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# GENERAL AGREEMENT ON TARIFFS AND TRADE

COUNCIL
10 October 1985

## MINUTES OF MEETING

Held in the Centre William Rappard
on 10 October 1985

Chairman: Mr. K. Chiba (Japan)

1. Recent developments in international trade and their consequences for GATT, and status of implementation of the 1982 Ministerial Work Program (C/W/479-481, L/5804, L/5818 and Add.1, L/5827, L/5831, L/5833-5838, L/5842, L/5846, L/5848-5852)

The Chairman recalled that the Council had considered this item at its meetings in April, June and July 1985, and that the July meeting had been suspended with the possibility that it could be reconvened to continue consideration of this item. He also noted that at the informal meeting of Heads of Delegations on 26 September, in preparation for the Special Session, he had suggested that this item be dealt with, as necessary, at the present meeting.

The Chairman invited discussion. There were no speakers, and the Chairman proposed that this item be closed.

The Council so agreed.

2. Dates for the forty-first Session of the CONTRACTING PARTIES (C/135)

The Chairman recalled that at its meeting in July, the Council had agreed to revert to this item. He drew attention to the Director-General's proposal in C/135 that the forty-first Session should open on the afternoon of Monday, 25 November. He noted that at the Special Session, the CONTRACTING PARTIES had decided that the Senior Officials Group would report to the CONTRACTING PARTIES at their November Session. Accordingly, he proposed that the Council adopt the Director-General's proposal, amended to fix the duration of the Session for up to five days.

The Council so agreed.

3. Working Group on MTN Agreements and Arrangements
- Follow-up on the Working Group report (L/5832/Rev.1)

The Chairman recalled that at its July meeting, the Council had adopted the Working Group's report (L/5832/Rev.1), and had agreed that with adoption of the report, the Working Group was terminated. The Council had also agreed to revert to this matter at the present meeting, and that in the meantime, consultations would take place as needed. The Chairman noted that those consultations had been initiated but not yet concluded.

The representative of Colombia recalled that his delegation had already drawn the Council's attention to the fact that the Working Group had found there were anomalies in the implementation of the Subsidies and Countervailing Measures Code because one of the signatories followed a commitments policy under the Code's Article 14:5 creating an obstacle for developing countries in joining the Code. Colombia believed it was necessary to study the practice followed by that signatory and that since it had been diagnosed that there were gaps in that Code, the Working Group should suggest corrective measures to resolve the problem. He therefore proposed that the same Working Group be reconvened for the specific purpose of considering the commitments policy followed by the United States concerning Article 14:5 of the Subsidies Code. Colombia considered that the US practice not only created obstacles for developing countries considering joining the Code, but also for those developing countries which had already signed the Code and had found, because of the US practice, that their rights were diminished, particularly rights arising from paragraphs 1 and 2 of Article 14. Furthermore, Colombia believed that the US practice contravened Article I of the General Agreement.

The representative of the United States noted that the Working Group had examined the effectiveness of the MTN Codes and obstacles posed to their acceptance. The United States considered that further work on specific problems should be undertaken in the relevant MTN Committees and Councils, and that the Council should, if necessary, take stock of such further work at a later date. The Working Group had been established to examine all the MTN Agreements for their adequacy and effectiveness, and if it were to be reconstituted, the United States would object to any terms of reference which focused on one agreement or on any single signatory's actions. Moreover, the original purpose of the Working Group had been, as his delegation understood it, to examine the articles of the MTN Agreements to see if they were inadequate or represented obstacles to acceptance. The United States would oppose any terms of reference for a working group that did not include all signatories' actions with respect to all the MTN Agreements.

The representative of Colombia said that since there were no major problems concerning accession of developing countries to the other MTN Agreements, his delegation proposed that the Working Group be reconvened to examine only problems with the Subsidies Code. Colombia would consider any terms of reference that the United States might suggest, so that the Working Group could continue its work.

The representatives of Egypt, Pakistan, Yugoslavia, Uruguay, Thailand, India, Argentina, Chile, Singapore, Brazil and Malaysia supported Colombia's proposal that the Working Group be reconvened.

The representative of Egypt said that the Working Group should continue to focus not only on obstacles faced by developing countries in acceding to the MTN Agreements, but also on the adequacy and effectiveness of the Agreements. The Working Group should continue with the same terms of reference as before and report to the Council.

