

GENERAL AGREEMENT ON TARIFFS AND TRADE

RESTRICTED

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Forty-First Session

SUMMARY RECORD OF THE SECOND MEETING

Held at the International Labour Office
on Tuesday, 26 November 1985, at 10 a.m.

Chairman: Mr. F. Jaramillo (Colombia)

Subject discussed: - Report of the Council

Report of the Council (L/5909)

The CHAIRMAN referred to the report of the Council of Representatives on its work since the Fortieth Session of the CONTRACTING PARTIES. He proposed that the CONTRACTING PARTIES consider the report point by point, and stressed that it was not intended to reflect detailed positions of delegations, since the Council Minutes contained such information and remained the record of the Council's work. He noted that general comments on implementation of the 1982 Work Program could be made later in the Session under Item 2 (Activities of GATT).

Mr. SMITH (United States) said that items in the Work Program had a certain relationship to the CONTRACTING PARTIES' consideration, under Item 3, of establishment of a Preparatory Committee. Consequently, it would be difficult to take decisions on the Work Program items without knowing the Preparatory Committee's terms of reference. His delegation understood that the individual Work Program items in the Council's report would not be finally approved until the report was adopted as a whole.

Mr. BATISTA (Brazil) supported the statement by the United States.

Point 1. Work Program resulting from the 1982 Ministerial Meeting

Sub-point 1(a). Safeguards

The CHAIRMAN proposed that the CONTRACTING PARTIES direct the Safeguards Committee to review progress towards a comprehensive understanding on safeguards and to make such suggestions in the matter as would facilitate further action. The Committee shall report to the CONTRACTING PARTIES at their 1986 Session.

The CONTRACTING PARTIES so agreed.¹

¹ See L/5927.

Sub-point 1(c). Trade in Agriculture

Mr. LOPEZ-NOGUEROL (Argentina) reiterated that his country attached the highest priority to sustained and broad liberalization of agricultural trade. He said this view was shared by a large number of contracting parties, as reflected in L/5818 and in statements made at the 1985 Special Session of the CONTRACTING PARTIES and in the Senior Officials Group. The main action should be to set clear limits on the external effects of national policies, particularly for major producing and exporting countries. Such action was urgent because, agriculture having always been left outside GATT rules, contracting parties were now faced with countless practices and exemptions which had created chaos in international agricultural trade. The situation faced by many contracting parties, and by developing countries in particular, was very discouraging. Prices of agricultural commodities had fallen substantially in international markets and a trade war had started between the two major producing and exporting regions, further displacing exports from third markets. Moreover, low prices of agricultural products discouraged farm production in developing countries, and in the case of many of them, was increasing their dependence on imported foodstuffs. The export earnings of developing exporting countries were progressively declining, thereby limiting their import capacity and their ability to meet their external financial obligations, in particular debt servicing. Argentina supported the work in the Committee on Trade in Agriculture to improve access and progressively eliminate unfair practices and subsidization.

On the question of access, he said it was necessary to secure strict observance of GATT rules and to establish minimum access criteria for all agricultural products as a first step toward expanding access possibilities; for example, the broadest possible binding of tariffs and increased tariff liberalization on the basis of a tariff reduction formula should be seriously considered. Measures outside the General Agreement should be eliminated, particularly if they were subject to decisions by the CONTRACTING PARTIES on standstill and rollback. Preferential régimes and exceptions from GATT rules should likewise be eliminated, in particular the US agricultural waiver. As for subsidies, it was essential not only to regulate them but also to progressively reduce practices of unfair competition; this covered not only direct export subsidies but also preferential credit and similar practices. Argentina favoured a clear and definite understanding on these matters so as to achieve, in the not-too-distant future, a substantial reduction of the practices he had mentioned and ultimately an increase in international agricultural prices.

There was also a need for more favourable treatment for developing countries in agricultural trade through advanced implementation of tariff reductions. Similarly, imports under quota should be allocated so as to guarantee preferential access for developing countries that

were small suppliers. Concerning products under quota, of which developing countries were important suppliers, provision could be made for tariff quotas with progressive growth percentages more favourable in respect of products coming from developing countries. Consideration should be given to establishing some flexibility for developing countries on the possible maintenance of certain import restrictions or application of export support measures in clearly specified cases and circumstances.

