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COUNCIL OF REPRESENTATIVES

Report on Work since the Thirty-Ninth Session

Addendum

The present addendum contains the portions of the Council's report to the CONTRACTING PARTIES relating to the Ministerial Work Program.

1. Work Program resulting from the 1982 Ministerial Meeting

(a) Implementation of the GATT Work Program (C/M/178, 179, 183)

At the Council Meeting on 16 May 1984, the representative of Uruguay read out the full text of a statement on behalf of developing country contracting parties to the GATT, entitled "Improvement of World Trade Relations through the Implementation of the Work Programme of GATT", which had been circulated in document L/5647. He asked for a reaction to it from developed contracting parties.

The representatives of the European Communities, United States, Switzerland, Sweden on behalf of the Nordic countries, Canada, Australia, Austria, Japan, Poland and Czechoslovakia said they shared the concerns in document L/5647.

The representative of the European Communities said that the Work Program had been designed for the whole of the 1980s; its implementation should be a continuous rather than piecemeal process, to be carried out in a balanced and orderly fashion; the 1984 CONTRACTING PARTIES session was merely the first rendez-vous in this process. As for a new round of multilateral trade negotiations, the Community was highly dependent on free trade for its prosperity, and hoped to stimulate international commerce in both goods and services. Thus it supported any concrete and specific proposals leading to a reinforcement of an open world trade system in the course of the 1980s. The first priority, however, should be to resist protectionist pressures, to roll back restrictive actions and to implement the 1982 work program. Only then would the launching of a possible new round be credible. Also, there should first be confirmation of definite and generalized economic recovery, and an improvement in the operation of the international monetary and financial system.

The representative of the United States said that progress in implementing the Work Program had been disappointing and extremely slow in certain key areas. Some studies required as background for further discussion had required more time than envisaged, and interest in other areas seemed to have lagged since the 1982 Ministerial meeting. The United States urged all contracting parties to intensify efforts to make progress in implementing the work program so as to meet the deadlines set by Ministers.

The representative of Switzerland said that the growing number of trade measures taken in the "grey area" over the past six months had left his delegation perplexed concerning implementation of paragraph 7(i) of the Ministerial Declaration (BISD 29S/9). Recovery could not be secured solely by checking protectionist trends; both developed and developing contracting parties should try to lower restrictive barriers hampering imports into their countries of products from developing countries. He gave details of recent such trade-liberalizing measures taken by Switzerland. Developing contracting parties also had an important rôle to play in sustaining the recovery that was now taking shape, and it was important not to introduce any new differentiation by country and by type of obligation in the implementation of commitments taken on jointly in the Ministerial Declaration. It was also important that developing countries create or maintain a climate conducive to investment, and that they improve the transparency of their trade systems, applying progressively all the rights and obligations of the GATT. Preparations for a new round of multilateral trade negotiations should be based on implementation of the 1982 Work Program. It was nonetheless clear that certain problems in the Program might be resolved only in the framework of new multilateral negotiations.

The representative of Sweden, on behalf of the Nordic countries, said the Nordic countries would do their utmost to avoid trade actions that harmed developing countries; there was an urgent need to make progress on the Work Program as a whole, thereby creating the basis required for launching a new round of negotiations in GATT.

The representative of Canada regretted that implementation of the Work Program was not proceeding more quickly, as it was the basis on which to approach further trade liberalization.

The representative of Australia said there was increasing compartmentalization of the world trading system both by sectors and by the proliferation of bilateral and plurilateral restraint agreements. Australia agreed that implementation of the Work Program was a continuous process which was fundamental to the process of further trade liberalization and to setting the stage for any new negotiations. Such a new round would have to be truly global and address the broadest possible range of issues. Improved access to the markets of the major developed countries would be a fundamental consideration in examining the attractiveness of a new round. A major way in which GATT could be strengthened would be by returning to the fundamental m.f.n. principle.

The representative of Austria said his Government believed that the 1982 Work Program should be implemented before any new negotiating round was launched.

The representative of Japan said that the idea of a new negotiating round and the faithful implementation of the 1982 Ministerial Declaration were mutually reinforcing. Japan would make every effort to bring all the items in the Work Program to a satisfactory conclusion, as time was running short.

The representative of Poland said that depending on the results of the work between the present meeting and the session in November 1984, the CONTRACTING PARTIES would be in a position then to assess new initiatives and determine further action.

The representative of Jamaica, after detailing the progress or lack of progress in implementing the various areas of the Work Program, emphasized that the assumptions and economic environment of the 1980s were very different from those prevailing during earlier rounds of GATT multilateral trade negotiations. Any new round could not be based on a United States/EEC/Japan tri-partite arrangement; it would have to take account of many smaller trading partners and of the developing countries; the international monetary and financial system had also changed radically over the past 40 years, and the link between trade and finance would have to be given careful attention.

The representative of Nicaragua said that in contradiction of the 1979 Understanding Regarding Notification, Consultation, Dispute Settlement and Surveillance (BISD 26S/210) and of the 1982 Ministerial Declaration -- particularly its paragraphs 7(i) and (iii) -- Nicaragua's quota for sugar exports to the United States for the current fiscal year had been cut by 90 per cent. He recalled that in March 1984, the Council had adopted the Panel report (L/5607) on the complaint by Nicaragua against the United States. He added that the damage caused to Nicaragua's trade and economy by recent US mining of its ports was substantial. These and other measures complained of in his statement were in breach of both the spirit and the letter of the General Agreement, and had the common denominator of discrimination based on non-economic factors.

The representative of the United States said the statement by the representative of Nicaragua was inappropriate under this item and within the forum of GATT.

The representative of Uruguay, speaking on behalf of developing contracting parties, welcomed the positive statements that had been made.

The representative of Cuba said that implementation of the Work Program had been a continuous process of frustration for developing countries. The Council should also consider recent acts of military and economic aggression against developing countries, which were relevant to the discussion on this item.

The representative of Czechoslovakia said his delegation was not against a new round of multilateral trade negotiations, but considered that the Work Program should be completed first.

The representative of India fully endorsed the statement in document L/5647. Developed contracting parties should honour their commitments under Article XXXVII and the commitments undertaken by them in the Ministerial Declaration. The areas of interest to developing countries, revolving around commitments already undertaken by developed contracting parties, did not in fact require the initiation of a new round for their implementation.

The representative of Korea endorsed the statement in document L/5647, and said Korea would actively participate in completing the Work Program.

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

At the Council meeting on 14 June 1984, the Chairman said that as the Council would be addressing this issue on a continuing basis between the present meeting and the fortieth session of the CONTRACTING PARTIES, this item was bound to figure on the Council's agenda during that period.

The Council took note of this statement.

At the Council meeting on 6-8 and 20 November 1984, the Chairman pointed out that the proposed agenda (C/W/455) for the meeting listed a number of elements in the Work Program on which a report was to be made to the Council or on which a decision was to be taken, in addition to those listed at the request of delegations. While other elements had not been specifically listed, including some matters being dealt with by the Committee on Trade and Development, it was open to the Council to consider any of them as well as the Work Program generally. He invited representatives to introduce for discussion any other elements in the Work Program on which they wished to express views or on which they considered Council action might be appropriate.

The representative of Chile said that particular attention should be given to those areas of the Work Program that would allow rapid improvement of market access for developing countries. The Director-General had repeatedly emphasized that the Program covered all fundamental aspects of international trade and in practice constituted in itself a framework for a possible new round of negotiations. The Program was not negotiable; it had already been negotiated at the 1982 Ministerial meeting as to its content, scope and priorities. Similarly, the fundamental obligation of paragraph 7(i) could not be re-negotiated; accordingly, the oft-heard contention that there was a package for negotiation was inappropriate. Any such package had already been negotiated and approved by the Ministers. He added that there was a possibility that in some sectors, agriculture for example, if recommendations discussed in the relevant Committee were to develop into a consensus, this could be formalized through negotiations that could be separate from any overall new round.

The representative of the United States said that his delegation took the entire Work Program seriously and would do its best to move forward on the Program as a whole. Such an approach had been agreed by Ministers in 1982.

The representative of Australia referred to statements that had put forward the proposition that certain linkages in the Work Program needed to be taken into account in moving the work forward as a package. This was an unfortunate and negative development. The Ministerial Declaration provided a good indication of the priorities to be attached to individual items in the Program, some elements of which were fundamental, affecting many contracting parties and forming the very basis of the trading system; others were of a more exploratory nature to ascertain their relevance to GATT. On safeguards, for example, his delegation was discouraged that it had not yet been possible to achieve a comprehensive solution. The attainment of such a settlement was of fundamental importance in improving the unity, consistency and functioning of the GATT system. Australia considered that so-called new items or areas should not be advanced at the risk of stalling progress on long-standing unresolved issues. Work should be pushed forward on each item as far as possible, without contracting parties constantly looking over their shoulders at progress in other areas. The second approach would not be the way to achieve genuine consensus or to preserve a multilateral approach to continuing work. His delegation considered that a positive approach, embodying a genuine attempt at building a broad-based consensus, should be adopted.

The representatives of Malaysia and Peru supported the statement by the representative of Australia.

The representative of Austria said that his country had more interest in some Work Program items than in others, but considered that all contracting parties should act in the light of the common interest

in implementing the entire Ministerial Declaration. They should try to advance work as far as possible on the different items without, at this stage, linking the progress of work on one item to progress on others. The question of a package could arise when there was a better idea of possible substantial results under the different items.

The representative of the European Communities said that if credible results were to be achieved at the fortieth session, all contracting parties would have to be able to find something positive for themselves in the Work Program. Referring to the United States, he said that the bilateral approaches which the United States had been trying to explore, even though they might be carried out in good faith, were a reflection of frustration at lack of progress in the multilateral system. Unless care were taken, such approaches could have unfortunate effects on the rest of the world and on the multilateral system. In an attempt to address the concerns and needs of all contracting parties, the Community wanted to propose a method of approaching the Program. Perhaps it was not a good idea to speak of a package; nevertheless, work had to be carried out in a balanced way. Accordingly, an effort should be made to classify the various Program items into three categories or baskets, as follows: (1) items on which something concrete could be decided and completed at the fortieth session; (2) items which were well in hand; and (3) items for which there existed a future; for example, he wondered whether the Working Party on Trade in Certain Natural Resource Products would complete its work by 1990. This would be an organized but flexible approach in which items could be moved from one basket to another, depending on progress, and which would enable a shared overall vision of how to deal with the various issues. He appealed to the Community's partners to have a global vision of what remained to be done, and to examine what efforts and concessions each could make so that the fortieth session would have a credible result and not constitute a failure, either for governments or for the people they represented.

The representative of Egypt supported the statements by the representatives of Chile and Australia and reiterated his delegation's view that each item in the Ministerial Declaration should be treated individually and according to its specific mandate, whatever inter-relationships there might be.

The representative of Hungary said that while every contracting party had the right to have its own priorities and to pursue them, even in new areas, Hungary was more interested in GATT's traditional field of trade in goods. Efforts in new areas should not be made at the expense of unresolved, fundamental issues which were indisputably within GATT's competence.

The representative of Chile endorsed the interpretation of the Ministerial Declaration by the representative of Egypt.

The representative of Sweden, on behalf of the Nordic countries, said it was important to assess to what extent it would be possible to complete or follow up work already undertaken without first reaching an understanding at the fortieth session. Such an understanding would accelerate and coordinate future work so as to safeguard balance between the various issues. The Nordic countries were attracted by the Community proposal on methodology. With such an impetus, considerably more progress could be made in various fields. The Nordic countries would not exclude that the CONTRACTING PARTIES decide upon an early assessment of continued work.

The Chairman concluded that further consultations were needed if specific conclusions were to be forwarded to the fortieth session. He appealed to contracting parties to do their utmost so that the conclusions forwarded to the session were credible, not only to world public opinion, but also to governments and representatives in Geneva.

After consideration of other items and following informal consultations, the Council reverted to this matter at its resumed meeting.

