditiously, and it was suggested that the United States keep the Council informed about the progress in this matter.

The Council took note of the statements and that the two proposals by the EEC were maintained, and agreed that it might revert to this item at a meeting after its next meeting.

16. Working Party - Sugar (C/M/156)

In September 1981 the Council had established a working party to conduct a review of the situation and to report to the Council.

At its meeting on 31 March 1982 the Council considered the report of the Working Party (L/5294). The Working Party had been faced with significant differences among its members as to the interpretation of the Council Decision of 25 September 1981 (C/M/150), and had been unable to take the review as far as was desirable. It had therefore agreed to end the proceedings and to submit a report of the discussion which had taken place.

The representative of Australia expressed disappointment that a procedural device had been used whereby one party was able unilaterally to block progress in the Working Party. Policies pursued by a group of contracting parties which had been found to be causing prejudice or threat of prejudice to other contracting parties, still remained in force more than two years after the findings of two panels. This could only weaken the dispute settlement procedure of the GATT and damage the credibility of the organization as a whole. He made several points in respect of the substantive issues in the dispute, and stated that Australia's complaint had not been resolved and was maintained. He said that Community subsidies were continuing to damage Australia's trade by significantly depressing world sugar prices, while at the same time further increasing the EEC's share of world trade at the expense of unsubsidized exports from efficient producers. Australia fully reserved its rights under the General Agreement.

The representative of Brazil also expressed regret that the Working Party had not produced any positive results. His delegation noted that prejudice and threat of prejudice had been found to exist by a panel and by the Council, that the EEC had taken no measure to correct the sugar policy which had caused this situation, and that notwithstanding these facts, the Council had failed to make recommendations or give a ruling on the matter. His delegation, therefore, reserved all of Brazil's rights under the General Agreement and under pertinent Decisions of the CONTRACTING PARTIES.

Several other representatives expressed their regret and concern that the Working Party had been unable to arrive at any results and had been unable to fulfil its terms of reference as a result of discussion focussing essentially on procedural matters. A number of representatives reserved their position as to whether the co-responsibility system was equivalent to an export subsidy and whether it was compatible with the General Agreement.

The representative of the European Communities shared the regret which had been expressed as to the inability of the Working Party to proceed further with its review of the situation because, in his view, this would have demonstrated that the EEC could not be held solely responsible for the

conditions existing in the world sugar market. He recalled that the EEC had reserved the possibility of bringing into the discussion of the Working Party the totality of the policies of countries participating in the world sugar economy. Accordingly, it could not be said that the EEC had used certain procedures to block the progress of the Working Party. He stressed that if the interpretation of negotiated terms of reference could not be agreed upon, it would be impossible to work together. He expressed regret that the discussions in the Working Party had centred on questions of procedure. As to the Community sugar policy, he pointed out that from the point of view of Community sugar producers, it would not be possible to have prices reduced by 40 per cent from one year to the next, and that the Community producers were not the only ones to have increased production. He reiterated that the new Community sugar policy no longer included export subsidies for sugar originating in the EEC and that the burden was now borne by the producers. The EEC considered, therefore, that it had fully complied with its obligations under Article XVI:1 of the General Agreement. He reserved both the rights and the obligations of the EEC in this matter.

The representative of Brazil said that if the co-responsibility levy was not a subsidy it might be considered as dumping, and that the question had also arisen whether interest-free credits constituted subsidies and whether the internal and export prices included an element of dumping. In his view, these new elements warranted further examination.

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

The Chairman expressed regret that no satisfactory solution had been reached in this matter. The Council had adopted two Panel reports; and a series of formal and informal meetings had been devoted to this subject. However, the Council had not been able to arrive at a solution satisfactory to all. He suggested that these two cases be closed and not placed on the agenda of the next meeting. It was so decided.

17. Customs unions and free-trade areas; regional agreements

(a) Second ACP/EEC Convention of Lomé (C/M/156)

In March 1981 the Council had established a working party to examine the Second ACP/EEC Convention of Lomé.