Mr. FITZGERALD (Australia) said his country supported the Committee's recommendation in L/5900, and accepted that it should continue in existence so as to pursue an in-depth examination of the approaches towards greater liberalization of trade in agriculture, as set out in the recommendations adopted at the Fortieth Session (L/5753). In agreeing to such an extension of the elaborative phase of the Committee's work, Australia emphasized that the objective of the work would be to contribute to the basis for negotiations. It followed therefore that the Committee should carry out its work expeditiously and in a manner which would assist the early completion of preparations for trade negotiations. Australia had not yet adopted a position on the modalities for handling negotiations in a new round on the problems affecting agriculture; that was a task for the Preparatory Committee. It was important that a decision on this matter not preclude negotiations on issues relating to agriculture that might not have been fully considered in the Committee.

Mr. MARTINS (Brazil) recalled that his delegation had stated its views on agriculture and on the Committee's work during the meetings of the Senior Officials Group (SR.SOG/4). Liberalization of agricultural trade was a priority for a large number of contracting parties, particularly for developing countries including Brazil, and for GATT itself. The Committee had done an important job and, in the light of the CONTRACTING PARTIES' recommendations in November 1984 (L/5753), Brazil felt that the work must be continued. The Committee's work showed the urgent need to improve access conditions and to start progressively eliminating unfair competition practices. More favourable treatment for developing contracting parties would have to be examined.

Mr. RANDHAWA (India) said his delegation continued to support fully the aim of liberalizing trade in agriculture, and the continuation of the Committee's work along the lines of the 1982 Ministerial decision (BISD 29S/16). It would be unfortunate if progress made in the Committee so far, as reflected in the recommendations adopted by the CONTRACTING PARTIES in November 1984, were to lose momentum. The importance of more favourable treatment for developing countries in all aspects of trade in agriculture had been duly recognized in the preamble of those recommendations and should be maintained. Improved trade in agriculture was an area which had long awaited resolution in GATT, and where GATT disciplines and the multilateral trading system had yet to be enforced. India supported the view that all waivers, exceptions contained in protocols of accession, and pre-existing legislation should be brought under scrutiny in any consideration of this issue.

Mrs. KLJAJIC (Yugoslavia) said her delegation considered that agriculture should be given priority in GATT's future work.

Mr. LACARTE (Uruguay), Mrs. GARCIA (Cuba), Mr. HAMZA (Egypt), Mr. BAJWA (Pakistan) and Mr. ALEMAN (Nicaragua) supported the statements by previous speakers, particularly Argentina.

Mr. NOTTAGE (New Zealand) referred to his delegation's statement on agriculture in the Senior Officials Group (SR.SOG/4). He agreed with many of the previous speakers and supported continuation of the Committee's work, which was looking towards future negotiations.

Mr. JARA (Chile) supported the statement by Argentina, although he considered that there was need for greater emphasis on the critical problems of low agricultural prices and restricted market access.

Mr. FURULYAS (Hungary) supported Australia's statement.

The CONTRACTING PARTIES adopted the report of the Committee on Trade in Agriculture (L/5900) and agreed that the Committee should continue in existence for the purposes outlined in paragraph 3 thereof, and report as appropriate.¹

Sub-point 1(d). Quantitative Restrictions and Other Non-Tariff Measures

Mr. JARA (Chile) reiterated his delegation's disappointment and dissatisfaction with the Group's report (L/5888), for reasons which Chile had given at the Council meeting on 5-6 November 1985 (C/M/194, page 8). Chile preferred not to establish the institutional machinery suggested by the Group. The Group had achieved transparency but had not complied with the 1982 Ministerial decision (BISD 29S/17). Insofar as effective liberalization was concerned this should be reached by eliminating restrictions not in conformity with the General Agreement. Chile could not agree to continuing the present inequitable state of affairs. Many developing countries took measures to restrict imports and had to justify such measures in the Balance-of-Payments Committee; however, in the case of developed contracting parties which had maintained quantitative restrictions for many years, it had not even been possible to discuss whether those measures conformed with the General Agreement. Furthermore, developed country proposals for liberalization were either conditional or extremely marginal. Chile felt it would be inappropriate and undesirable, on the basis of the Group's recommendations, to legitimize a state of affairs which had existed for many years to the detriment of developing contracting parties. The Group's recommendations gave an apparent cover for a