The representative of Japan drew attention to the immediate problems facing the CONTRACTING PARTIES and offered an overview of GATT's future work. Regarding progress on the Work Program, he said that three points should be kept in mind: GATT was a multilateral trade organization composed of a large number of diverse countries; GATT decisions had always been, and should continue to be, made by consensus; and the interests of all the contracting parties should be taken into account in efforts to develop trade, which was not a zero-sum game where concessions automatically meant losses. The Ministerial Declaration and the Program had put together all the themes of interest to all the contracting parties, and out of these, the main points had acquired the status of GATT priorities. Work had been continuing on many fronts in an effort to solve the various problems confronting the GATT system. In this regard, there was danger in contracting parties pursuing only their own individual interests, which might have a negative impact on GATT's traditional system of decision by consensus. At risk was not only progress on the Program, but the development of a nefarious influence on the system as a whole. Japan's priorities had at their centre the dynamic expansion of trade, and included two main elements: to bring new viewpoints to traditional items, and to grapple with new problems. The most important goal was to maintain and develop the GATT system. A spirit of mutual concessions should be fostered. He expressed appreciation for the efforts of all contracting parties towards advancing the Program items and noted especially the progress on trade in agriculture. His delegation wanted to use the days remaining before the CONTRACTING PARTIES session to make further efforts at progress on other Work Program items such as safeguards. In conclusion, he said that progress must be made in what might be described as a multiple and closely related advance on all fronts; Japan would do its best to cooperate with other delegations to achieve shared goals.

The Council took note of the statements.

(b) Safeguards (C/M/174, 180, 183)

The CONTRACTING PARTIES had agreed at their 1983 Session "that the Council should conclude the work of drawing up a comprehensive understanding as called for by Ministers within such a time frame that it would be placed for adoption by the CONTRACTING PARTIES at their 1984 Session" (SR.39/1).

At the Council meeting on 7 February 1984, the Chairman said that he had recently restarted, with the active support of the Director-General, the process of informal consultations on safeguards in order to find a way to achieve the task given to the Council. Council members would be kept informed of progress made in the consultations.

The Council took note of the statement.

At the Council meeting on 11 July 1984, the Chairman noted that he had been holding informal consultations since the beginning of 1984 to explore how progress could be made under the mandate given by the CONTRACTING PARTIES in 1983. The consultations had concentrated on each of the elements mentioned in the 1982 Ministerial Decision (BISD 29S/12), taken individually and in their interrelationships. They had also touched on some general questions, such as the application of paragraph 7(i) of the Ministerial Declaration (BISD 29S/11) to actions of a safeguard nature by governments. One element in the discussions had been what might be done about existing grey-area measures. He drew attention to some of the points discussed, and said that despite the efforts made in these informal discussions, it had not yet been possible to substantially narrow down differences on the main issues. There had been certain indications, however, that there existed on the part of a number of countries a will to put together proposals on a subject which had been under negotiation for so long and which had been looked at from all angles. The informal consultations would be intensified and work would be pursued in the autumn as a matter of urgency; but he emphasized that it was necessary for the work to be based on concrete proposals by delegations for a comprehensive understanding on safeguards, or at least on a set of guidelines on the main elements which would have to be covered in such an understanding.

The Council took note of the statement.

At the Council meeting on 6-8 and 20 November 1984, the Chairman reported that since July, various delegations had continued to exchange views informally on this matter. There was no major breakthrough to announce on the substantive issues, but the informal consultations had recently been intensified on all the elements in this area with an informal paper, put forward by the Director-General, serving as a

reference document.¹ Delegations were not committed to this paper and might have their own views on particular elements in it. All those involved in the informal consultations had agreed that they should continue between the present meeting and the fortieth session of the CONTRACTING PARTIES, with the aim of making progress towards agreement on a comprehensive understanding. He would make a further statement on developments in this area when presenting the Council's report to the fortieth session.

The representative of the European Communities noted that agreement had not been reached on the informal paper put forward by the Director-General; it was still being examined by his authorities.

The representative of Spain said that his delegation had serious misgivings about some elements in the informal paper. Spain would reserve further comment until a further report on safeguards was presented.

The Council took note of the report by the Chairman and of the statements and agreed that informal consultations should continue.

Following informal consultations, the Council reverted to this matter at its resumed meeting. The Council asked the Chairman to continue the informal consultations and authorized him to report on the further results when he introduced the Council's report to the CONTRACTING PARTIES at the fortieth session.

(c) Dispute settlement procedures (C/M/175, 180, 183)

At the Council meeting on 28 February 1984, the Director-General drew attention to document C/124 containing information on the current status of work in panels. Steps had been taken to enable the secretariat to fulfill the mandate given to it by the CONTRACTING PARTIES in 1982 to assist panels on the legal, historical and procedural aspects of matters before them (BISD 29S/14). He described three longstanding problems which tended to prolong the dispute settlement process, namely the difficulty in agreeing on membership of panels, the failure of parties on occasion to observe agreed deadlines, and the postponement of the adoption of panel reports from one meeting of the Council or relevant Committee to another. Similarly, the Council would no doubt admit that panel recommendations took too much time to be translated into action. He added that since Ministers had agreed in 1982 that the Council would periodically review the action taken pursuant to panel recommendations

¹ Copies of the paper (dated 15 October 1984) were distributed to representatives in the meeting room.

(BISD 29S/15), perhaps the Council should consider this topic at its special meetings to review developments in the trading system. He emphasized once more the need to respect the rules of discretion and confidentiality in the delicate area of dispute settlement. He confirmed that the Council Chairman would continue to announce the terms of reference and composition of a panel once these were agreed, and said that in future whenever a panel was constituted, a communication would be sent to all contracting parties to this effect. He proposed that for the sake of transparency, the Council should also be informed of the composition of panels established by MTN Committees and Councils.

The representative of Egypt stressed the need to make GATT's multilateral conciliatory rôle more effective.

The representative of the United States agreed that the dispute settlement process was not working as effectively as it should; if the process was to have any meaning, parties to disputes had to accept panel findings and conclusions, and panel reports had to be adopted in cases where bilateral solutions could not be reached. The United States urged contracting parties to respect the dispute settlement process and to support the work of panel members.

The representative of Sweden, on behalf of the Nordic countries, stressed their full support for the views expressed by the Director-General.

The representative of the European Communities supported the views expressed by the representative of Egypt on the importance of conciliation. Moreover, if the dispute settlement process had been held up from time to time, perhaps the origin of those blockages should be examined in depth. Certain panels had tended to interpret or create new obligations which did not exist in the MTN Agreements or in the General Agreement.

The Council took note of the information in document C/124, and of the statements by the Director-General and representatives.

At the Council meeting on 11 July 1984, the representative of Canada said his delegation believed that contracting parties shared a general sense of concern over the operation of GATT's dispute settlement system, and felt that something could and should be done to improve it. Canada did not intend to put forward any specific proposals at this time, but might return to this issue in greater detail at a Council meeting later in 1984.

The Council took note of the statement.

At the Council meeting on 6-8 and 20 November 1984, the Chairman drew the Council's attention to a proposal (L/5718) by a number of delegations relating to improvements in existing procedures for appointment of panels. The Consultative Group of Eighteen had discussed the proposal at its meeting in October 1984 and had agreed that the proposal should be forwarded to the Council by the Director-General.

The Director-General made a full report on the state of work of panels presently in operation, covering panels established by the Council and by the MTN Committees. Turning to the proposal in L/5718, he said delay in panel formation could seriously impede the speedy resolution of disputes; such delay could entail injustice, and it certainly eroded respect for the authority and efficiency of the dispute settlement process. The proposal in L/5718 aimed to prevent such delays and to improve the efficiency and effectiveness of panel procedures. The essential point of the proposal was that a short list of non-governmental panelists should be approved by the CONTRACTING PARTIES, and that in case of difficulty in reaching agreement on membership of a panel, the Director-General would be authorized to complete it, at the request of either party to the dispute, by appointing panelists from the roster. He stressed that adoption of the proposal would in no way change the Council's rôle in the dispute settlement process. The proposal would clearly not resolve all problems in the field of dispute settlement, but was intended as a modest first step forward in improving dispute settlement procedures. He shared the hope of delegations which had co-operated in drawing up the proposal, that the Council would agree to recommend it to the fortieth session of the CONTRACTING PARTIES for adoption, so that it could be brought into effect in 1985.

The representative of Jamaica supported the thrust of the proposal in L/5718, but he did not see that either this proposal or the proposal by Canada (L/5720) introduced any substantially new elements in view of the agreement by Ministers in 1982 on "more effective use of the existing mechanism and for specific improvements in procedures to this end", and the specific agreements on how such improvements would be made. The basic problem in the dispute settlement process appeared to be not of procedure, but rather of individual contracting parties seeking, in various ways, to pre-determine or even veto the outcome of panels. No improvements in procedure would change that problem, which should be acted upon by the Council in a clear and responsible manner. His delegation was also concerned that the improvements suggested in L/5718 might lead to a quasi-judicial system in GATT; if a roster of independent panel experts were to be established, it would be necessary to have some description of the experts and of their representativeness. He noted that as drafted the proposal would entail an increase in the Director-General's responsibilities in the area of dispute settlement. There were also budgetary implications in the proposal (L/5718) which had to be considered, given the fact that outside experts would be used for panels established both by the Council and by the MTN bodies. As for Canada's proposal in L/5720, this was much too modest and cautious, and merely reaffirmed what should already be existing practice.

The representative of Chile said that it would be useful to continue informal consultations on the proposal in L/5718; the Canadian proposal in L/5720 appeared to be a useful contribution to facilitating the Council's dispute surveillance obligation and to improving the

follow-up procedure on panel reports in paragraph (vii) of the Ministerial decision. Chile considered that provision for conciliation had not been sufficiently used so far, and that it might be productive to broaden this process.

The representative of Canada stressed that his delegation's proposal in L/5720, intended for information purposes only at this stage, was aimed at a major problem: follow-up action on panel reports, and the extent to which such reports were taken seriously. The proposal in L/5718 was indeed procedural, but the nature of the procedures suggested could have an important impact, in the view of many delegations, on how the whole process worked, and even on the extent to which panel recommendations were taken seriously. The aim of having a standing roster of panel experts was to have some degree of automaticity, coupled with necessary flexibility. There might be budgetary implications in the proposal, but given the importance of the dispute settlement process, these would be well worth incurring.

The representative of Romania said that his delegation could accept any proposal which aimed to improve existing procedures and practice. He sought clarification on the meaning of "compelling reasons" in paragraph 2 of L/5718.

The representative of the United Kingdom, on behalf of Hong Kong, said that in the light of recent experience with panels, including Hong Kong's own experience, it was appropriate and timely that the dispute settlement procedures be examined and improved. The Canadian proposal in L/5720 was particularly welcome. The purpose of resorting to the GATT dispute settlement mechanism could be completely negated if, following the adoption of a clear-cut panel finding, there was still no satisfactory adjustment of the problem within a reasonable time. The proposal in L/5720 was the minimum that could and should be done pursuant to the Ministerial decision; his delegation believed that it should be adopted at an early date.

The representative of Norway, on behalf of the Nordic countries, said that it would be essential to choose people for the roster who followed closely GATT's day-to-day functioning, and only to use experts from the roster in the last resort. The accepted rule should remain that both parties to a dispute agreed on the composition of a panel. The Nordic countries supported the thrust of L/5718 and of the Canadian proposal in L/5720.

The representative of Argentina said that his delegation supported the proposals in L/5718 and L/5720, and would support any proposal which would reinforce GATT's dispute settlement procedures.

The representative of Nicaragua supported the statement by the representatives of Jamaica, Chile and Canada. Some contracting parties had only taken panel recommendations seriously when it suited them; i.e., the real problem was the follow-up.

The representative of Uruguay supported both proposals.

The representative of Hungary said that an effective dispute settlement mechanism was indispensable to the GATT system. His delegation supported Canada's proposal in L/5720.

The representative of the Philippines said that if action were deferred on the two proposals, representatives might want to bear this in mind when considering a related element in the proposed budget for 1985 (L/5699, paragraph 39).