The representative of the European Communities said that the Working Group had fulfilled its mandate and had identified a problem; he felt that the proposal to carry on work in the Working Group was premature. There had been strenuous efforts over many months in the Subsidies Committee to eliminate the difficulties faced by some developing countries, including Colombia, concerning their possible accession to that Code; however, those efforts had not met with success although a proposed solution had been rejected by neither the United States nor by the developing contracting parties which wanted to accede. The Community considered that the Committee should be asked to make a final effort to find a solution to this question, in the light of statements made in the Council. If that course of action were to fail, any contracting party or parties could then bring the problem back to the Council or to a session of the CONTRACTING PARTIES and ask for a working party to examine this particular problem.

The representative of India supported the statement by the representative of Egypt. He added that the problem raised by Colombia, although specific, had wider implications because it affected a basic aspect of the Subsidies Code and of Article I of the General Agreement.

The representative of Argentina said that the Working Group's report reflected problems not only concerning the Subsidies Code, but also other MTN agreements, for example the Arrangements on meat and dairy products. Furthermore, Argentina considered that the problem with the Subsidies Code affected more than one contracting party.

The representative of Chile said the fact that some contracting parties had joined the MTN Agreements, while others had not, implied differing interpretations of the General Agreement. With the prospect of a new round of multilateral trade negotiations, these differences had serious implications for the rights and obligations of all contracting parties. With particular reference to the Subsidies Code, Chile

continued to support all efforts to ensure that developing countries could accede to it without being required to accept excessive conditions that they could not possibly meet.

The representative of Singapore noted that the Working Group had identified a particular problem concerning developing countries' accession to the Subsidies Code. The Council had three options: (1) to have the problem examined in greater detail in the Subsidies Committee; (2) to examine the problem in the Working Group, which would be reconvened with the same terms of reference as before; or (3) to examine the problem in a working group with specific terms of reference concerning the difficulties and obstacles faced by developing countries in acceding to the Subsidies Code. His delegation rejected the first option because developing nations wanting to accede to the Subsidies Code were by definition not members of the relevant Committee; consequently, their participation in that body was prejudiced. Singapore would prefer the third option, but would accept the second.

The representative of Brazil supported the statements by those representatives, particularly of Singapore, who had addressed the problems faced by developing countries in acceding to the Subsidies Code.

The representative of Pakistan said that the CONTRACTING PARTIES had ultimate responsibility for supervising implementation of the MTN Agreements, particularly when there were recurrent problems, with political implications, concerning for example the Subsidies Code. He agreed with India that such problems had implications for Article I of the General Agreement and for the integrity of the GATT system.

The representative of Malaysia supported the statement by Singapore.

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

4. United States - Trade measures affecting Nicaragua (C/W/475, L/5802 and Corr.1, L/5803, L/5847)

The Chairman recalled that at its July meeting, the Council had taken note of Nicaragua's request for a panel to examine its complaint against the United States, and that the request had been supported by a number of representatives. The Council had authorized him to carry out consultations on possible terms of reference and the rôle of such a panel, in the light of the issues raised in the Council. The Council had also agreed to revert to this matter at the present meeting, taking account of the results of those consultations.

He said that following his consultations with a number of interested parties, he could now report that the United States, while maintaining its position expressed at the July Council meeting, would not oppose establishment of a panel provided it was understood that the Panel could not examine or judge the validity of or motivation for the invocation of Article XXI:(b)(3) by the United States in this matter. He proposed that a panel be established with terms of reference, reflecting that understanding, to be determined by the Council Chairman in consultation with interested parties and, according to GATT practice, with the agreement of the parties to the dispute, and that the Council Chairman be authorized to designate, in consultation with the parties concerned, the Panel's members.

The representative of Jamaica said that his delegation had not been consulted on this matter. The implications of the understanding referred to by the Chairman were not clear to him. His delegation would not oppose a consensus to agree to the Chairman's proposal, but did not believe that the understanding constituted a precedent.

The Council took note of the statements and agreed to the Chairman's proposal.

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

(a) Biennial reports

(i) South Pacific Regional Trade and Economic Co-operation Agreement (SPARTECA) (L/5794)

The Chairman drew attention to document L/5794, containing information given by the parties to the South Pacific Regional Trade and Economic Co-operation Agreement (SPARTECA).