¹ See L/5928.

number of developed countries to continue applying restrictions without even discussing their GATT conformity. Chile believed that a decision on this matter should be reached and that appropriate institutional machinery should be set up, but on a different basis. This was a question of principle and was also in line with the specific commercial needs of a number of contracting parties. He suggested further consultations during the present Session before the CONTRACTING PARTIES took any decision on this sub-point.

Mr. FITZGERALD (Australia) said that the outcome of the Group's work had been disappointing, largely because there had been no agreement on eliminating illegal non-tariff barriers or bringing them into conformity with the General Agreement. There had been even less discussion on liberalizing legal non-tariff measures. Not only did non-tariff barriers distort world trade more than tariffs, they also nullified the benefits of low tariffs negotiated in previous rounds of multilateral trade negotiations. The lack of action to eliminate or reduce non-tariff barriers was symptomatic of a tendency among contracting parties participating in the Group to modify the rules to accommodate and legalise non-tariff barriers which could not be justified under GATT. This tendency had to be resisted; otherwise, trade liberalization in the general area of safeguards, and particularly in textiles, clothing, agriculture, footwear and steel, would be jeopardized in a new round of negotiations. Australia supported the Group's proposal for a periodic multilateral review of quantitative restrictions and other non-tariff barriers in conjunction with unilateral liberalizing action by contracting parties. Australia proposed as an aid to this review that the Secretariat develop a method which could be applied at a national level to show the domestic and external costs of non-tariff measures in line with Recommendation¹ of the Study Group's report on "Trade Policies for a Better Future".¹ It should be clear, however, that while policy transparency was desirable, liberalization of those measures would be Australia's priority in the new round.

Mr. CARTLAND (United Kingdom on behalf of Hong Kong) supported Chile's statement. He added that the work in this area should continue in accordance with the 1982 Mandate set by Ministers, which contained two specific elements: first, that quantitative restrictions not conforming with the General Agreement were to be eliminated or brought into conformity; and second, that other quantitative restrictions and non-tariff measures were to be liberalized. While the ultimate aim was liberalization of trade, conformity with GATT rules had to be the cornerstone of the exercise. Termination of offending measures was an obligation that contracting parties were required to fulfil, and

¹ Circulated with C/133.

was not a matter for negotiation. Negotiations, however, were desirable to achieve liberalization of those measures for which there was GATT justification. It was therefore logical that the continuation of this work should require establishment of an adequate multilateral mechanism to ensure progress in eliminating non-conforming measures and to oversee negotiations for the liberalization of the others.

Mr. BAJWA (Pakistan) supported the statements by Chile and the United Kingdom on behalf of Hong Kong. The Group's work should be carried forward in 1986; this would be central to implementation of the Work Program and to the preservation of GATT itself. Pakistan encouraged contracting parties to pursue greater efforts at autonomous liberalization measures and at removing quantitative restrictions.

Mr. LACARTE (Uruguay) supported the statements by previous speakers. Uruguay could not conceive of any new round in which the problems posed by quantitative restrictions and other non-tariff measures were not solved.

Mr. LUYTEN (European Communities) said his delegation recognized that work on quantitative restrictions and other non-tariff barriers should continue within some kind of institutional machinery; the Community could thus agree to extending the Group's mandate for a further year. Referring to Chile's disappointment at liberalization proposals which had been made, he wanted to make clear that in the Community's case, it had actually eliminated more than 20 quantitative restrictions. He added that the distinction between legal and illegal restrictions was important, but cautioned contracting parties against the temptation to push reasoning based on that distinction too far, given the fact that an illegal quantitative restriction could be replaced by an even more prohibitive legal measure, such as a tariff quota.