The representative of Poland said his delegation saw considerable merit in both proposals. Budgetary considerations were important, but the overriding objective was to strengthen the effectiveness of the dispute settlement system.

The representative of the United States supported adoption of L/5718, describing it as a modest proposal which would be carried out on a trial basis. The Director-General had reaffirmed that there would be no change in the Council's rôle.

The representative of Colombia said that his delegation supported both proposals, which in no way would alter the Council's rôle in dispute settlement.

The representative of the European Communities emphasized that when the dispute settlement process was blocked, it was not as a result of procedural problems, but of problems of political will. Governments were often torn between national commitments and their international obligations, while at the same time welcoming the dissuasive effect of the process on protectionist pressures. The Community supported adoption of the proposal in L/5718, which was in any case only for a trial period and which would not change the Council's leading rôle in dispute settlement. He asked for further time to reflect on L/5720.

The representative of Switzerland supported the proposal in L/5718, which was an attempt to make modest improvements on a trial basis.

The representative of Nigeria said that both proposals formed a good basis for further consultation and eventual adoption.

The Director-General said he hoped that the Council's interest in both proposals had been prompted not by legal perfectionism but by a real awareness that behind the problems of dispute settlement were to be found industries, traders and people committed to international commerce, and that while a panel was being established and while it was deliberating, the problem which it was created to examine continued to exist, and the people concerned continued to look for justice. He

wanted to make it absolutely clear that the Council remained sovereign in decisions regarding panel membership. Improvements to the text of the proposal could very easily be made; the vital thing was that the procedure should function.

The representative of the United States said he hoped that the Council would agree to the proposal in L/5718 and perhaps, if possible, the proposal in L/5720.

The representative of the European Communities fully endorsed the view put forward by the representative of the United States.

The Council took note of the statements and agreed that informal consultations should continue.

Following informal consultations, the Council reverted to this matter at its resumed meeting. The Chairman drew attention to the revised text which had been circulated in L/5718/Rev.1.

The Council agreed to forward document L/5718/Rev.1 to the CONTRACTING PARTIES for consideration at their fortieth session.

The representative of Egypt asked whether the informal indicative list of governmental and non-governmental persons referred to in paragraph 13 of the 1979 Understanding was being maintained by the Secretariat. He also asked about the relationship between any new roster of non-governmental experts, as proposed in L/5718/Rev.1, and the 1979 Understanding taken together with the 1982 Ministerial decision on dispute settlement procedures.

The Director-General confirmed that the indicative list was being maintained by the Secretariat. He added that paragraph 13 of the 1979 Understanding referred to the first step in the selection of panel members; this first step would not be affected by the proposal in L/5718/Rev.1.

The representative of the European Communities said that his delegation provisionally agreed to the proposal in document L/5718/Rev.1, and any final action on it could only be taken at the fortieth session of the CONTRACTING PARTIES. The Community understood that by adopting this proposal, the CONTRACTING PARTIES would neither directly nor indirectly be reopening either the 1979 Understanding or the 1982 Ministerial decision on dispute settlement procedures; they would only be improving those procedures.

The Chairman then turned to the Canadian proposal in L/5720, and said that during the informal consultations several delegations had supported the proposal, while others had not yet been able to take a final position. Some requests for further clarification had also been made. He therefore suggested that further consultations be undertaken after the fortieth session of the CONTRACTING PARTIES, with the aim of having a text ready for adoption at the next Council meeting.

He added that Nicaragua had more recently put forward a proposal (L/5731) concerning implementation of panel reports; this document would also be considered in the further consultations, together with any other proposals that might be submitted by other delegations.

The representative of Nicaragua reiterated her delegation's support for the Canadian proposal, which Nicaragua understood should be considered in relation to paragraphs 22 and 23 of the 1979 Understanding and also to paragraph (viii) of the 1982 Ministerial decision on dispute settlement procedures. Her delegation considered that the time was now overdue for decisions of principle concerning dispute settlement procedures to be translated into action, and this was why Nicaragua had submitted its own proposal in L/5731.

The Council took note of the statements.

(d) Trade in Agriculture (C/M/183)

At the Council meeting on 6-8 and 20 November, Mr. Kelly, Deputy Director-General, reported on behalf of the Chairman of the Committee on Trade in Agriculture, that the Committee had been established to carry out a comprehensive examination of measures affecting trade in agriculture and to make recommendations with a view to achieving greater liberalization in the trade of agricultural products. The examination phase of the Committee's work had been substantially completed in early 1984; this had involved the trade measures of 51 participating countries, as well as an examination of the operation of the General Agreement in relation to subsidies affecting agriculture, including export subsidies and other forms of export assistance. A meeting of the Committee at senior policy level in April 1984 had considered the conclusions to be drawn from this exercise, and had commissioned the Secretariat to prepare the text of draft recommendations, in consultation with the Chairman. The Committee had considered the initial and revised versions of this text at its meetings in June and September 1984, respectively; an explanatory note by the Secretariat on the general approach embodied in the draft recommendations had also been prepared. At the Committee's meeting in September 1984, divergent views had emerged on several aspects of these draft recommendations; amendments proposed by certain delegations had then been presented in the form of an alternative version of the draft recommendations. Since that meeting, the Chairman had held consultations with a view to achieving an agreed text. A further meeting of the Committee at senior policy level would take place on 15 November 1984.

The Council took note of the statements and agreed that informal consultations should continue.

Following informal consultations, the Council reverted to this matter at its resumed meeting. The Chairman reported that the Committee on Trade in Agriculture had reached agreement on recommendations (L/5732) to be made to the Council and the CONTRACTING PARTIES. Furthermore, the Chairman of the Committee, on his own responsibility, had submitted a report (L/5733) to the Council.

The Council took note of L/5733 and adopted L/5732 and the recommendations therein.

The representative of Spain said that his delegation accepted L/5732, but wanted to make the following points: (1) Spain had accepted the document in a spirit of compromise and as a demonstration of goodwill, so that work in the sector of trade in agriculture could continue; (2) Spain hoped that, in carrying out future work, full account would be taken of the terms of reference in the Ministerial decision (BISD 29S/16) and therefore that all matters should be examined "in the light of the objectives, principles and relevant provisions of the General Agreement"; (3) Spain hoped that thorough account would be taken of the balance of rights and obligations of the contracting parties and "of specific characteristics and problems in agriculture", as laid down in the Ministerial decision. It was therefore hoped that account would be taken of the differences existing between the agricultural sectors of individual countries and that, as a result, the work would take into account "the effects of national agricultural policies" as stated in paragraph 1 of that decision; those effects could not be the same when policies must of necessity be different owing to differing factors in individual contracting parties' agricultural sectors; (4) Spain hoped that due attention would be given to security of supply, and to the avoidance of export prohibitions and other practices that could create serious difficulties for small producers and large importers in sectors that were of the greatest importance to them; (5) Spain hoped that, in dealing with the problems of agriculture with a view to achieving greater liberalization in the trade of agricultural products, the work would proceed in a manner that ensured advantages for all contracting parties and prevented a situation in which some obtained net advantages while others were harmed. This is what had been stated in other terms in paragraph 1(i) of the decision; and (6) Spain believed that agreements should be obtained by consensus, as he said was indicated in paragraph 7(v) of the Ministerial Declaration, and not by imposition. Spain hoped that future work would be carried out in a true spirit of concord and mutual understanding, and in a genuine sense of realism, in order to seek a balance between the interests and objectives of the agricultural policies of individual countries, with a view to obtaining a collective advantage; in other words, so that the greater adaptation of trade in agricultural products to the rules of GATT would produce an advantage for all contracting parties and for the multilateral system.

The representative of Austria said that his delegation, while not opposing acceptance of the recommendations in L/5732, regretted the absence in the heading of that document of a reference to the "specific characteristics and problems in agriculture", as mentioned in paragraph 2 of the Ministerial decision, on the same level as the "special needs of developing countries". Under "specific characteristics and problems in agriculture" his Government understood to be the principles and legal obligations of national agricultural policies. For Austria, this meant that security of supply and social and regional objectives had to be taken into account. Furthermore, his Government doubted whether it was useful to deal with matters such as variable levies and unbound duties in the Committee. Austria had recently introduced essential changes in its agricultural policy leading to a significant adjustment of market possibilities, and reserved its right to revert to detailed problems in the Committee's further work.

The representative of Finland, on behalf of the Nordic countries, said that the recommendations in L/5732 provided a good basis for continuing the Committee's work. Referring to paragraph 6 of L/5733, the Nordic countries understood that the Secretariat's explanatory note (AG/W/9) was without any legal status as to the Committee's work and had not been accepted by the Committee; in no way did it prejudice the positions of delegations in future work. As small producers and small markets, the Nordic countries were not major actors in international agricultural trade, but they had vital and traditional interests at stake. They attached great importance to the Committee's work and considered it to be one important element of the Work Program. They wanted to support the GATT system and work for its improvement. He said that in the Committee's future work, it would be important to respect fully all elements of the Ministerial decision; attempts to break the delicate balance of that mandate would only lead to complications. Accordingly, future work on approaches governing market access, export competition and sanitary and phytosanitary regulations would have to be based, among other things, on all elements listed in paragraph 2 of that decision.

The representative of the European Communities drew attention to and confirmed the statement by his delegation as reflected in paragraph 7 of L/5733, namely, that the Ministerial Declaration covered a certain number of areas and that the Community made its definitive approval of the Committee's recommendations conditional on an overall assessment of the results achieved in these other areas. The Community re-emphasized that the Work Program had resulted from a general compromise, and that progress in implementing the Program should be made on all items of interest to all contracting parties in a well-balanced manner, within the framework of that compromise. At the fortieth session, the Community and its member States would review progress achieved in each area and in the Program as a whole.

The Council took note of the statements.

(e) Quantitative restrictions and other non-tariff measures
(C/M/183)

At its meeting on 6-8 and 20 November 1984, the Council considered the report (L/5713) of the Group on Quantitative Restrictions and Other Non-Tariff Measures.

The Chairman of the Group noted that for practical reasons, the report was divided into two main parts but that it should be considered as a whole, since work on quantitative restrictions and other non-tariff measures had proceeded in parallel. The report contained specific recommendations, in paragraphs 44 and 65, for further work in this area. In the final paragraph of the report, the Group had recommended that the CONTRACTING PARTIES might wish to consider that the Group should continue its work, with a view to making further progress in pursuance of the mandate given to it by Ministers (BISD 29S/18) and to presenting a report containing its findings and conclusions for consideration by the CONTRACTING PARTIES at their next session. He noted that despite differences of views, particularly regarding the justification of measures and their conformity with the General Agreement, there had been a will in the Group for work to progress towards their elimination and liberalization. The fact that the Group had approved the report unanimously was proof of that will. He hoped that the Group's work and recommendations had led to the stage where decisions could be taken that would lead to early and fruitful negotiations.

The representative of Argentina said that the Group had done no more than compile necessary information. Certain contracting parties had shown scant will to co-operate and did not want to have any detailed examination of measures not conforming to the General Agreement. Argentina considered that the Group's conclusions covered restrictions in all sectors, including agricultural trade where the greatest number of quantitative restrictions existed.

The representative of Norway, on behalf of the Nordic countries, said they accepted the report and would participate actively in carrying out its recommendations. They also welcomed the recommended multilateral review, which would include the grounds on which measures were maintained and their conformity with the General Agreement. However, any successor body to the Group should not pronounce on the legality of a specific measure. Only the CONTRACTING PARTIES could do that, and GATT had appropriate dispute settlement mechanisms which could be invoked. Continued work was required in order to make further progress in pursuance of the Ministerial mandate, but unnecessary duplication of work among GATT bodies dealing with this subject should be avoided. More attention should be devoted to non-tariff measures other than quantitative restrictions.

The Council took note of the report and of the statements, and agreed to forward the report (L/5713) to the CONTRACTING PARTIES, with the recommendation that the Group's mandate be extended to allow it to make a report, with its findings and conclusions, for consideration by the CONTRACTING PARTIES at their next session.