The representative of Australia noted that since L/5794 had been circulated, his country had announced at the Heads of Government meeting of the South Pacific Forum that across-the-board duty-free access would be granted to all exports from Forum Island countries apart from a narrow range of items which had specific concurrent trade liberalization régimes; the decision would take effect on 1 January 1987.

The Council took note of the statement and of the report.

(ii) Agreement between Finland and Hungary (L/5867)

The Chairman drew attention to document L/5867, containing information given by the parties to the Agreement between Finland and Hungary.

The Council took note of the report.

(b) Agreement between Israel and the United States (L/5862 and Add.1)

The Chairman drew attention to the communication from the United States and Israel in L/5862 and Add.1 in which they submitted the text of the Agreement on the establishment of a free-trade area.

The representative of Brazil said that since his authorities were still examining the Agreement, his delegation proposed that the Council postpone consideration of this item until its next meeting.

The representative of the United States said his delegation would prefer the Council to follow its customary procedure, which was to take note of an agreement of this kind and set up a working party to examine it.

The representative of Israel noted Brazil's desire to study the contents of the Agreement. He also noted that the purpose of a working party would be to do exactly that. Consequently, it seemed appropriate to follow standard practice and set up a working party at the present meeting.

The Chairman then suggested that a working party be established with the standard terms of reference used for such agreements in the past, i.e., to examine the Agreement in the light of the relevant provisions of the General Agreement and to report to the Council. Membership would be open to all contracting parties indicating their wish to serve on the Working Party, and the Council Chairman would be authorized to designate the Working Party's Chairman in consultation with the delegations principally concerned.

The representative of India said his delegation wanted to consider carefully the terms of reference proposed by the Chairman before agreeing to any decision.

The representative of Japan said his delegation would have no objection to following the standard practice of setting up a working party to examine this Agreement, with the standard terms of reference and composition as proposed by the Chairman.

The representative of the European Communities supported the statement by Japan. He noted that if a contracting party wanted further information on such agreements, then it was precisely through the normal procedure of a working party that they could obtain the information. Furthermore, they could follow the standard procedure in working parties of addressing written questions to the parties to the Agreement, following which they would receive written answers.

The representatives of Canada, Chile, Australia, Spain and New Zealand supported following the usual procedure of establishing a working party to examine this Agreement, with the terms of reference and composition as proposed by the Chairman, and indicated their interest in serving on the Working Party.

The representative of Brazil said the information so far received by his authorities was not enough for them to understand fully all the implications of this Agreement. Brazil had reason to believe that some of the Agreement's provisions, and some of its complementary documentation, might introduce matters outside the competence of the General Agreement. His delegation did not object to setting up a working party, but considered that the Council should decide on specific terms of reference for the Working Party at its next meeting, when representatives would have a clearer idea of what was being decided.

The representative of Nicaragua supported the statement by Brazil.

The representative of the United States said that the purpose of a working party would be to secure the information and detailed examination which various delegations wanted to have. The Chairman had proposed the standard terms of reference used for working parties in the past. Once contracting parties had received written answers to their written questions about the agreement, and had had an opportunity to examine the Agreement in detail in the Working Party, that body would submit its report to the Council, according to normal GATT practice. It was not logical to expect discussion in the Council until that customary procedure had been followed.

The representative of New Zealand expected this Agreement to be treated in the same way that other such agreements had been treated in the past.

The representative of India said that it was not unusual for the Council to agree to a request by any delegation for time to consult its capital on creation of a panel or working party. India did not oppose setting up a working party to examine this Agreement; however, the terms of reference needed to be drafted carefully.

The representative of Brazil said his delegation could agree to establishing the Working Party at the present meeting, and proposed that agreement on the terms of reference should be postponed until the next Council meeting.

The representative of Israel urged the Council not to depart from the established, standard and recognized procedures for examining such agreements.

The representative of Uruguay said his delegation wanted to serve on the Working Party and to be involved in any consultations concerning its terms of reference, which would have to be decided in the Council.

The Chairman said he was willing to consult on this matter if necessary, but he believed that the terms of reference which he had proposed were brief, clear, conformed to standard practice and were not difficult to understand. He asked whether the Council, particularly the representatives of Brazil and India, could agree to his proposal.

The representative of India reiterated his delegation's agreement to setting up the Working Party at the present meeting. However, he found it difficult to share the Chairman's view that the proposed terms of reference were not difficult to understand, and said his delegation would need more time to examine them.