At its meeting on 31 March 1982 the Council considered the report of the Working Party (L/5292). There had been wide sympathy amongst all participants in the Working Party for the view that the purpose and objectives of the Convention were in line with those embodied in the General Agreement. The parties to the Convention had taken the view that the trade commitments contained therein were compatible with the relevant provisions of the General Agreement. Some members of the Working Party had

considered it doubtful, however, that the Convention could be fully justified in terms of the legal requirements of the General Agreement. It had been understood by all members of the Working Party that the Convention could in no way be considered as affecting the legal rights of contracting parties under the General Agreement.

The Council took note of this information and adopted the report.

(b) Biennial reports

In accordance with the calendar of biennial reports on developments under regional agreements (L/5158), reports were submitted to the Council as follows:

(i) Meeting of the Council on 22 February 1982 (C/M/155)

- Agreements between the European Economic Community and Austria, Finland, Iceland, Norway, Portugal, Sweden and Switzerland (L/5238 and Corr.1, L/5244, L/5237, L/5242, L/5285, L/5249, L/5275)

The Council took note of the reports.

(ii) Meeting of the Council on 31 March 1982 (C/M/156)

- Caribbean Common Market (L/5251)
- New Zealand/Australia Free-Trade Agreement (L/5268)
- Central American Common Market (L/5270)

The Council took note of the reports.

(iii) Meeting of the Council on 29-30 June 1982 (C/M/159)

- Finland/Czechoslovakia Agreement (L/5315)

The Council took note of the report.

18. Waivers under Article XXV:5

(a) India - Auxiliary duty of customs (C/M/156)

By their Decision of 15 November 1973 (BISD 20S/26), as extended until 31 March 1982 (BISD 28S/19), the CONTRACTING PARTIES had waived the application of the provisions of Article II of the General Agreement to the extent necessary to enable the Government of India to apply the temporary auxiliary duty of customs on certain items included in its Schedule XII.

At its meeting on 31 March 1982, the Council considered a request by India for an extension of the waiver until 31 March 1983 (L/5304).

The representative of India explained that the special circumstances which had compelled his Government to maintain the auxiliary duty of customs as a means to provide resources for essential development needs continued to exist. He expressed his delegation's willingness to consult with any contracting party which considered that serious damage was caused or threatened to be caused to its trade interests.

The representative of the United States believed that the Committee on Balance-of-Payments Restrictions should examine the relationship of this duty to India's balance-of-payments.

The representative of Hungary noted India's offer to enter promptly into consultations in connection with this duty, and supported the request.

The Council approved the text of a draft decision extending the waiver until 31 March 1983 and recommended its adoption by the CONTRACTING PARTIES by postal ballot.

The Decision was adopted on 3 May 1982 (L/5316).

(b) Uruguay - import surcharges (C/M/159)

By their Decision of 24 October 1972 (BISD 19S/9), as extended until 30 June 1982 (BISD 28S/23), the CONTRACTING PARTIES had waived the application of the provisions of Article II of the General Agreement to the extent necessary to allow the Government of Uruguay to maintain certain import surcharges in excess of bound duties.

At its meeting on 29-30 June 1982, the Council considered Uruguay's request for an extension of the waiver (L/5335).

The representative of Uruguay recalled that his country was engaged in a process of simplifying its import tariff. However, as a result of the international economic situation this process had been held up; and his delegation was obliged to request a further extension of the waiver by six months.

The Council approved the text of a draft decision extending the waiver until 31 December 1982 and recommended its adoption by the CONTRACTING PARTIES by postal ballot.

The Decision was adopted on 30 July 1982 (L/5356).

(c) Reports under waivers

- United States - Agricultural Adjustment Act (C/M/159, 161)

Under the Decision of 5 March 1955 (BISD 3S/32) the CONTRACTING PARTIES are required to make an annual review of any action taken by the United States under the Decision on the basis of a report to be furnished by the Government of the United States. At its meeting on 29-30 June 1982 the Council considered the twenty-fourth Annual Report (L/5328).

The representative of the United States said that the report covered the period from October 1980 to October 1981. It contained additional information requested by the GATT Council as well as information related to certain recent developments, which he described.

The representative of New Zealand said that the report did not really provide justification for the retention of the measures, notably in the dairy sector. The purpose of the waiver was not to grant a permanent derogation from Article XI, nor was it to enable the United States to pursue policy objectives that might permanently nullify benefits of concessions negotiated under GATT on the products in question. He suggested the establishment of a working party, to examine all factors relevant to this matter.