(f) Tariffs (C/M/183)

At the Council meeting on 6-8 and 20 November 1984, the representative of Chile said there were some areas that needed resolute action if the circumstances preceding a broad new round of multilateral negotiations were to yield a significant improvement of the trade environment. Such was the case of tariff escalation. Solution of this problem, or substantial progress on it, would mean that any new round of negotiations could improve industrial investment possibilities for developing countries. Examination of tariff escalation had been limited so far to procedural aspects regarding its application in the agricultural sector, and to its formal identification as a major problem in the Working Party on Trade in Natural Resource Products. The Ministerial decision (BISD 29S/18) on this subject was not being fulfilled. There was a need for the developing countries to identify the extent to which tariff escalation was affecting their development needs and plans. Such identification could be carried out in the Committee on Trade and Development, and could be included as a regular agenda item so that countries affected could report their experiences and assemble the necessary knowledge to be able to take up the matter on a practical and systematic basis.

The Council took note of the statement.

(g) MTN Agreements and Arrangements (C/M/183)

At the Council meeting on 6-8 and 20 November 1984, the representative of Egypt said that his delegation was particularly concerned at the small number of developing countries that had signed the MTN Agreements and Arrangements, and at the reasons for this. The Ministerial decision (BISD 29S/18) on this item provided that the CONTRACTING PARTIES should review their operation and that the review should focus on their adequacy and effectiveness, and on the obstacles to their acceptance by interested parties. The real problem here was not lack of knowledge among certain developing countries concerning these instruments, but that there were certain obstacles which discouraged some developing countries from signing the Agreements and Arrangements, and which caused difficulties even for some of those developing countries that had signed. He reiterated his delegation's proposal at the thirty-ninth session (SR.39/2, page 4) for working parties to be established to examine this subject, and asked the Chairman to include this issue in the informal consultations to be conducted on various elements of the Work Program.

The representative of Colombia said that the Ministerial decision on this item had only been followed in a very limited way, although the Committee on Subsidies and Countervailing Measures had held some informal consultations which might yet produce some satisfactory results for the parties concerned. The basic reason why more developing

countries had not signed the MTN instruments was because there had been a lack of transparency in the operation of the various bodies. His delegation therefore proposed that all MTN bodies should include this issue as a priority at their next meetings, and should submit reports on their conclusions to the Council for consideration before a meeting of the CONTRACTING PARTIES in mid-1985. Also, while a study had been made of obstacles lying in the path of the developing countries to access to MTN bodies, nothing had been said about the effectiveness of the Agreements, as requested by Ministers. Therefore, Colombia proposed that the Secretariat make a report on this subject; it could be studied by a working party set up for that purpose, which should also report on its work in mid-1985.

The representative of Jamaica supported the proposal by the representative of Colombia and recalled that at the Council meeting in March 1984, his delegation had called for an early substantial review on how to bring the MTN Agreements and Arrangements into line with the GATT framework. Such a review should be carried out in a serious manner, rather than included in marginal and not very transparent reports by the MTN bodies, or left to informal consultations. In his view, GATT was becoming too informal a body, with too many informal consultations and informal results; this was undermining formal GATT decision-making, rules and disciplines.

The representatives of Argentina and Yugoslavia supported the statements and proposals made by the representatives of Egypt, Colombia and Jamaica.

The representative of the United States said he had taken note of the views expressed on informal procedures, and recalled that he had made similar remarks on different issues. The United States did not want to hold back work on examining the MTN Agreements and Arrangements, which were an integral part of GATT.

The representatives of Malaysia and Peru supported the statement by the representative of Colombia.

The representative of the European Communities wondered what new elements there might be to justify the establishment of a working party.

The Council took note of the statements and agreed that informal consultations should continue.

Following informal consultations, the Council reverted to this matter at its resumed meeting. The Chairman drew attention to document C/W/456 containing a draft agreement for consideration and adoption by the Council.

The Council approved the text of document C/W/456 and agreed to forward it to the CONTRACTING PARTIES for consideration at their fortieth session.

The representative of the European Communities emphasized that his delegation's agreement to approve the proposal in C/W/456 was provisional in the sense that treatment of this matter was to be seen as being within, and not additional to, the Ministerial Work Program.

The Chairman said that the point made by the representative of the European Communities was fully understood by the Council and had also been understood in the same way by delegations during the informal consultations.

The Council took note of the statements.

(h) Structural adjustment and trade policy (C/M/174, 183)

In November 1983 the Council had discussed the report of the Working Party on Structural Adjustment and Trade Policy (L/5568) and had agreed to revert to the report at its next meeting, so as to complete its consideration and decide on such further action as might be called for.

At the Council meeting on 7 February 1984, the Chairman said that subsequent consultations had indicated a general recognition of the importance of the problem of structural adjustment for international trade and in relation to GATT principles and objectives. While there was acceptance of the need for further work in this area having regard to the matters dealt with in the Working Party's report, more reflection was needed to determine how this might be done.

The representative of Jamaica said that further action on this subject should be on more pragmatic, specific and operational lines, and should include an examination of positive adjustment measures where safeguard measures were being taken. There was a strong body of opinion that if structural adjustment proceeded efficiently, there would be far less recourse to safeguard measures; however, since the beginning of the 1970s and the rise of protectionist measures and policies, the international structural adjustment process had not worked as efficiently as it should have done. Among his illustrations of this point, he said that once a number of developing countries had begun to show a degree of competitiveness, they had faced new protectionist measures applied to their products by industrialized countries, as the major trading partners sought to maintain the terms of trade in their favour and to prop up industries which were not competitive with new suppliers.

The representative of Egypt supported the statement by the representative of Jamaica.

The Council took note of the statements and agreed to revert to the issue at one of its next meetings.

At the Council meeting on 6-8 and 20 November 1984, the Chairman said that there appeared to be no difficulty in the Council's now adopting the Working Party's report; by doing so, it would also adopt the recommendation in paragraph 47 that the Council ask "relevant GATT bodies to take into account the insights gained and conclusions reached in the Working Party". The Working Party had also considered that the GATT should continue to focus attention on the question of structural adjustment and its relation to trade, in the light of the conclusions in paragraphs 40-46 of the report, and had recommended that the Council decide how this might be undertaken. Some delegations had suggested that a special body be established to continue work in this area, and a specific proposal by Canada had been circulated in C/W/454.

The representatives of Canada, United States, Egypt, Norway on behalf of the Nordic countries, New Zealand, Switzerland, the European Communities and Chile supported adoption of the report, but there were differences of view on how and in exactly what forum such further examination should take place.

The representative of Canada said his delegation believed it was important that there be a place within GATT where the relationship between trade and structural adjustment could be kept under review, with attention focused on current problems. Consequently, Canada had proposed in C/W/454 draft terms of reference for a revived working party; these terms appeared to meet the main priorities, identified in consultations over the past year, on the many possibilities for advancing work in this area.

The representative of India supported the proposal by Canada in C/W/454. Within these broad terms of reference, India believed that future work on this question should focus specifically on three aspects: (1) it should give priority attention to sectors such as textiles and clothing in which pressures for protective action had repeatedly been felt; (2) an analysis should be attempted of the reasons why governments had been unable to allow operation of the autonomous adjustment process; and (3) work should focus on how trade policy actions could achieve GATT objectives in the context of the operation of the autonomous adjustment process.

The representative of the United States said there appeared to be a lack of precision in knowing exactly what structural adjustment really meant. The adjustment exercise was also being examined as a component in the discussions on safeguards which would, in his delegation's view, be a more appropriate place for looking at this subject.

The representative of Egypt supported adoption of the report, Canada's proposal and the statement by the representative of India.

The representative of Norway, on behalf of the Nordic countries, said they considered it premature to set up a new working party at this stage. The question of a separate body for structural adjustment could be discussed later in the light of broader implementation of the Work Program. Canada's proposed mandate for a new working party represented little or nothing new, and a body with those terms of reference would to a large extent only repeat work that had already been done; it also represented a sectoral approach that the Nordic countries did not find useful.

The representative of New Zealand supported Canada's proposed terms of reference for a revived working party, and agreed with the suggestions made by the representative of India for more precision. New Zealand did not see such continued work as a substitute for discussing structural adjustment in other GATT bodies, such as the Committees on Safeguards and Trade in Agriculture.

The representative of Switzerland said that it was important not to treat this subject in isolation from other general questions which might arise in the framework of the General Agreement. Switzerland believed that the procedural proposals made by the representative of Canada and India required further reflection.

The representative of the European Communities said that structural adjustment was a permanent problem in many of GATT's activities; for example, the Textiles Committee had found it necessary to set up the Sub-Committee on Adjustment. It was not necessary to duplicate the work already entrusted to such bodies, and the Community shared the view expressed by the representative of the United States that it was premature to take a decision on Canada's proposal. This problem was linked to others under discussion in the Work Program such as safeguards.

The representative of Canada said that his delegation wanted to maintain its proposal if the Council decided that it was not yet ripe for adoption. He agreed that structural adjustment problems were being discussed in the Committee on Safeguards, although that body had not spent much time so far dealing with the fundamental issues of structural adjustment; that practice would probably not change. This was a continuing problem, and it was necessary not merely to address the symptoms, as was done for example in the Committee on Safeguards, but the nature of the illness itself, and to consider possible cures, even if contracting parties had to look uncomfortably close to home.

The representative of Chile said it was true that this issue was closely linked with matters such as subsidies and safeguards, but a global perspective and examination of the relationship between structural adjustment and trade policy would continue to be required.

The representative of the European Communities said that GATT should examine the impact of structural adjustment policy measures on trade, and not the policies themselves, which were a matter of national sovereignty. For example, it was useful to examine a safeguard measure which was accompanied by a measure in the field of structural adjustment. One could not generalize the task, so the Community could not at this stage envisage a new working party whose only task would be to deal with structural adjustment.

The Council agreed (1) to adopt the report (L/5568), together with the recommendation contained in paragraph 47 asking relevant GATT bodies to take into account the insights gained and the conclusions reached in the Working Party; (2) that informal consultations should continue on the further work that might be done in this area and on the question of establishing a specific body for that purpose; (3) that the Canadian proposal in C/W/454, and any other proposals received, should be taken into account; and (4) that the Council would revert to this question after the fortieth session of the CONTRACTING PARTIES.

(i) Trade in counterfeit goods (C/M/174, 180, 181, 183)

At the Council meeting on 7 February 1984, the Chairman noted that the Director-General had reported in 1983 on his consultations with the Director General of the World Intellectual Property Organization (W.I.P.O.). The next step would be for the Council "to examine the question of counterfeit goods with a view to determining the appropriateness of joint action in the GATT framework on the trade aspects of commercial counterfeiting" (BISD 29S/19). Following informal consultations, the Secretariat was preparing a background paper to facilitate further work, and would remain in contact with interested delegations and with secretariats of relevant organizations as work proceeded on the paper.

The Council took note of the Chairman's statement and agreed to revert to this issue at a later stage when additional information was available.

At the Council meeting on 11 July 1984, the Chairman noted that the Secretariat had made available to interested delegations a draft of the background paper. There would be further informal consultations with respect to the examination of the points covered by the paper, and the Council would revert to this matter later in the autumn.

The representative of the United States said that it was important for GATT to examine these problems with a view to possible solutions, and to carry out the provisions of the GATT work program in this regard.

The representative of the European Communities said that this issue deserved full attention, as did the other items in the work program resulting from the 1982 Ministerial Declaration.

The Council took note of the statements.

At the Council meeting on 2 October 1984, the Chairman reported that further informal consultations on this issue were taking place; they were focussing on a number of points that were considered to need examination in order to prepare for the decisions that the Council was called upon to take by the Ministerial Declaration.

The representative of the United States urged delegations to give serious thought to this matter before the next Council meeting so that it could take the decisions called for in the Ministerial Declaration.

The Council took note of the statements.

At the Council meeting on 6-8 and 20 November 1984, the Chairman reviewed his earlier reports on this matter and on the informal consultations which had taken place. He noted that the Consultative Group of Eighteen had discussed this matter at its October 1984 meeting.