The representative of Brazil supported the statement just made by the representative of India. He said that the terms of reference proposed by the Chairman would be normal for examination of agreements that did not interfere with the competence of the General Agreement. However, the text of the agreement between Israel and the United States seemed to include matters which went beyond GATT's jurisdiction.

The representative of the United States said his authorities considered that the Agreement conformed to Article XXIV, and he asked if the representative of Brazil could show anything in the text of the Agreement which did not conform to Article XXIV.

The representative of Chile said that nothing prevented two contracting parties from reaching an agreement on matters outside GATT's competence, and that should such an agreement cover any areas not within GATT's competence, for example services, GATT would not have to pronounce on them. Consequently, if elements outside GATT's competence were included in the present Agreement, this should not prevent or delay the Council from dealing with this item.

The representative of Norway suggested that the Council establish the Working Party at the present meeting and that the proposed terms of reference would be agreed ad referendum. If there were no objections to those terms of reference by the next Council meeting, they would then be considered definitively agreed.

The Council took note of the statements and agreed to establish a working party. The Council also agreed that the following terms of reference would be discussed in further consultations and would be considered definitive unless amended at the next Council meeting:

Proposed terms of reference: "To examine the Agreement on the Establishment of a Free-Trade Area between Israel and the United States signed on 22 April 1985, in the light of the relevant provisions of the General Agreement, and to report to the Council."

Membership: Open to all contracting parties indicating their wish to serve on the Working Party.

Chairman: The Council authorized its Chairman to designate the Chairman of the Working Party in consultation with the delegations principally concerned.

6. Problems of trade in certain natural resource products - Communications from Canada (C/W/467 and Add.1)

The Chairman recalled that the Council had discussed this item at its four most recent meetings. The item was on the agenda of the present meeting at Canada's request.

The representative of Canada recalled his delegation's long-standing request, supported by a number of contracting parties, that the Secretariat prepare a background document on trade in paper for examination by the Working Party on Trade in Certain Natural Resource Products. Canada was disturbed and disappointed that agreement had been blocked on allowing the Secretariat to prepare this study, particularly because documents had been produced on certain other resource products at the request of only some of the delegations participating in the Working Party. Under the circumstances, Canada had had no option but to prepare and submit a background note on problems of international trade in forest products, including paper products, which had been circulated in MDF/W/49 and subsequently discussed in the Working Party.

The Council took note of the statement.

7. European Economic Community - Production aids granted on canned peaches, canned pears, canned fruit cocktail and dried grapes - Panel report (C/W/476, L/5778)

The Chairman recalled that the Council had discussed the Panel's report (L/5778) at its five most recent meetings and had agreed at the July meeting to revert to this item at the present meeting.

The representative of the United States said his delegation's position on this matter had been fully reflected in the minutes of previous meetings. He noted that the Panel report had been circulated to contracting parties eight months earlier, and said that the United States expected that the report could be adopted at the present meeting.

The representative of the European Communities said that the time his authorities had taken in considering this report indicated the substantial concerns the Community had about it. He recalled that at the May Council meeting, the Community had circulated a working paper (C/W/476) which underlined those concerns. The Community was ready to adopt the report on the basis of an understanding by the Council covering the relationship between obligations of signatories under the Code on Subsidies and Countervailing Measures, and their obligations under GATT Articles, in disputes between those signatories; the understanding should also deal with the question of nullification and

impairment of effectively bound tariff concessions. The Community was ready to consult with the United States and any other interested contracting party on the terms of such an understanding, in order to be able to conclude this matter at the next Council meeting.

The representative of the United States said his delegation was concerned at the Community's continued attempts either to re-argue its case, or to interpret the Panel's conclusions to suit its own position. The United States insisted that the report be adopted without any qualifications. He then reiterated his delegation's major concerns. The basic issue in this case was impairment of a tariff concession, and the outcome should have been the same whether the case was brought under the Subsidies Code or the General Agreement. Regarding evidence of adverse effects, the Panel's conclusions were grounded on established GATT precedents; similarly, the finding that the introduction of a subsidy impaired a tariff concession was based on long-standing precedent and was particularly appropriate in this case, where the subsidy, on its face, was designed to make the tariff an absolute margin of protection. His delegation had made clear its disappointment with the Panel's conclusions that the Community's subsidy system on raisins did not impair previous concessions by the nine-member State EEC because it considered these subsidies, confined to Greek producers, to be a foreseeable continuation of prior Greek subsidies. The United States believed the facts would support a different conclusion, but had not sought to block or reinterpret that portion of the report. In the US view, the Community's willingness to adopt the report provided that the Panel's conclusions were nullified, was the same as blocking adoption.