The representatives of the European Communities, Australia, Chile, Brazil, Pakistan, Canada, India and Hungary supported the proposal to establish a working party.

The Council agreed to establish a working party and authorized the Chairman of the Council to decide on appropriate terms of reference and to designate the Chairman of the Working Party in consultation with the delegations principally concerned.

At its meeting on 1 October 1982 the Council was informed of the terms of reference and designation of the Chairman of the Working Party.

19. Negotiations under Article XXVIII - Australia (C/M/154, 155)

At the meeting of the Council on 7-8 December 1981 the representative of Australia informed the Council of the negotiations being conducted by Australia under the provisions of Article XXVIII:1 with a number of trading partners with the intention of concluding them prior to 1 January 1982. If the negotiations could not be finalized by that date, Australia would continue any ongoing discussions under the provisions of Article XXVIII:5.

The representative of the European Communities expressed the view that the entry into force of the increased rates on 1 January 1982, in the event that the negotiations could not be completed within the very short deadline, would not be in conformity with normal GATT procedures, nor was

the Australian intention to transform concessions that had been granted prior to 1965 without providing up-to-date statistics.

The Council took note of the statements.

At the meeting of the Council on 22 February 1982 the representative of the European Communities said that the EEC had thus far been unable to obtain adequate Australian trade statistics and other data, making it impossible to arrive at a speedy conclusion of the negotiations. The EEC expected Australia not to implement higher rates of duty on the withdrawn concessions until a satisfactory solution had been reached.

The representative of Australia said that his delegation would respond as soon as possible to the EEC requests.

The Council took note of the statements.

20. Accession, provisional accession

(a) Thailand (C/M/155, 160, 161)

In July 1978 the Council had established a Working Party to examine the request by Thailand to accede provisionally to the GATT. Subsequently, the Government of Thailand had informed the CONTRACTING PARTIES of its decision to apply for full accession.

At its meeting on 22 February 1982 the Council agreed that the earlier Working Party would be replaced by a new Working Party to examine the application of Thailand to accede to the General Agreement under Article XXXIII. The Working Party was invited to make use of the documentation and other information which had already been made available or was in preparation for the earlier Working Party.

At its meeting on 21 July 1982 the Council considered the report of the Working Party as well as the text of a Draft Protocol of Accession annexed thereto (L/5314). The Working Party had given particular attention to certain legislation and restrictions in force in Thailand and had noted the intention of Thailand, in reviewing its internal tax system consistently with its development, financial and trade needs, to ensure that the system was in line with the provisions of the General Agreement. Subject to the satisfactory conclusion of the relevant tariff negotiations, Thailand should be invited to accede to the General Agreement.

The representative of Thailand said that the tariff negotiations should take place in September. Thailand attached great importance to its participation as a full member in the Ministerial meeting.

A number of representatives supported the adoption of the report.

The Council approved the text of the draft Protocol of Accession, with the understanding that the Schedule LXXIX - Thailand would be circulated as soon as possible as an addendum to the Working Party's report and would be annexed to the Protocol of Accession. The Council also approved the text of the draft Decision and agreed that the Decision should be submitted to a vote by postal ballot when the Thailand Schedule had been circulated. The Council adopted the report of the Working Party.

At the meeting of the Council on 1 October 1982, the Chairman said that bilateral negotiations between Thailand and contracting parties were in the final stages and that ballot papers would be distributed by the secretariat as soon as the Schedule of Thailand had been received. He pointed out that the representative of Thailand had sent a letter to other representatives requesting that delegations be prepared to cast their votes as soon as possible in order that Thailand's accession could become effective in time for it to participate in the thirty-eighth session as a contracting party to the GATT. He expressed the hope that delegations would take due note of the letter from the delegation of Thailand.

The representative of Thailand reaffirmed that Thailand hoped soon to be a contracting party.

The representative of New Zealand, Finland, speaking on behalf of the Nordic countries, and the European Communities said that their negotiations with Thailand had been concluded.

The representative of Switzerland said that he expected that a mutually satisfactory conclusion of the negotiation would be reached in the immediate future.

The Council took note of the statements.

(b) Tunisia (C/M/155)

At their thirty-seventh session in November 1981 the CONTRACTING PARTIES had agreed to establish a working party to examine the application of Tunisia to accede to the General Agreement under Article XXXIII, and had authorized the Chairman of the Council to designate the Chairman of the Working Party in consultation with the delegation of Tunisia and other interested delegations.