Mr. RANDHAWA (India) said his delegation continued to support the Group's work. It was clear that only some headway had been made so far in the task of identifying measures inconsistent with the General Agreement. The Group's mandate had two distinct elements, and the distinction had to be kept in mind. The first priority had been given to eliminating quantitative restrictions and non-tariff measures which were inconsistent with the General Agreement. Liberalization of measures which were consistent with GATT could not be equated with the elimination of GATT-inconsistent measures. Elimination of GATT-inconsistent measures could not be negotiated in return for the liberalization of measures which conformed with the General Agreement. He said that the Work Program provided that priority attention should be given to measures affecting products of particular export interest to developing countries, which would include textiles and clothing. India supported continuation of the Group's work, provided priority was given to eliminating quantitative restrictions and other non-tariff measures which were inconsistent with the General Agreement.

Mr. LOPEZ-NOGUEROL (Argentina) recalled that his delegation had made specific proposals on this subject at the 1985 Special Session of the CONTRACTING PARTIES. Despite the fact that these problems had been discussed in GATT for years, the action taken since the 1982 Ministerial meeting had not led to the eliminations envisaged when the Ministerial commitments were made. The Group had not progressed in distinguishing between GATT-consistent and inconsistent measures. Argentina considered that contracting parties should start dismantling illegal measures before entering into negotiations leading to elimination of the other measures.

Mr. HAMZA (Egypt) endorsed the statements on this subject by previous speakers from developing countries.

Mr. HARAN (Israel) said his delegation attached particular importance to dismantling quantitative restrictions and other non-tariff measures which were inconsistent with the General Agreement. Israel believed that paragraph 7(i) of the Ministerial Declaration was of major importance in this context. In so far as the Group's report showed that only limited progress had been made, contracting parties should make a particular effort in this area.

Mr. ALEMAN (Nicaragua) supported the statements by Chile, India and other developing countries.

Miss ARCINIEGA (Peru) shared Chile's disappointment at the Group's lack of progress. Peru felt that it was urgent, on the eve of a new round, that all GATT-inconsistent quantitative restrictions and other non-tariff measures be dismantled as soon as possible. Her delegation attached importance to the Group's work and considered that its mandate should be extended for another year.

Mr. BOUBACAR BA (Senegal) supported the views expressed on the need to eliminate non-tariff barriers affecting exports from developing countries, particularly from the least-developed nations.

Mr. PARK (Korea) said his delegation attached great importance to the Group's work, even though it was not clear that existing restrictions could be removed faster than new ones were put into place.

Mrs. KLJAJIĆ (Yugoslavia) supported previous speakers who had expressed dissatisfaction with the Group's lack of progress. Her delegation gave priority to rollback of measures not conforming with the General Agreement and to those measures affecting developing country exports.

Mrs. CEIJAS DE JIMENEZ (Cuba) said her delegation attached priority to the rollback of all non-tariff measures in preparation for the new round. Cuba attached particular importance to implementation of paragraph 7(iii) of the Ministerial Declaration.

Mr. PRAVDA (Czechoslovakia) said his delegation attached importance to this issue. The Group's results so far were of small value, and the limited liberalization by a number of countries was too general and difficult to measure in terms of improved market access. Moreover, some proposals for action on quantitative restrictions had been discriminatory and contrary to basic GATT provisions. Czechoslovakia believed that progressive and comprehensive liberalization should be undertaken in accordance with an agreed plan and schedule covering non-tariff measures, particularly quantitative restrictions. All measures not consistent with GATT should be eliminated. His delegation supported the Group's recommendation concerning continuation of its work.

Mr. JARA (Chile) proposed that a decision on this sub-point be postponed until later in the Session.