The representative of Switzerland said that his delegation could accept adoption of the report provided that the Panel's interpretation, and the manner in which it was formulated, particularly in paragraph 80, were not understood as restricting application of Article XVI or the Subsidies Code. In the second conclusion in that paragraph, the Panel distinguished between subsidies for commodities and those for industrial activities. In Switzerland's view, this distinction was implicit in the third conclusion in paragraph 80.

The representative of the European Communities said his delegation did not agree with the US statement on the substance of this issue. The Community had felt it better to discuss substance in consultations, in order to try to reach agreement. He stressed that the Community had made progress over recent months in attempting to resolve this matter, both in terms of procedure, in agreeing to adoption of the report, and in terms of actual practice. His delegation was surprised by the US opposition to the concept of an interpretative understanding of panel reports when in other cases, such as the DISC panel report (L/4422), the United States had favoured this type of solution.

The representative of the United States recalled that the interpretations on the DISC report and the reports on associated tax practices had been included at the Community's insistence. His delegation had found from experience that it did not like this type of arrangement.

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

8. Consultation on trade with Romania
- Working party report (L/5856)

The Chairman recalled that in November 1984 the Council had established a working party to carry out the fifth consultation with the Government of Romania and to report to the Council. The Working Party's report had been circulated in L/5856.

Mr. Lopez Noguerol (Argentina), Chairman of the Working Party, introduced the report. The Working Party had heard how the negative impact of the general economic and financial crisis had affected Romania's foreign trade with contracting parties, which now accounted for more than half of its total external commerce. The majority of contracting parties had no quantitative restrictions on imports from Romania; some such restrictions remained and should be phased out according to the provisions of paragraph 3 of Romania's Protocol of Accession (BISD 18S/5). A positive development in that direction had been obtained through an agreement between Romania and the European Community concerning industrial products, providing for substantial progress to be made in eliminating discriminatory trade restrictions by the end of 1985. Reference had also been made to the recent proliferation of new trade restrictions not provided for in the General Agreement, such as grey area restrictions and voluntary export limitations. Romania favoured a GATT program to eliminate these discriminatory restrictions which affected its export possibilities. The Working Party had discussed the level of Romanian exports to contracting parties, and the reduction of discriminatory trade restrictions which, according to one delegation, affected only some 3.3 per cent of Romania's exports to the European Community, its largest trading partner among the contracting parties. The Working Party had also discussed the decline of Romanian imports from contracting parties, which was related to a shortage of convertible currencies. The need for improvement in trade information and the practice of compensation trade had also been mentioned.

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

9. Canada - Measures affecting the sale of gold coins - Panel report (L/5863)

The Chairman recalled that in November 1984 the Council had established a panel to examine the complaint by South Africa. In January 1985, the Council had been informed of the Panel's composition, and in February, of its terms of reference. The Panel's report had been circulated in L/5863.

Mr. Girard, Chairman of the Panel, introduced the report. He recalled that in May 1983, the Ontario provincial government had exempted Canadian Maple Leaf gold coins from provincial retail sales tax. South Africa, as a producer of a competing gold coin, had in June 1984 asked for consultations with Canada under Article XXIII:1. In October 1984, following unsuccessful bilateral consultations, South Africa had requested establishment of a panel. The Panel's terms of reference related to Articles II, III and XXIV:12. The terms of reference had been further defined by the understanding reached on the proceedings of the Panel, as announced at the January 1985 Council meeting. The Panel had submitted its report to the parties to the dispute in August 1985. The Panel had then discussed with the parties whether a solution had been reached and whether the Panel's report might therefore be confined to the "brief description" of the case, as specified in paragraph 17 of the Understanding Regarding Notification, Consultation, Dispute Settlement and Surveillance (BISD 26S/213). The Panel had noted that the parties could not yet reach a mutually satisfactory solution. Taking into account the concerns expressed by the complaining party regarding the settlement of the case and its consequent interest in having the case brought before the Council, the Panel had decided to circulate its report to the contracting parties, in accordance with established procedures, while encouraging the parties to pursue their efforts to reach a mutually satisfactory solution.