At its meeting on 22 February 1982 the Council was informed of the designation of the Chairman of the Working Party.

21. Switzerland - review under paragraph 4 of the Protocol of Accession
(C/M/154, 157)

Under paragraph 4 of its Protocol of Accession the Government of Switzerland reserved its position with regard to the application of the provisions of Article XI of the General Agreement to permit the application

of certain import restrictions pursuant to existing national legislation. The Protocol calls for an annual report by Switzerland on the measures maintained consistently with this reservation, and it requires the CONTRACTING PARTIES to conduct a thorough review of the application of the provisions of paragraph 4 every three years. The Council had considered this matter on 3 November 1981 and had agreed to revert to it at its next meeting.

At the meeting of the Council on 7-8 December 1981 the representative of Switzerland recalled that Switzerland had regularly complied with its obligation under paragraph 4, and that in the past it had seemed unnecessary to establish a new working party to examine quantitative restrictions which Switzerland applied in conformity with its agricultural legislation. There were no changes to report regarding either the systems of restrictions or the products covered. Switzerland was nevertheless disposed to participate in a thorough review of the application of the provisions of paragraph 4 and, likewise, fully disposed to reply at bilateral level to any questions asked by delegations.

Several representatives supported the establishment of a working party.

The Council agreed to establish the Working Party to conduct the fifth triennial review of the application of the provisions of paragraph 4 of the Protocol of Accession of Switzerland, and authorized the Chairman of the Council to designate the Chairman of the Working Party in consultation with delegations.

At its meeting on 7 May 1982 the Council considered the report of the Working Party (L/5311). The discussion in the Working Party had covered both the general question of trade liberalization by Switzerland in the agricultural sector and the need for the CONTRACTING PARTIES to keep under constant review those cases where derogations exist from the application of GATT rules, as well as specific questions relative to the actual methods of application of the measures maintained by Switzerland in accordance with its negotiated exemption under paragraph 4 of the Protocol.

The representative of Australia expressed concern that a highly industrialized country like Switzerland continued to use the unique reservation on agricultural products in its Protocol of Accession, and questioned the necessity for this privileged position.

The representative of New Zealand noted that the report exhorted Switzerland to be somewhat more transparent in future, in particular with regard to the details of bilateral and plurilateral agreements involving quotas.

The representatives of Chile and Argentina said that their delegations' views were reflected in the report of the Working Party.

The representative of Switzerland said that he had taken note of the opinion of the representative of Australia, but did not think that it was either the place or the time to appreciate the balance of rights and obligations of the contracting parties. Paragraph 4 of the Protocol of Accession represented neither a reservation nor a waiver but was a recognition of a particular situation which implied no commitment with respect to its modification or abolition in the future, and for which Switzerland had paid amply in its negotiations for accession.

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

22. Consultations on trade

(a) Hungary (C/M/156)

The Protocol for the accession of Hungary provides for consultations to be held biennially between Hungary and the CONTRACTING PARTIES in order to carry out a review of the operation of the Protocol and of the evolution of trade between Hungary and the contracting parties. In June 1981 the Council had established a working party to conduct the fourth consultation with the Government of Hungary.

At its meeting on 31 March 1982 the Council considered the report of the Working Party (L/5303). The Working Party had noted that discriminatory quantitative restrictions not consistent with Article XIII of the General Agreement were still maintained against Hungarian exports by certain contracting parties. The Working Party had examined Hungarian imports in general and specific points of its import régime.

The representative of Hungary said that consultations between Hungary and Sweden had resulted in a long-term agreement between the parties, and expressed the hope that other countries still maintaining quantitative restrictions would follow this example. He also described how Hungary and some other countries had been excluded from a number of liberalization measures by the EEC.

The representative of the European Communities said that there had been a change in the method of presenting liberalizations by the EEC and that the quantitative restrictions maintained in respect of Hungary represented 4 per cent of Hungarian exports to the EEC. His delegation requested that Hungary publish its agreements with other CMEA countries. He also said that his delegation was prepared to enter into negotiations with Hungary with a view to arriving at a bilateral agreement for the progressive and total liberalization of trade in both directions.