Addressing substantive questions, the Chairman said that in the course of the consultations and discussions, some delegations had repeated their view that, because problems of trade in counterfeit goods were important and growing, the GATT should do something about them urgently. There was widespread recognition that a problem existed and that GATT's concern was with the trade aspects; but to some delegations it remained a matter of low priority. Concern had been expressed about the danger that action to combat trade in counterfeit goods could lead to the creation of new, and perhaps discriminatory, obstacles to legitimate trade; the need to safeguard against such danger had been stressed. It had been noted that a number of countries had recently taken or were considering unilateral action against imports of counterfeit goods. The point had been made that any such action should be taken in conformity with obligations under the General Agreement. The question had been discussed of whether work in this area should look only at problems of counterfeiting related to the unauthorized use of trademarks or whether certain other types of intellectual property infringement, for example that of industrial designs, might also be covered, perhaps at a later stage. Views had been put forward on the adequacy of existing national and international law, in particular that of W.I.P.O., and on how and where such law might most appropriately be improved if it were found to be less than adequate in certain respects. Points had been made concerning the relationship between action against the domestic production of counterfeit goods and action specifically directed against imports of such goods, and also to the respective rôles that the national judicial and administrative authorities should play. There was a general view that the above points, and possibly certain others, needed to be examined in greater detail before the Council could be expected to take the decisions required of it by the Ministerial Declaration. As for procedure, i.e., how such further examination might be undertaken, some delegations in the informal consultations had urged the establishment of a working party. Others had favoured intensifying the present process of informal consultations. He then drew attention to the request by the United States (C/W/451) for establishment of a working party.

The representatives of the United States, India on behalf of developing contracting parties, Canada, Argentina, the European Communities, Finland on behalf of the Nordic countries, Korea, New Zealand, Japan, Switzerland, Brazil and Egypt thanked the Chairman for his detailed report. The Secretariat paper was commended by many delegations as useful. There was general agreement that a problem did exist in trade in counterfeit goods, but different views were expressed over GATT's responsibility and competence, and how further work should be carried out.

The representative of the United States said it was clear that there was little disagreement that trade in counterfeit goods could have an adverse impact on contracting parties, both in terms of economic disadvantage to producers of legitimate goods, and in terms of health and safety risks to consumers. It was clear that while a number of international mechanisms existed for discouraging commercial counterfeiting, these had been inadequate in dealing with the problem. Additional action at the international level was therefore necessary. The most appropriate means to accomplish further work towards the decision required of the Council by Ministers in 1982 was a working party with membership open to all interested contracting parties.

The representative of India, speaking on behalf of developing contracting parties, said that even though the Chairman's informal consultations and the Secretariat paper had led to a deeper understanding of the trade aspects of commercial counterfeiting, some of the fundamental issues which confronted Ministers in 1982 still remained unclear. For instance, issues pertaining to the legal and institutional competence of other international organizations, specifically W.I.P.O., were still unresolved. Developing contracting parties were keen to ensure that the trade disruptive and inhibiting effects of commercial counterfeiting should be curbed. It seemed clear to the developing contracting parties that the Paris Convention for the Protection of Industrial Property contained all the basic rules to deal with this problem, both from the trade and the production angles, and was therefore a more effective instrument than GATT for the desired purpose. If it was felt that specific measures were required to ensure the effective application of such rules in national legislation, then governments should take action to draft and approve, in W.I.P.O., the necessary international regulations. If developed contracting parties so wished, the developing contracting parties that were also members of W.I.P.O. would be ready to initiate joint appropriate action in that forum. Developing contracting parties did not rule out examination of the question of counterfeit goods in GATT; they believed, however, that this stage had not yet been reached, and that it might well prove to be unnecessary.

The representative of Canada supported the US request for a working party. Existing mechanisms were not perceived by some governments as adequate to deal with the issue, and there were clear signs that some

major governments were intending to take steps, unilaterally if necessary, to address the problem. The best way to ensure that new non-tariff barriers to trade were not brought into force was to have a full airing of this issue multilaterally in GATT, which was where the contracting parties, individually and collectively, could best protect their interests.

The representative of Argentina supported the statement by the representative of India. Competence to deal with this matter at a multilateral level lay with W.I.P.O., not GATT. Furthermore, Argentina considered that the subject of counterfeit goods was better dealt with bilaterally.

The representative of the European Communities supported the US request for a working party. There was a serious risk in letting this matter grow more and more complicated without the prospect of effective results. Trade in counterfeit goods had been estimated at between one and two per cent of trade in manufactured products, and if GATT showed itself incapable of at least bringing some discipline into this area, there would be trouble. In industrialized countries, if legitimate rights in design, creation and imagination were not properly protected, the people involved might become so discouraged that they would begin seeking autonomous protectionist measures. In his view, W.I.P.O. did not offer a viable alternative to GATT for taking effective action on the trade effects of commercial counterfeiting.

The representative of Finland, on behalf of the Nordic countries, said they agreed that there was a need for further exploratory work, related to the trade aspect of commercial counterfeiting, to be done within GATT. This work would not exclude the examination, perhaps at a later stage, of forms of intellectual property other than trademarks, such as violation of industrial designs. They supported the US proposal.

The representative of Korea supported the statement by the representative of India.

The representative of New Zealand said that an extension of multilateral disciplines might limit abuses in this area and deserved further examination. Therefore, New Zealand supported the US proposal in general terms.

The representative of Japan agreed there was a real danger that action to combat trade in counterfeit goods could lead to new and perhaps discriminatory obstacles to legitimate trade. A problem did exist, and GATT was competent to deal with it. He understood that a number of countries had recently taken or were considering unilateral action against imports of counterfeit goods. Such action should be strictly limited and in conformity with GATT obligations. His delegation supported the US proposal.

The representative of Switzerland agreed that it would be appropriate to examine in a GATT body whether multilateral action in GATT on the trade aspects of counterfeiting should be taken; his delegation was open as to the procedures to be chosen, including the possibility of establishing a working party.

The representative of Brazil endorsed the statement by the representative of India. His delegation was concerned by the suggestion that if nothing were done multilaterally in GATT, then something would be done unilaterally and with no assurance that it would be consistent with GATT principles. His delegation could not accept this assumption. Contracting parties were bound to comply, in whatever actions they took, with their GATT obligations. Furthermore, Brazil considered that W.I.P.O. was an organization which went much further than simply passing resolutions; it negotiated treaties and conventions which had a binding force on countries prepared to accept, sign and ratify them.

The representative of the United States said that work in GATT on this issue would be complementary rather than contradictory to the work pursued in W.I.P.O. Work in GATT needed to continue, and in a formal working party, especially in view of complaints, including those by developing countries, that informal consultations were sometimes untransparent, exclusive and unsatisfactory.

The representative of Egypt endorsed the statements by the representatives of India and Brazil.

The Council took note of the Chairman's report and of the statements and agreed that informal consultations should continue.

Following informal consultations, the Council reverted to this matter at its resumed meeting. The Council asked the Chairman to continue the informal consultations and authorized him to report on the further results when he introduced the Council's report to the CONTRACTING PARTIES at the fortieth session.

(j) Export of Domestically Prohibited Goods (C/M/183)

At the Council meeting on 6-8 and 20 November 1984, the Chairman drew attention to a draft airgram (C/W/457), noting that it was the outcome of informal consultations held on this subject and that, if approved, it would be issued in early December. It was his understanding that in preparing the documentation referred to in paragraph 4 of the draft airgram, the Secretariat would consult with other international organizations, including the World Health Organization.

The representative of the European Communities said that his delegation did not oppose the Council's provisional approval of the draft airgram. However, the Community had a waiting reservation on this matter as there were certain ramifications which the Community had not yet been able to identify. His authorities were now consulting on this with the member States.

The Council took note of the statements, approved the text of C/W/457, and agreed to forward it to the CONTRACTING PARTIES for consideration at their fortieth session.

(k) Textiles and clothing (C/M/178, 179, 180, 183)

At the Council meeting on 15 May 1984, Mr. Mathur, Deputy Director-General, introduced the Secretariat's background Study on "Textiles and Clothing in the World Economy" (Spec(84)24 and Addenda), noting that it responded to the Council's request of 26 January 1983 (L/5582, page 17). The Study was not simply of the textile and clothing industries by themselves, but of those two industries as parts of each country's overall economy.

The Chairman said that following his informal consultations with a number of contracting parties, he proposed that the Council establish a working party with the terms of reference and membership as provided in document C/W/440. It was his understanding that the Working Party would be free also to take account of any relevant materials bearing on the subject submitted to it by participants in the Working Party. It was understood that the participation as observer in the Working Party of any government which was not a contracting party but which was a party to the MFA, would be without prejudice to that government's position with regard to its legal status vis-à-vis the GATT. The Council would authorize him to designate the Chairman of the Working Party, in consultation with delegations.

The Council so agreed.

The representative of the European Communities said that the Study was a valuable basis for further work and reflection on this subject. It was now necessary to break the vicious circle in which the textiles and clothing problem had been locked too long and to re-establish mutual confidence. The Community did not rule out the possibility that in its conclusions the Working Party might collectively make recommendations to the Council.

The representative of the United States said that the Working Party, in formulating its conclusions, should aim at advancing both an understanding of what different modalities for further trade liberalization in textiles and clothing would involve for the countries concerned, and the steps which could be taken to implement any one of the conclusions. The Working Party should focus on operative solutions to problems in textiles trade.

The representative of Canada endorsed the statements by the representatives of the European Communities and the United States.

The representative of Pakistan, speaking on behalf of developing country exporters of textiles and clothing, welcomed both the Study and the statements by the representatives of the European Communities, the United States and Canada. The best way of building confidence would be for all contracting parties to fully implement paragraph 7(viii) of the 1982 Ministerial Decision relating to textiles (BISD 29S/20). The parameters of the discussions, conclusions or recommendations of the Working Party could be drawn only in terms of the respective GATT rights and obligations of the contracting parties.

The representatives of Thailand, the United Kingdom on behalf of Hong Kong, Egypt, Philippines, Brazil, Indonesia and Mexico (speaking as an observer) welcomed the establishment of the Working Party and endorsed the statement by the representative of Pakistan.

The representative of Japan said that his delegation supported the general thrust of the comments made by both developing and developed countries.

The representative of Switzerland welcomed the Study and the establishment of the Working Party. He added that it would be difficult to extend the MFA once again without at the same time easing its restrictive character and extending it to other trade policy instruments such as tariffs, non-tariff barriers and protection of industrial property.

The representative of Austria agreed with statements by representatives who had not excluded that the Working Party could make recommendations to the Council.

The representative of Poland stated his delegation's commitment to the Working Party's terms of reference.

The representative of India expressed appreciation for the statements by representatives from importing countries which pointed to the possibility of recommendations being made by the Working Party; India hoped that the Working Party would in fact make such recommendations.

The Council took note of the statements.

At its meeting on 14 June 1984, the Chairman informed the Council that following consultation with delegations, it had been agreed that Mr. Mathur would be the Chairman of the Working Party.

The Council took note of this information.

At its meeting on 11 July 1984, the Council agreed to derestrict the Secretariat Study, i.e., the text of the basic document as well as the addenda already issued and those to follow, on the basis of document C/W/443.

At the Council meeting on 6-8 and 20 November 1984, Mr. Mathur introduced the Working Party's progress report (L/5709) which described its activities and progress since establishment. The Working Party had agreed essentially on a procedure for carrying out the examination entrusted to it, and had begun discussing a number of elements that needed to be explored, but the greatest part of its substantive work still lay ahead. It was evident that this work would need to be carried forward in a time-frame that took into account its place in the Ministerial Work Program and also permitted it to be related to other ongoing discussions on the future of policies governing trade in textiles and clothing. In the final paragraph of its report, the Working Party had noted that it was unable to complete its work in time for consideration by the CONTRACTING PARTIES at their 1984 session. Accordingly, the Council might want to consider extending the Working Party's mandate for such further period as would permit it to make a more complete report to the Council and the CONTRACTING PARTIES.