The representative of South Africa said that the measure taken by the Ontario provincial government had given an effective protection of seven per cent to the Maple Leaf over other gold coins in direct contradiction with the provisions of paragraphs 1 and 2 of Article III. The measure also constituted an impairment of the duty-free tariff concession on gold coins imported into the Canadian market, in violation of Article II. The security and predictability of market access provided by the tariff concession, which was a central obligation under GATT, had been undermined by a unilateral modification of competitive conditions in Canada, without recourse to the provisions of Article XXVIII by Canada. The discriminatory Ontario measure had had an immediate adverse effect on sales of the Krugerrand. Canada's arguments for not removing the discriminatory measure hinged on the provisions of Article XXIV:12. South Africa considered that a contracting party whose GATT rights had been impaired could not be expected to enter into litigation on constitutional matters of another contracting party. It was therefore disappointing that the Panel had been unable to reach a

finding that a reference to the Supreme Court in Canada by the Federal Government itself, and not by any other party, should be considered to be a reasonable measure for the purposes of Article XXIV:12. If the measure had been introduced by a contracting party with a unitary form of government, South Africa's right of redress would have been established by a straightforward finding of violation, with a straightforward recommendation to have the discrimination eliminated. However, in the Panel's opinion, that right had been limited by the provisions of Article XXIV:12 in this particular case. Although South Africa had argued that Ontario had exceeded its powers to regulate trade, his delegation nevertheless accepted the Panel's findings in that regard because South Africa's interest in adopting the report as a whole went beyond that particular aspect.

South Africa was also disappointed at the Panel's findings, based purely on technical grounds, on the alleged infringement of Article II. The Panel had found that Article XXIV:12 did not limit the scope of application of GATT provisions to local governments, but merely the measures to secure their observance by local governments. Consequently, given the finding that the Ontario measure did not accord with Article III:2, South Africa considered that a case of prima facie nullification or impairment had been established, and Canada was therefore obliged to pay compensation in the customary manner, until such time as the balance in rights and obligations between Canada and South Africa had been restored. He said that two-and-a-half years had elapsed since Ontario had introduced the measure, and that the Province of Quebec had subsequently introduced a similar measure. The Panel had allowed the parties sufficient time, before circulating the report, to arrive at a mutually satisfactory resolution of the dispute. South Africa believed that adoption of this report would undoubtedly contribute to the resolution of the immediate complaint and to avoiding similar disruptive actions in future. Contracting party exporters of gold coins already faced an identical situation in Quebec, and adoption of this report would obviate a repetition of the same process in its entirety. In these circumstances, South Africa requested adoption of the report by the Council at the present meeting.

The representative of Canada said his delegation did not intend to reiterate some of the arguments and counter-arguments which had been adequately set out in the Panel's report. His delegation rejected some of the statements and assertions made by the representative of South Africa. Since this was the first time that a panel had examined the scope and intent of Article XXIV:12, its meaning, in the light of the intention of the drafters of the General Agreement, was of key importance to a federal State such as Canada in which the constitution and constitutional practice established a highly decentralized governmental system. He noted that the Panel had concerned itself not only with interpreting established GATT precedents but also, to some degree, with setting a course through less charted waters. In this regard, contracting parties might want to review paragraph 64 as well as

certain other sections of the report. Canada considered that the report raised new, complex and far-reaching issues requiring careful consideration. Review of the report was not yet completed in his capital, and it also had to be discussed with the appropriate provincial authorities. Accordingly, he proposed that a full discussion be postponed until the Council's next meeting when his delegation hoped to indicate more precisely its approach to the report.

The representative of Jamaica wanted to know from the Panel Chairman whether the Panel's finding regarding Article XXIV:12 rested primarily or exclusively on interpretation of Article III:2.

The Chairman of the Panel referred Council members to the report, saying he did not think it appropriate to make further comment at this stage.

The representative of Jamaica said he was not able to accept the report at this stage.