The representative of Hungary said that the debate had been closed in respect of the transparency of Hungary's foreign trade. Hungary was prepared to examine with the EEC all quantitative restrictions which were not in conformity with Article XIII on a case-by-case basis, and was also prepared to accept voluntary restrictions in conformity with specific

safeguards if exports of goods subject to discriminatory quantitative restrictions caused market disruption or a threat thereof. His delegation was prepared to follow in the field of textiles the same procedures as agreed with Sweden.

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

(b) Romania (C/M/161)

The Protocol for the Accession of Romania provides for biennial consultations to be held between Romania and the CONTRACTING PARTIES in order to review the development of reciprocal trade and the measures taken under the terms of the Protocol.

At its meeting on 1 October 1982 the Council agreed to establish a working party to conduct the fourth consultation with the Government of Romania.

23. De facto application of the GATT to newly-independent countries
(C/M/160)

At its meeting on 21 July 1982 the Council considered the fifth report by the Director-General on the application of the Recommendation of 11 November 1967 (BISD 15S/64), inviting contracting parties to continue to apply the General Agreement de facto in respect of newly-independent territories on a reciprocal basis (L/5345).

The Council took note of the report and invited the Director-General to remain in contact with the governments of the States concerned and to report again on the application of the Recommendation within three years.

24. Liquidation of strategic stocks (C/M/154)

At the meeting of the Council on 7-8 December 1981 the representative of Peru drew attention to the problems arising from the decision of the United States to liquidate some basic stocks, including the strategic stocks of silver. Since this would cause serious prejudice to Peru's economy and a crisis in its mining industry, his delegation had asked for urgent consultations with the United States under the relevant provisions of the General Agreement.

The representative of the United States stated that his delegation would reply to the delegation of Peru in a few days' time.

The Council took note of the statements.

25. United Kingdom - tax practices on lease transactions (C/M/156)

At the meeting of the Council on 31 March 1982 the representative of the United States expressed concern with certain practices in the United Kingdom related to tax allowances and credits associated with lease transactions to non-United Kingdom entities.

The representative of the United Kingdom said that the United Kingdom's tax laws on cross-border leasing were entirely neutral in their treatment of United Kingdom and foreign manufactures.

The Council took note of the statements.

26. Relations between the United States and the European Economic Community (C/M/160)

At the meeting of the Council on 21 July 1982 the representative of the European Communities said that in the recent past there had been an outcrop of difficulties between the United States and the EEC, which could have serious consequences for the multilateral trading system. He referred to the EEC's deteriorating trade balance with the United States and to a number of disputed issues such as sugar, canned fruits, dried raisins, citrus fruit, and steel, and described in some detail a typical case of such harassment involving a Franco-Italian company whose products had been claimed to constitute a dangerous threat to a potential U.S. manufacturer. He appealed to the United States to refrain from applying certain internal procedures excessively and in a mechanical, not to say systematic, way because this harassment was increasing tension which would have serious consequences unless the situation could be defused.

The representative of the United States felt that the United States was not unilaterally responsible for the trade conflicts between his country and the EEC. He considered that disagreements should be kept under control and within the GATT approved channels.

The Chairman recognized the serious issues raised in the statements by the representatives of the European Communities and the United States, and expressed the hope that such matters could be aired in GATT so that proper solutions could be found.

The Council took note of the statements.

27. United States - Caribbean Basin Economic Recovery Act (C/M/156)

At the meeting of the Council on 31 March 1982, the representative of the United States informed the Council about proposed legislation which was part of a new programme for economic co-operation with the countries in the Caribbean Basin Region. He described certain features of the programme and stated that his delegation would wish to discuss it further in the GATT at a later date.

The Council took note of the statement.

28. Training activities (C/M/...)

To be completed.