The representative of Pakistan, speaking on behalf of developing country exporters of textiles and clothing, said that work on this issue, which was of considerable importance to many developing countries, was being undertaken in a trading environment which was not conducive to seeking modalities for trade liberalization. The developing countries hoped that this environment would improve and thus help a genuine search for trade liberalization in textiles and clothing.

The representative of the European Communities said he had the feeling that GATT was starting to change direction on textiles and clothing for the first time in many years. The Community supported extension of the Working Party's mandate and hoped its work would be finalized as soon as possible, say towards mid-1985. He stressed that all options mentioned in the report should be explored by the Working Party before its work was finalized. The Community favoured any solution directed towards setting up as liberal a régime as possible in due course. "Full application of GATT provisions" was a phrase which had to be examined very carefully, and liberalization might even go beyond the provisions of the General Agreement.

The representative of the United States said that the Ministerial Declaration had been agreed as a balanced package. The United States had not tried to block work on this area; in fact, his delegation had tried to work constructively, which it was necessary for all participants to do if the work was going to move forward. The United States would, however, want to look at the total package before agreeing on how this work should proceed.

The representative of Pakistan said that the developing countries had agreed to the Ministerial decision on textiles and clothing without any linkage to other elements in the Work Program. The developing countries saw this as an exercise at bringing textiles and clothing back into the fold of GATT, and the Working Party had rightly agreed to begin the examination by looking at what had been called the first option, i.e., the full application of GATT provisions to trade in this area.

The representative of the United States said that it would be difficult for his delegation to move forward only on textiles and clothing. He noted that informal consultations would continue on other items of the Program (trade in counterfeit goods, for example) which would allow time for informal consultations on textiles and clothing. Further reflection was required before agreement could be reached.

The representative of Pakistan said that each element in the Work Program had its own dynamics and should be allowed to proceed without being tied to other elements. In the case of the Working Party, it had just begun its work and would need to resume in 1985, which was why an extension of its mandate had been recommended.

The representative of the European Communities said that he could understand the point of view expressed by the representative of the United States. It had to be recognized of course that in this particular instance, the Working Party's mandate was far from fulfilled, which was frustrating for his and some other delegations because the options in which they were interested had not even been touched. Nonetheless, it was difficult for many delegations if work progressed only in one area and not in others. He agreed that informal consultations would be needed to see how the work in this area, along with others, could be moved ahead in a balanced manner.

The representative of the United Kingdom, on behalf of Hong Kong, noted that the representative of the United States had linked further consultations on textiles and clothing to informal consultations on counterfeit goods. It was hard to see any justification for such a link. The Working Party on Textiles and Clothing was still necessary because the problem for which it was set up was still there.

The representative of Egypt reiterated his delegation's view that each item in the Program had to be treated individually, according to its specific Ministerial mandate.

The Council took note of the progress report and of the statements and agreed that informal consultations should continue.

Following informal consultations, the Council reverted to this matter at its resumed meeting. The Council asked the Chairman to continue the informal consultations and authorized him to report on the further results when he introduced the Council's report to the CONTRACTING PARTIES at the fortieth session.

(1) Problems of trade in certain natural resource products
(C/M/174, 176, 178, 183)

At the Council meeting on 7 February 1984, the representative of Canada said his delegation would propose at the next Council meeting that a working party be established to examine the tariff, non-tariff and other problems relating to trade in non-ferrous metals and minerals, including in their semi-processed and processed forms. The work would be extended to other metal and mineral products as further background documents were produced by the Secretariat. Such a working party should start its work quickly after the next Council meeting and make a progress report to the 1984 CONTRACTING PARTIES' Session.

The representatives of Chile, Peru, Thailand, Colombia and Australia supported the statement by the representative of Canada.

The representative of the European Communities said it would be appropriate to wait until other documents, including those concerning forestry and fish and fisheries products, were completed, before taking a decision as to whether a working party should be established. The three products had been tied together in the 1982 Ministerial Declaration (BISD 29S/20), and they could not be separated.

The representative of Chile recalled that the proposals on these subjects had been made in the Preparatory Committee by different delegations on different occasions, and under different headings. He believed that when the Ministerial Declaration had been adopted, it had been clearly understood that there was no tie between the three sectors.

The representative of Canada said the Ministers had clearly called for examination of three separate subject matters. There was no reason why a working party on non-ferrous metals and minerals could not begin work with respect to lead and zinc, and continue with other studies as the background documents became available. The same would be true for forestry products and for fish and fisheries products.

The representative of New Zealand supported the position taken by the representative of Canada.

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

At its meeting on 13 March 1984, the Council considered document C/W/434 containing a request by Australia, Canada, Chile, Colombia, Peru and Zaire for establishment of a working party on non-ferrous metals and minerals.

The representative of Canada said that a working party was the only real possible forum for the kind of technical examination that Ministers had decided upon. The Secretariat had already produced background documentation on lead and zinc; the time had come for interested delegations to examine the problems, reach conclusions and develop possible recommendations. The Ministers had decided in 1982 that work in each of the three sectors of natural resource products was separate, and in April 1983 the Council had adopted separate decisions (L/5483, L/5484, L/5485) to launch work in each sector. It was obvious that while there might be similar problems in all three sectors, there were also likely to be substantial differences. Canada was not suggesting that all elements of the Ministerial action program should move forward together; but it was high time for all contracting parties to assume their responsibilities in the area of natural resource products.

The representative of Sweden, on behalf of the Nordic countries, said that they considered it would be prudent for the Council to examine first an adequate number of studies, primarily those concerning fish and forestry products, before deciding on the terms of reference, time frame and procedures for the complete examination. They suggested that informal consultations continue so as to prepare such a Council decision in due course.

The representatives of a number of developing countries said that any further delay in setting up a working party would contravene the intention of the Ministerial Decision, particularly as it affected the interests of developing countries. They supported the statement by the representative of Canada and endorsed the request in document C/W/434 for a working party on non-ferrous metals and minerals. Attention was drawn to the other two products in the Ministerial Decision, i.e. fish and forestry products, and concern was expressed that work in those two areas should be speeded up.

The representative of Poland said that the background studies on non-ferrous metals and minerals so far presented by the Secretariat were representative enough in terms of coverage and methodology to justify establishment of a working party without delay while other studies were being prepared.

The representative of Australia said that his delegation's preference was for establishment of three working parties, one for each sector agreed by Ministers in 1982; however, to postpone decisions on setting up one or more working parties until all studies on all three sectors were available would delay the establishment of the working party or parties until some time in 1985. Such a timetable would be far from prudent and would frustrate the intention of the Ministerial Decision.

The representative of the European Communities said that a certain balance had to be struck in carrying out work on all subjects in the Ministerial Declaration. He suggested that the Council consider setting

up one working party at the present meeting to cover all three sectors which had been joined together in the Ministerial Decision. However, it was too early to draft terms of reference for such a working party immediately, because only when studies on all three sectors had been examined in capitals would it be possible to define appropriate terms of reference.

The representative of the United States also suggested setting up one working party at the present meeting to cover all three sectors. The Chairman could be designated and the terms of reference could be drawn up in consultation with the Chairman of the Council. The Working Party would examine and discuss each study as it was made available, and in due course would issue a separate report on each of the three sectors.

The representatives of Austria and Spain supported the proposal by the Nordic countries that informal consultations continue and that the Council revert to this item at its next meeting.

The representative of Japan supported the request for establishment of a working party on non-ferrous metals and minerals as contained in document C/W/434.

The representative of Sweden, on behalf of the Nordic countries, said it should be clearly remembered that in this area, unlike others, the Ministers had not set a definite time frame for the completion of the examination. The Nordic countries considered that it was reasonable to have a look at studies concerning fish and forestry products, as well as certain others in the area of non-ferrous metals and minerals, before evaluating the implications of work to be done in this area. They could not share the interpretation that Ministers had decided there should be a separate examination for each sector; the Ministerial Decision had clearly left it to the Council to decide on terms of reference, time frame and procedures. The Nordic countries would not block a consensus on a decision to set up a working party at the present meeting, but they could not accept an immediate decision on terms of reference, time frame and procedures, and proposed that a decision in this respect be taken at the next Council meeting after informal consultations.

The representative of India said it was clear that the proposal in document C/W/434 had received widespread support. While his authorities had not yet finished examining how best the Ministerial Decision could be carried forward, India would not block the overwhelming consensus for establishment of a working party.

The representative of Colombia supported the US proposal, and hoped that once the Working Party's terms of reference were drawn up, it would start work as quickly as possible.

The representative of Canada said it was encouraging that no one was attempting to block a consensus on proceeding with this work. His delegation would have no difficulty with a single working party beginning work on one sector and moving on to the others as more studies became available.

The representative of Chile said that if the Working Party were to make progress in the field of non-ferrous metals and minerals, this would set an example for the other sectors.

The representative of the European Communities reiterated his delegation's concern that work should move forward on all fronts; at some point there would have to be a review of the progress on the whole Ministerial action program, without forgetting some sectors which had so far been left in the background.

The representative of Australia said his delegation would accept, with some reluctance, establishment of one working party to cover all three sectors, on the understanding that it would operate independently for each sector.

The representative of New Zealand supported the statement by the representative of Canada.

The representative of Mexico, speaking as an observer, said that Mexico would closely follow the work in this area.

The Council took note of the statements and agreed to establish a working party to study the three sectors of non-ferrous metals and minerals, forestry products, and fish and fisheries products, and to make separate reports for each sector. The Council authorized the Chairman to draw up terms of reference for the Working Party and to designate its chairman in consultation with interested delegations so that it could begin work without any need for ratification by the Council.

In response to questions by representatives, the Chairman affirmed that his consultations would be conducted on behalf of, not outside, the Council and that the question of having separate terms of reference for each sector would be resolved in the consultations.

At the Council Meeting on 15/16 May 1984, the Chairman drew attention to document C/126 concerning the chairmanship and terms of reference for the Working Party.

The Council took note of this information.

At the Council meeting on 6-8 and 20 November 1984, the Chairman of the Working Party made a report (MDF/3) describing the work that had taken place in all three sectors since establishment of the Working

Party, and indicated the work planned for the future. The Working Party had held a number of meetings to examine both tariff and non-tariff measures affecting trade in these products, basing its work on background studies prepared by the Secretariat in all three areas. It had been decided inter alia that the studies would be updated and reissued, as amended, to reflect corrections and comments made by delegations. The Working Party expected to pursue its activity in 1985.

The representative of Canada said that his delegation continued to attach high priority to this work. It was essential for the Working Party to continue expeditiously its examination of trade problems affecting non-ferrous metals and minerals, forestry products and fish and fisheries products. The Working Party had already identified some significant problems affecting trade in products which had been considered so far. Canada looked forward to completing an analysis of the remaining products as well as to addressing recommendations which it expected the Working Party to develop before the summer of 1985.

The representative of Peru hoped that the Working Party's work would continue as effectively as it had so far, and that it would be in a position to make recommendations to the CONTRACTING PARTIES, as required by the Ministerial Decision on this subject.

The representative of Chile supported the statements by the representatives of Canada and Peru.

The Council took note of the report and of the statements, and agreed to forward the report (MDF/3) to the CONTRACTING PARTIES for consideration at their fortieth session.

(m) Exchange rate fluctuations and their effect on trade
(C/M/176, 179, 183)

At its meeting in January 1983, the Council had taken note of the Ministerial Decision on Exchange Rate Fluctuations and their Effect on Trade (BISD 29S/21), and had also taken note that the Director-General would consult with the Managing Director of the International Monetary Fund, as requested in that Decision. At the Council meeting in May 1983, the Director-General had reported on his consultations with the Managing Director of the Fund on the possibility of a study on the effects of erratic fluctuations in exchange rates on international trade.

The resulting study, entitled "Exchange Rate Volatility and World Trade", was before the Council at its meeting on 13 March 1984, together with document L/5626 which noted that the Fund planned to publish the Study in its "Occasional Paper" series, making clear that the Study was done in response to the Decision by GATT Ministers.