The representative of South Africa said his delegation recognized Canada's request for more time to consider the report, but did not understand why Canada needed to consult its provinces at this stage. The Panel's findings and conclusions were addressed to the Federal Government and as such did not recommend any action by Ontario. Canada's commendable intention of approaching its provinces in the light of the Panel's findings was a positive step, and could be seen as already giving effect to the Panel's first recommendation in paragraph 72(a). However, any delay in adopting the report would cause mounting trade damage which would only increase the amount of compensation recommended by the Panel in paragraph 72(b). The Panel had recognized Ontario's right to levy direct taxes and had recommended certain actions by the Federal Government; the provincial governments were therefore not directly involved in adoption of this report. In order to be able to adhere to the Panel's recommendation in paragraph 72(c) that Canada should report to the CONTRACTING PARTIES before the end of 1985 on the actions that it would have taken, South Africa would reluctantly agree to postpone adoption of the report until the next Council meeting, but certainly not beyond that meeting if possible.

The representative of Canada said his authorities would determine with whom they should consult on the implications of such an important report. His authorities had decided that they needed to complete full consultations not only with the province directly involved, but with other provinces having a central interest in this issue.

The representative of South Africa recalled that his country's gold mining industry rather than his Government had initiated the complaint in this dispute, and he asked if the report could be made available to that industry.

Mr. Kelly, Deputy Director-General, said that panel reports were restricted, but that the Council could decide to derestrict this report at the present meeting.

The representative of Canada said his delegation understood that panel reports remained restricted until they had been adopted by the Council. In any case, Canada would not agree to derestricting this report at this stage.

The representative of the United Kingdom, on behalf of Hong Kong, said that in paragraphs 64 and 65 of the report, the Panel had reached the only conclusion possible as to the question of whether Canada could avoid its obligations under Article III:2 by invoking the provisions of Article XXIV:12. The logic behind that conclusion was clearly spelt out in the European Community's statement in the report (paragraph 48). However, in supporting adoption of the report, Hong Kong saw considerable merit in the points made by Canada (paragraph 46) on the difficulties of quantifying or even identifying the damage caused by the Ontario measure. Hong Kong felt that it would accord with the spirit of the dispute settlement mechanism for this report to be adopted, if not at the present meeting, then at least at an early date, and for the parties concerned to effect satisfactory adjustments in accordance with the Panel's recommendations within a reasonable time.

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

10. Committee on Budget, Finance and Administration - Membership

The Chairman recalled that at its July meeting, the Council had agreed that he would pursue this matter through further informal consultations. The consultations were not yet concluded and had so far centred on possible enlargement of the Committee to include three additional members. During the consultations, some contracting parties had maintained that the Committee's size should remain unchanged at 19 members.

In the discussion, the representatives of Australia, Egypt, Japan, Korea, New Zealand, Singapore, United States and Uruguay said that the Committee should be open to all contracting parties. It was also stated that membership should be conditional on payment of assessed contributions.

The representative of the European Communities, speaking on behalf of their member States, said that the Committee's membership should reflect a balance. He said that the Community's member States, in the interest of the Committee's efficiency, opposed the idea of opening its membership to all contracting parties. He suggested that the Chairman continue his consultations on this matter.

The representatives of the Philippines, Pakistan, United States and Uruguay favoured the immediate admission of the three interested contracting parties. It was also suggested that the general question of membership in the Committee be studied with a view to ensuring balanced representation.

The representative of Brazil said his country had decided to withdraw from the Committee, but might reconsider that decision if the membership was increased.

The representative of Romania said that his Government had sought membership five years earlier but had continued as an observer in the Committee.

The representative of Spain considered that the Committee's present membership was well balanced, and cautioned that enlargement might lead to inefficiency in the Committee's work.

The Director-General proposed that the Council decide to invite four additional members to sit on the Committee: Greece, Jamaica, Korea and Singapore, and that the Council take note of the fact that between the present meeting and the November CONTRACTING PARTIES Session or the first Council meeting in 1986, the Council or the CONTRACTING PARTIES would decide on membership for 1986.

The Council took note of the statements and adopted the Director-General's proposal.

11. International trade in agriculture
- Communication from Australia (L/5874)

The representative of Australia, speaking under "Other Business", referred to the European Economic Community's practices in agricultural trade. He introduced a report entitled "Agricultural policies in the European Community" prepared by the Australian Bureau of Agricultural Economics, a fully independent research organization, which examined the effects of the Community's agricultural policies on Australian interests. A copy of the report would be furnished to all contracting parties and a summary had been circulated in L/5874, since the results of the study were of broad international significance. He outlined the report's conclusions as follows: (1) since implementation of the Common Agricultural Policy (CAP), the Community had changed from one of the largest importers of temperate zone agricultural products to the world's second largest exporter of such products; (2) this change had depressed world prices for these products by an average of 16 per cent and had adverse effects on other agricultural exporters; (3) the cost of the CAP to Australia was estimated at almost one billion Australian dollars per year over the past few years; (4) an estimated 60 per cent of the value added by agriculture in the Community had come from consumers and taxpayers through transfers and subsidies amounting to between 60 and