29. International Trade Centre

- Joint Advisory Group (C/M/159)

At its meeting on 29-30 June 1982 the Council considered the reports of the Joint Advisory Group on the International Trade Centre UNCTAD/GATT on its resumed fourteenth session (ITC/AG/(XIV)75/Add.1) and its fifteenth session (ITC/AG(XV)81). At the resumed fourteenth session the Group had endorsed the ITC's contribution to the Medium-Term Plan for the economic and social sectors of the United Nations for the period 1984-89. The ITC's own Medium-Term Programme covering 1983-85 would be reviewed in 1982 and submitted to the Group at its sixteenth session in April 1983. At the fifteenth session attention had been drawn to the lack of resources which had resulted in the ITC being virtually unable to respond to new activities recommended by the Group in recent years. The Group had emphasized the need for resources to be strengthened through all available means. It approved the Annual Report reflecting the 1981 programme. The main recommendations made by the Group in relation to future work were that increased resources should be channelled to Africa, and that work on export market development should increasingly include manufactured products. The Group had also noted several new areas requiring specialized trade promotion services, and had also stressed the need to continue increased assistance to least-developed countries.

A number of delegations expressed appreciation for the work performed by the ITC and voiced concern in regard to its financial situation, urging that more trust funds be made available to assist developing countries in their export efforts. It was also suggested that these problems be considered during the preparations for the Ministerial meeting and, if necessary, that the Ministers take note of the situation faced by the ITC in respect of its funding problems.

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

30. Administrative and financial questions

(a) General Service category staff salaries (C/M/156)

At its meeting on 31 March 1982 the Council considered the matter of salary scales applicable to staff in the General Service category. The Chairman of the GATT Staff Council, who was invited to speak, said that a decision taken by the Director-General of the ILO to apply two different salary scales had, unfortunately, not been followed by the heads of the other international organizations in Geneva. In a second decision the Director-General of the ILO had increased the salaries of some General Service staff members by 3 per cent. He said that in July 1981 the heads

of the secretariats of the organizations in Geneva had clearly stated their intention to grant a comparable increase to their own staffs, so that there existed a formal commitment collectively and individually to follow the example set by the ILO. He asked the Council to provide the Director-General with the financial means in order to apply the decision taken by the ILO, in the interest of social justice.

The Director-General recalled that the Council was the competent GATT body for taking a decision in respect of the matter, and stressed that the decision in the case of the ILO had been taken by the same representatives of the same governments in a sister organization. He requested the Council to enable him to rectify the anomaly represented by the present inequality of remuneration of General Service staff depending on the organization by which they were employed.

The Council took note of the statements and agreed that this and other related matters should be considered by the Committee on Budget, Finance and Administration at its next meeting.

(b) Assessment of additional contribution to the 1982 Budget and advance to the Working Capital Fund (C/M/156)

At its meeting on 31 March 1982 the Council adopted an assessment on Zambia, which had become a contracting party in accordance with the provisions of Article XXVI:5(c).

(c) Committee on Budget, Finance and Administration

(i) Membership (C/M/156)

At its meeting on 31 March 1982 the Council agreed that the membership of the Committee should be enlarged to include Chile and Italy.

(ii) Report (C/M/159)

At its meeting on 29-30 June 1982 the Council considered the report of the Committee on its meeting held in May 1982 (L/5324).

Attention was drawn to the final position of the 1981 GATT Budget (L/5298) and to recommendations by the Committee related thereto. The Committee had considered the outstanding contribution situation and had expressed great concern because of the marked deterioration compared with previous years. The Committee had decided to reconsider the whole question, and the secretariat had been requested to intensify its efforts in connection with the collection of contributions. The Committee had also examined the question of remuneration for staff in the General Service category. The only recommendation acceptable to the Committee was that made by the International Civil Service Commission rejecting a possible

3 per cent salary increase. The Committee had decided to examine a proposal with regard to the improvement of employment conditions on the basis of a recommendation to be made by the Director-General. The Committee was still considering the decision by the owner of the Centre William Rappard to increase the rent payable by GATT for 1983-1986. It was noted that with regard to GATT's contributions to the International Trade Centre UNCTAD/GATT, the situation for 1982 continued to give rise to concern.

The Council approved the recommendations contained in the report and adopted the report.

31. Council

(a) Membership and observer status (C/M/157, 159)

At its meeting on 7 May 1982 the Council accorded observer status to the Junta of the Cartagena Agreement, i.e. the Andean Group, at sessions of the CONTRACTING PARTIES and at meetings of the Council.

At its meeting on 29-30 June 1982 the Council accorded to Venezuela observer status at meetings of the Council.

(b) Conduct of business (C/M/160)

At the meeting of the Council on 21 July 1982 the representative of the United States said that his delegation was considering ways in which the Council might improve its procedures.

The Council took note of the statement.