The representative of the European Communities said that he had hoped for a statement by the Director-General on this matter, but the Director-General doubtless felt that the introduction in L/5626 was sufficient. The Study's conclusion left him still mystified and somewhat disillusioned. The Community was concerned not only by the question of fluctuation per se, but by erratic fluctuations fuelled by speculative movements.

The representatives of Norway, on behalf of the Nordic countries, and of Egypt and Switzerland proposed that the Council revert to this item at a later meeting when delegations had had time to consider the Study properly.

The representative of Jamaica said that his delegation would also have appreciated a statement by the Director-General on what specific implications the Study had for protectionism, trade and the GATT system. The Study raised many fundamental questions which needed to be clarified. After describing in some detail a number of such questions, he said that perhaps these and others could be discussed and examined in the Consultative Group of Eighteen.

The Director-General recalled the text of the Ministerial Decision, which made clear that his rôle on this subject was primarily that of an intermediary. This was the rôle he had carried out; consequently he could not accept suggestions that the Secretariat should have commented extensively on the Study.

The representative of Jamaica encouraged the Director-General to initiate some informal exchanges on this issue, because the Council could not properly consider implications of such a complicated study for the General Agreement without adequate preparatory examination.

The representative of the European Communities said that the Study merited thorough examination in capitals so that the Council could consider it properly and try to demystify the effects of exchange rate fluctuations on trade.

The Director-General referred to document L/5626 which said that while the Executive Directors of the Fund had approved the Study for transmission to GATT, the Study did not necessarily reflect the views of the Fund's Executive Board. This was a study on which Governments had not yet pronounced, and it was now up to the Council to decide whether and how it should be followed up.

The representative of Pakistan said that the Council now had to consider any implications of the Study for the General Agreement, hopefully from a pragmatic viewpoint.

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

At the Council meeting on 15/16 May 1984, the representative of the European Communities said he felt that the Study did not go adequately into the effects of monetary instability on world trade. The Community requested the Director-General to ask the International Monetary Fund to supplement the Study with an examination of the medium- and long-term perspectives of erratic exchange rate fluctuations. When such a supplementary study had been completed, his delegation might suggest the conclusions that could be drawn from it on the possible impact of such fluctuations on international trade and on protectionism.

The representative of Jamaica suggested that before the Director-General was asked to consult with the Fund, the GATT Secretariat might be requested to present to the CONTRACTING PARTIES its own evaluation of the relationship between erratic exchange rate fluctuations and the General Agreement.

The representative of the United States said his Government believed that the Study was thorough and had fulfilled the mandate given by Ministers in 1982. It had come to a conclusion with which the United States fully agreed. The United States doubted that the Study could be carried much further, if at all. Perhaps it would be useful to ask the Secretariat to look at the relationship between exchange rate fluctuations and the General Agreement.

The Director-General proposed informal consultations to clarify what further action could be taken.

The representative of the European Communities emphasized that management and decision-making in the private sector could be severely affected by the effect of erratic exchange rate fluctuations on international trade, and this was why the Community wanted to know if these effects could be quantified.

The representative of Poland said his delegation was disappointed by the lack of consistency between the first part of the Study, containing bold assumptions concerning the potential implications of exchange rate fluctuations on trade, and the rather timid, inconclusive final section. The Study seemed to be written from the perspective of government policy makers rather than of individual traders. Moreover, it made no reference to the international debt exposure of a number of countries.

The representative of Jamaica suggested that the informal consultations should focus on two points: the impact of erratic exchange rate fluctuations on world trade, and the implications of this for the General Agreement.

The representative of the United States agreed with this suggestion.

The representative of Argentina said the consultations should include one aspect ignored in the Study, namely the plight of developing countries confronted by sudden changes in exchange rates.

The representative of the Philippines supported the statement by the representative of Argentina.

The representatives of Israel, and Norway on behalf of the Nordic countries, supported the proposal to hold informal consultations.

The representative of Hungary supported the statements by the representatives of Poland and the European Communities.

The Council took note of the statements, agreed that informal consultations should be held, and agreed to revert to this item at its next meeting.

At the Council Meeting on 14 June 1984, the Chairman said that the informal consultations had begun, and suggested that the Council revert to this matter at a future meeting when they had progressed further.

The representative of the European Communities reiterated that the Community wanted to ascertain whether erratic exchange rate fluctuations affected the development of trade, and if so, to what extent. It wanted the Council to give appropriate attention to this issue, especially in view of the fact that another recent study on the effect of exchange rate volatility on trade -- by the Federal Reserve Bank of New York -- had come to a different conclusion than the Study issued with document L/5626.

The Council agreed to revert to this matter at a future meeting when the informal consultations had progressed further.

At the Council meeting on 6-8 and 20 November 1984, the Chairman made a summary, on his own responsibility, of the views which had been expressed during the consultations so far among interested contracting parties. He noted that the consultations had been conducted against the background of the Study and a number of other papers on this subject. Some participants had expressed the view that the Fund's presentation of the Study had not exhausted the 1982 Ministerial request concerning the effects of erratic exchange rate fluctuations on trade. The main question concerned the reactions of traders and the effects these might have on trade and trade policies. Erratic fluctuations could have an inhibiting effect on commercial risk-taking generally; this could lead to greater dependence on domestic markets and to increased protectionist pressures, and could discourage investment. While difficult to quantify, additional costs imposed on traders could be serious at the margin. Other participants had noted that exchange rate risk was only one of many factors - and frequently only a minor factor - affecting international trade flows. There was a possibility for these risks to

be offset through forward currency markets, and for export markets to be diversified. The IMF Study had shown no clear evidence of a statistically significant link between exchange rate variability and trade, nor any consistent evidence that recent exchange rate fluctuations had reduced the level of international trade or investment. Variations in exchange rates essentially reflected underlying economic and financial conditions as well as expectations regarding future developments. The floating exchange rate system had made a positive contribution to the maintenance of international trade and payments and to the global adjustment process. Clearly, "erratic" exchange rate fluctuations could not justify protectionist measures, which would not resolve the uncertainty and could even aggravate it. Trade measures imposed in recent years had been introduced in response to a number of factors other than exchange rate variability per se. In relation to the operation of the General Agreement, several participants had said that exchange rate variability might have effects on such aspects as the basis for calculation of anti-dumping or countervailing duties as well as for the application of safeguard provisions. The possible impact on bound tariff rates had also been referred to. Rapid appreciation of exchange rates could also result in surges of imports into particular countries, leading to demands for greater protection. A number of participants had noted that currency instability might have more serious effects on traders in developing countries than in major developed countries, due to a number of factors such as forward currency facilities being less readily available or more expensive, production and trade being less flexibly adjusted to changes in the external environment; and protectionist pressures being related particularly to products of export interest to developing countries. However, insufficient data were available to permit a clear assessment of the problem. The IMF Study had been based exclusively on data relating to developed countries. He concluded by saying that only a limited number of delegations had expressed views so far, and his brief summary could not be taken to reflect the full spectrum of opinions on the subject. Informal consultations were continuing with a view to reaching a consensus on what the Council might be invited to say or do in this matter. He would report on the outcome of these consultations in due course.

The representative of Jamaica drew attention to an UNCTAD study (UNCTAD/TDR/4) on the effects of floating exchange rates, which had put the issues of uncertainty, investment, impact on developing countries and other factors into a proper perspective.

The representative of the European Communities said that the result of the consultations on this subject was part of the Work Program package, which would have to be assessed as a whole, whether progress had been made or not.

The Council took note of the statements and agreed that informal consultations should continue.

Following informal consultations, the Council reverted to this matter at its resumed meeting. The Council asked the Chairman to continue the informal consultations and authorized him to report on the further results when he introduced the Council's report to the CONTRACTING PARTIES at the fortieth session.

(n) Services (C/M/183)

At the Council meeting on 6-8 and 20 November 1984, the Chairman drew attention to the Ministerial decision on Services (BISD 29S/21), noting that in January 1983 the Council had taken note of the decision, including the recommendation and invitation to contracting parties, and that informal consultations had been held concerning certain points related to the decision; the consultations were continuing. He then drew attention to document C/W/453 containing a request by the United States for establishment of a working party on trade in services and proposing a decision on this item.

The representative of the United States said that one of the few hopes of gaining support in the United States for the pursuit of liberal trade lay in the achievement of some kind of progress on services. Since the Ministerial decision, eight studies had been put forward and examined, leading to a better understanding of the issues. It was now time to establish a formal working party to look into this issue further. Such a move would enable broader distribution of documents, better understanding of the issues, and further GATT involvement in the subject, all of which would enhance the ability of the United States to pursue a liberal trading policy.

The representative of Sweden, on behalf of the Nordic countries, supported the US proposal.

The representative of Yugoslavia said that it was premature to establish a working party at this stage; she proposed further informal consultations.

The representative of Japan considered the time had come to establish a formal structure within GATT to fulfil the relevant Ministerial mandate, and hoped that consensus on this issue would be reached before the fortieth session of the CONTRACTING PARTIES. A decision to set up a formal structure would not prejudice future action or prejudice the position of any contracting party on this issue.

The representative of Switzerland favoured proceeding to a collective reflection on this matter so that contracting parties could support each other mutually in exploring the problems. Switzerland was open as to how this collective reflection might be carried out, but was ready to consider setting up a working party.

The representative of Canada supported the US proposal. His delegation continued to favour the adoption of a realistic work program on trade in services, and considered that GATT remained the appropriate forum for such work.

The representative of India said that since only eight national studies had been submitted so far, of which four had been circulated only in October 1984, paragraph 1 of the Ministerial decision did not appear to have been complied with; and unless there was more substantial implementation of that paragraph, it did not appear logical to meaningfully address the second paragraph. Establishment of a working party now would be not only premature but would also amount to skipping the important sequence ordered in the Ministerial decision; it would also prejudice the issue of GATT's competence, which had wisely been left open in paragraph 3 of the decision, and would thereby prejudice the position of contracting parties such as India which held that issues relating to trade in services were outside GATT's jurisdiction and competence. The present informal consultations should be continued, and the question of establishing a working party should be addressed only when the first two stages envisaged in the Ministerial decision had been accomplished.

The representative of Argentina endorsed the statement by the representative of India, and said while services might account for roughly 60 per cent of the economies of certain countries and thus have high priority for them, there were subjects such as agriculture and safeguards which were of pre-eminent interest to developing countries and which represented a good 70 per cent of their economies, thus deserving equally high priority.

The representative of Egypt supported the statements by the representatives of India and Argentina, and noted that all eight studies had come from developed countries. The Ministerial decision had recognized the competence in this matter of other international organizations as well as GATT; he was thinking particularly of UNCTAD which had also been examining this subject.

The representative of Brazil noted that the Ministerial decision had provided for sequential steps which would lead to a consideration of whether any multilateral action on this matter was appropriate and desirable. At the fortieth session, this matter would have to be examined in the light of whatever progress might have been achieved in other Work Program items which, in Brazil's view, were more important. Brazil could not agree to a proposal which prejudged GATT's involvement in services. The representative of the United States had referred in the discussions on counterfeit and textiles to the need to assess a total package at the fortieth session, but seemed to want a decision on this particular item now. He did not see how the Council could consider certain subjects as package items and others as non-package items.

The representative of Cuba said that her delegation upheld Decision No. 192 of the Council of the Latin American Economic System (SELA) that GATT's exclusive responsibility was for trade in goods and that it was therefore not competent to deal with services.

The representative of the European Communities emphasized that the Ministerial decision on services had been a compromise and that it was part of a package of compromises. It had been said that this was a wise decision, but if nothing was to be put forward to the 1984 session, that did not strike him as very wise. He stressed that the GATT had been mentioned in paragraph 2 of the Ministerial decision not in order to exclude it but to single it out for a rôle. He asked what the Secretariat had been doing on this subject since 1982. He wondered whether the Secretariat needed a green light from contracting parties to undertake basic work.