70 billion ECU a year in 1984 values, or four times the Community budget expenditure on agriculture. He said that subsidization of agricultural products was a global problem. He added that the actions and policies of the major traders had encouraged a set of different rules for agriculture and that the US Section 22 waiver had marked the first major breakdown in GATT rules on trade in this sector, opening the way for subsequent actions. He noted also that in the context of Japanese market opening measures, Australia had formally expressed disappointment at the lack of specific and easily measurable reforms, directed at opening trade in agricultural products, equal to those for manufactured goods. Finally, the timing of the release of the study was relevant not only because the Community was reviewing its Common Agricultural Policy but also because of the impending new round of multilateral trade negotiations. The results of the study showed how imperative it was that the problems of international trade in agriculture needed to be addressed as a matter of priority in the new round.

The representative of the European Communities regretted the manner and means utilized by the Australian authorities to circulate to contracting parties their very particular views on the European Economic Community's policy. The Community also regretted that the GATT Secretariat had allowed itself to circulate a non-governmental study as a GATT document. Such methods risked hindering work, discussions and negotiations in GATT on the very sensitive and delicate matter of trade in agriculture. This non-governmental study could not be taken into account in the work of the GATT. He said that the Secretariat should exercise great care and responsibility in responding to pressures from contracting parties for publication of documents; an escalation of such requests might weaken the organization and its very professional Secretariat and would certainly lead to sterile polemics blocking GATT's work. Progress which had seemed likely on agriculture now seemed less likely. If the report was intended to be an instrument for negotiation, this would be discussed at the appropriate time and not under conditions imposed by Australia.

The Director-General said that in this case the Secretariat had followed normal procedures regarding the distribution of information to contracting parties.

The representative of New Zealand commended the study to all contracting parties and said that his delegation would welcome a response by the Community to the study's conclusions. His delegation did not share the Community's view that the Secretariat could not distribute a non-governmental study.

The Council took note of the statements.

12. Further opening of the Japanese market (L/5858)

The representative of Japan, speaking under "Other Business", said that on 30 July, his Government had announced an outline of the Action Program to improve market access; this had been circulated in document L/5858. The Program was based on three major guidelines: (1) to minimize government intervention and rely on consumers' choice, (2) to contribute to the new round of multilateral trade negotiations, particularly since the preparatory process for the round had been initiated, and (3) to help promote developing countries' economic development. The three main elements of the Program concerned tariff elimination and reduction, standards and certification procedures, and government procurement. It also dealt with measures on services, and import promotion, so that Japan could contribute to formulating an international framework on trade in services in the new round. Japan hoped that the Action Program would be a confidence-building measure paving the way for launching the new round.

The Council took note of the statement.

13. Brazil - Treatment of electronic data processing equipment (L/5871)

The representative of Brazil, speaking under "Other Business", referred to his Government's communication in L/5871 and said that Brazil had held Article XXII consultations with the United States on issues related to trade in informatic goods. His Government recognized no GATT obligation to discuss its informatics law or policy, or potential trade developments in this sector. GATT consultation procedures could not be invoked for a general discussion of this issue, and any such consultations had to centre on the precise trade effects of the Brazilian legislation on imports of informatic goods. To engage in bilateral discussions within the framework of the US investigation would imply acceptance by a sovereign government of another nation's domestic jurisdiction. Brazil's policy and law on informatics were not incompatible with any of its international obligations, and were aimed at creating a national technology capacity in this sector. His country reserved its GATT rights, for reasons explained in L/5871. Brazil expected the United States to abide by its obligations under GATT and under international law, including the duty to refrain from coercive measures to obtain advantages of any kind.

The representative of the United States said that his authorities, acting under Section 301 of the Trade Act of 1974, had initiated an investigation concerning Brazil's informatics policy. He quoted a paragraph from the US Federal Register describing the restrictions that Brazil's policy would impose on foreign participation in this sector. The United States intended to pursue this case to a speedy conclusion, and hoped that it could be resolved bilaterally. His delegation welcomed the statements in paragraph 6 of L/5871.

The Council took note of the statements.