The representative of the United Kingdom, on behalf of Hong Kong, said that in the light of the linkage seen by the representative of the United States between further progress on textiles and the start of new work on other matters such as counterfeit, his delegation drew attention to the fact that the proposal for a working party on services was a further example of new work. Such new departures should not be at the expense of items on which there was a more specific mandate from Ministers and on which a working party had already begun its work. Hong Kong believed that the work done so far on services could continue in accordance with paragraphs 1 and 2 of the Ministerial decision with a view to arriving at a stage later when the CONTRACTING PARTIES could consider whether any multilateral action in these matters was appropriate and desirable.

The representative of Israel supported the US proposal. The question of GATT's competence in this matter had been clearly dealt with by the Ministers, and the fact that GATT was specifically mentioned in the relevant decision needed no further elaboration; paragraph 2, which referred to an exchange of information, required the direct involvement of the GATT Secretariat. Future work on services was important for both developed and developing countries.

The Director-General said that the Secretariat had scrupulously observed the divergences of opinion concerning the interpretation to be given to the Ministerial text; it was particularly aware of the concern of a number of contracting parties over the Secretariat's competence on the one hand, and the assistance that it could supply to contracting parties on the other. The Secretariat had been playing the rôle of active observer on this subject. The Secretariat's reticence -- apart from its provision of meeting rooms, some translation and interpreting -- had not been caused by any officials suggesting that more direct participation by the Secretariat on services would have been contrary to the Ministerial decision. The Secretariat had held back because it had

been told that if it launched into activities in services it would be adopting a provocative attitude. As Director-General, he had considered it unwise for the Secretariat to become an additional factor complicating this exercise. He continued to think it essential that each contracting party should make the effort to look at its own interests in this domain, and it was important that compilation and exchanges of information should take place. He concluded by saying that the Secretariat had never claimed that it was or was not empowered to deal with services; it had remained strictly neutral on this issue.

The representative of the United States said that his delegation was far from doubting that the Secretariat had acted in a neutral fashion. While only eight studies had been submitted so far, they accounted for the greater portion of international trade in services; it was true that the studies varied, and that was another reason why the Secretariat should become involved to try to pull any common views together and draw some conclusions.

In answer to a question by the representative of Pakistan, the Chairman noted that the title of the relevant Ministerial decision was "Services", rather than "Trade in Services".

The representative of the European Communities said that none of those who had participated actively in the 1982 Ministerial discussions on services had thought in terms of titles, and he doubted that argument over titles would serve any purpose. His delegation did not at this stage intend to state its position on the substance of this issue. However, he was concerned at the Director-General's reply to his earlier question, because in his view there was a distinction between being provocative and being timid. The facilities which the Director-General had mentioned were certainly valuable and appreciated, but some intellectual assistance from the Secretariat would not have prejudged GATT's competence and might have contributed to avoiding the current impasse. He wanted to know why the Secretariat had made no studies of its own on services; after all, this was its job. It was the Secretariat's duty to assist contracting parties, and if it could now deploy its activities in this field, that would be one way of moving forward constructively.

The representative of Pakistan said it was important to look carefully at the titles of the various Ministerial decisions, because they had been the subject of quite lengthy and sometimes heated discussion. Also, apart from the fact that only eight studies had so far been submitted, the information base was also incomplete in the sense that some of the studies touched only upon services in the national economy rather than actual trade in services. Moreover, those studies which did deal with trade in services were long on the restrictions that their trade faced in other countries and short, or non-existent, on the restrictions which their governments imposed on imports of services. His delegation would appreciate some clarification on these points from those contracting parties principally interested.

The Council took note of the statements and agreed that informal consultations should continue.

Following informal consultations, the Council reverted to this matter at its resumed meeting. The Council asked the Chairman to continue the informal consultations and authorized him to report on the further results when he introduced the Council's report to the CONTRACTING PARTIES at the fortieth session.

(o) Aspects of trade in high-technology goods (C/M/174, 176, 183)

At the Council meeting on 7 February 1984, the representative of the United States said that during the Council's discussions of the US proposal (C/W/409/Rev.2 and Corr.1) throughout 1983, it had become clear that a number of delegations could support the study called for in that document. However, some contracting parties were still unjustifiably uncertain of US motives in this area. This was not just a developed country trade issue; high technology industries were becoming an important force in developing countries' economies. The process of structural adjustment in the developed countries would only be possible if they moved from traditional industries toward the high technology area on the basis of economic market conditions. The United States continued to believe that GATT was the proper multilateral forum for taking action on issues in the trading system. Once again, his delegation asked that members of the Council favourably consider the US proposal.

The representative of the European Communities said that leaders of the private sector in the Community considered that high technology should be discussed at a world-wide level. The Community continued to attach importance to this subject; but it needed to be approached cautiously. His delegation intended to abide by the letter and spirit of the 1982 Ministerial Decision (SR.38/9, page 2) on this subject.

The representative of Jamaica said GATT should examine the trade aspects of high-technology, without any prejudice as to whether contracting parties would take further action in GATT after such an examination. Perhaps the issue should be handed to the Consultative Group of Eighteen, which could discuss it and make a recommendation.

The representative of Argentina said that his delegation had requested further clarification on this subject from countries with a direct stake in the matter; however, no progress had been made in providing such clarification. Argentina could not change its position at this point, but would listen to arguments that might justify special treatment of this sector within GATT.

The representative of Canada reiterated his delegation's support for the US proposal. Canada was concerned at the Council's delay in taking a decision on this item.

The representative of Cuba said the US proposal was premature. Also, such a study would imply a financial and technical outlay by the secretariat that might not be justified.

The representative of Australia reiterated his delegation's view that the Council should move forward on this matter as soon as possible, so that all Council members could become better acquainted with the problems associated with high-technology trade.

The representative of Switzerland said that care should be taken to avoid high technology becoming more and more removed from the implementation of the General Agreement, through all sorts of bilateral, regional or other special arrangements. Contracting parties should also be aware that high technology, especially for industrialized countries, if applied in a liberal manner, could help the process of structural adjustment and sustain the ability of those countries to continue importing goods from developing countries at a satisfactory rate.

The representative of Israel reiterated his delegation's support for the US proposal. GATT should not ignore the problem of access to markets for high-technology goods, which was becoming increasingly specific.

The representative of New Zealand said that GATT had to be flexible in dealing with significant new developments in international trade. His delegation was not opposed to establishing a working party to consider this subject, but New Zealand's priorities dictated that attention should be focused elsewhere at present.

The representative of the United States said he had detected a willingness on the part of some delegations, which had previously shown reluctance on this issue, to discuss substance rather than procedure in the Council. It would be useful for the secretariat to prepare a paper on which to base such a discussion.

The representative of the European Communities said that his delegation would welcome a substantive debate on this issue in the Council, but such a debate would not need to be unduly protracted. The Community did not see why the matter should be dealt with in a secretariat study.

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

At the Council meeting on 13 March 1984, the representative of the United States said that his delegation intended to start bilateral consultations with other interested contracting parties so as to develop a paper which could serve as the basis for a substantive discussion of high-technology trade at a future Council meeting.

The representative of Jamaica hoped that the US delegation, in consultation with all contracting parties interested in this matter, would be in a position to have the paper circulated before the next Council meeting so as to permit substantive discussion of this issue.

The Council took note of the statements.

At the Council meeting on 6-8 and 20 November 1984, the Chairman drew attention to document L/5717 containing a request by the United States for inclusion of this item on the agenda of the meeting.

The representative of the United States said that trade in high-technology goods had been a major issue in the discussions leading up to the 1982 Ministerial meeting, and had been an integral part of the Ministerial Declaration until the very last hours when the United States had agreed to leave it outside the text of the Declaration. As technology was advancing throughout the world, the scope for this agenda item became increasingly large. Work was being done on this issue in other fora, including the OECD, and there had also been bilateral discussions; but there were signs of increasing protectionist action directed against high-technology goods. These products were increasingly assembled from component parts produced in a very wide range of countries, so this issue should be of interest to a number of delegations. The United States had shown considerable flexibility by repeatedly adapting its proposal in an effort to meet the trading needs of all contracting parties, without however securing any agreement on a GATT forum to discuss trade in these goods. His delegation was not suggesting that there should be negotiations on a sectoral basis for high-technology goods, but there should be a forum for constructive discussion of this issue, which was going to become increasingly important for all contracting parties in the future. The United States was open as to the terms of reference for such a forum.

The representative of the European Communities reiterated his delegation's position that it would welcome a substantive debate on this issue in the Council, but such a discussion should not be unduly protracted; after that, the CONTRACTING PARTIES could judge whether the matter should be dealt with in some other forum. It had to be remembered that even though it had been dealt with by Ministers (SR.38/9, page 2), the high technology item was somewhat peripheral to the Ministerial Declaration. Consequently, it should not have the same priority as other points in the Work Program.

The representative of Israel agreed that this element had ended up being peripheral to the Work Program, but progress nevertheless had to be made in the interests of all contracting parties. Delegations should recognize that trade in high technology was certainly within GATT's purview. This was no longer a sectoral problem; it was an inter-sectoral issue, like others in the Program, such as natural resource products. Israel believed that problems of trade in

high-technology goods should be dealt with in GATT as quickly as possible, according to the most appropriate relevant method to be agreed. High-technology goods were composite products with varied origins of production, and developing countries should be active in protecting their high-technology interests in GATT.

The representative of Jamaica said his delegation believed that the application of high technology to production and trade was bringing about substantial structural adjustments in national economies and in international production and trade. Accordingly, this issue should be addressed in a multilateral forum, particularly in any organization that was concerned with comparative advantage and the international division of labour. He recalled that at the Council meeting in March 1984, the representative of the United States had said that his delegation intended to start bilateral consultations with other interested contracting parties so as to develop a paper which could serve as the basis for a substantive discussion on high-technology trade at a future Council meeting. However, nothing seemed to have been produced since that meeting. The Council should assume its responsibility and decide on constructive action in this matter.

The representative of Argentina emphasized that this item had been left out of the Ministerial Declaration for well-known reasons. No doubt there were bilateral problems in high-technology trade, but so far there was no convincing evidence that any multilateral problems existed.

The representative of Japan said that high-technology goods included a wide range of products which could open a new horizon in terms of increased production, consumption and trade. However, there was a growing tendency for countries to take trade restrictive measures against imports of these goods. Given the high degree of transfer of technology, any country would be in a position to be a producer and exporter of high-technology products. For these and other reasons, Japan felt that GATT should start actively examining this important issue.

The representative of the European Communities recalled that it was still unclear to his delegation what was behind the US request, and appealed to the United States to supply a document which would enable the Council to have a proper discussion of any problems in this area so that a decision could be taken.

The representative of Jamaica said that there were substantial subsidies and protection involved in developing the high-technology sector. In his view, it was important that before this inefficient and high-cost sector was developed further and went the way of agriculture, the matter should be discussed in a multilateral forum.

The representative of Sweden, on behalf of the Nordic countries, said it appeared to them that some rather traditional kinds of trade problems existed in the high-technology field, but most if not all of these could be addressed within the current GATT framework. Some of the problems, such as government procurement restrictions and testing practices, were already being addressed in GATT. The Nordic countries would not object to any trade problem found in a particular high-technology industry being brought before an individual committee in GATT -- this was how the framework of rules was supposed to work -- but they saw no need for any comprehensive program of work or any new formal or informal group in GATT to handle such problems, as long as they appeared to be traditional in character and not specific to high technology.

The representative of the United States agreed that many problems in high-technology trade could be addressed through existing GATT provisions. However, the United States was now undertaking some significant bilateral discussions with a number of its trading partners on this issue. Since he believed in the multilateral system, he suggested that a formal or informal group be set up to deal with this issue in GATT; this would make it possible for a number of delegations not involved in the bilateral consultations to participate.

The Council took note of the statements and agreed that informal consultations should continue.

Following informal consultations, the Council reverted to this matter at its resumed meeting. The Council asked the Chairman to continue the informal consultations and authorized him to report on the further results when he introduced the Council's report to the CONTRACTING PARTIES at the fortieth session.