This was agreed.¹

Sub-point 1(e). MTN Agreements and Arrangements

Mr. CHIBA (Japan), Chairman of the Council, recalled that he had informed the Council at its meeting on 5-6 November 1985 that he would pursue his consultations on further actions in respect of MTN Agreements and Arrangements and report on the results of those consultations at the present Session. He said that although a number of problems with respect to the adequacy and effectiveness of certain of the agreements had been highlighted by the report of the Working Group (L/5832/Rev.1), it had been clear from the previous discussions in the Council, and had been confirmed in his consultations, that the most important obstacle to some non-signatory contracting parties' acceptance of MTN Agreements and Arrangements identified by the Working Group was the obstacle that some developing contracting parties were facing in accepting the Subsidies and Countervailing Measures Code.² This problem had already been considered in the Subsidies Committee. Contracting parties contemplating accession to the Code felt, however, that their participation in discussions in the Committee had been hampered by their being unable to participate in the deliberations as full members but only as observers.

In order to overcome this difficulty, he proposed that the CONTRACTING PARTIES invite the Committee on Subsidies and Countervailing Measures to establish a Working Party to examine obstacles which

¹ See SR.41/7, page 1.

² Agreement on Interpretation and Application of Articles VI, XVI and XXIII of the General Agreement (BISD 26S/56).

contracting parties face in accepting the Agreement on Interpretation and Application of Articles VI, XVI and XXIII of the General Agreement. Full membership of this Working Party would be open not only to parties to the Agreement but also to other contracting parties having expressed an interest in acceding to it.

The CONTRACTING PARTIES adopted the proposal.¹

Sub-point 1(g). Trade in Counterfeit Goods

The CHAIRMAN noted that the Council had reported that, as instructed, it had examined the question of counterfeit goods without, however, being able to make the determinations called for in the Ministerial decision. The Council had also suggested that CONTRACTING PARTIES review the matter in the light of all the relevant considerations.

Mr. MARTINS (Brazil) said his delegation wanted to stress that this issue had been appropriately considered in GATT; it had become evident from that consideration that the combat against counterfeit goods, including the aspect of unfair competition, was a major concern of the Paris Convention for the Protection of Industrial Property administered by the World Intellectual Property Organization (WIPO), which specified the law applicable in this field. In 1984, some developed contracting parties had asked for establishment of a GATT working party to examine trade in counterfeit goods. Brazil had considered then that creation of such a body was not advisable, since any action to combat counterfeiting fell within the competence of WIPO, which had the jurisdiction within the UN system in promoting the protection of intellectual property throughout the world. WIPO had exercised that jurisdiction outstandingly, as had been demonstrated by the praise addressed to that organization by all delegations at WIPO's Governing Body sessions. Nevertheless, taking into account that some developed countries still considered that GATT had a legitimate rôle in fighting counterfeiting, Brazil had agreed to establishment of a Group of Experts in GATT with a mandate to examine available background information, including a further clarification of the legal and institutional aspects involved. The Group's report (L/5878) did not support the conclusion that joint action within the GATT framework on this subject would be legitimate. Brazil continued to share the view that the combat against counterfeiting was a matter of ensuring effective protection of industrial property titles in force; adequate solutions to this problem could only be found through cooperation within the framework of national and international intellectual property systems.

¹ See L/5930.

Mrs. CEIJAS DE JIMENEZ (Cuba) said that the Group of Experts set up as a consequence of the Ministerial decision (BISD 29S/19) had not agreed that GATT should take multilateral action in this field. The report showed that GATT was not competent in this field. Cuba felt that there was only one organization competent in this matter, namely WIPO, which in September 1985 had established an inter-governmental group of experts to examine all aspects of commercial counterfeiting.

Mr. MURPHY (United States) reiterated the view expressed by a number of governments at the WIPO Governing Body meeting in September 1985 that the WIPO exercise and GATT efforts to combat trade in counterfeit goods were separate and independent. The United States looked forward to prompt action in both organizations to address this urgent problem. WIPO's recent decision to join GATT and the Customs Cooperation Council (CCC) in tackling this issue demonstrated broad recognition of the threat to legitimate trade caused by commercial counterfeiting, and the need to take prompt, effective action to control this activity. There could be no doubt that GATT was the international organization competent to deal with the trade aspects of commercial counterfeiting, and that WIPO was the international organization competent to deal with the establishment of minimum international law applicable to the protection of industrial property. The CCC was competent to ensure that any measures adopted to discourage international trade in counterfeit goods, which required the intervention of customs officials, were consistent with CCC rules and policies. The United States was gratified to see that all these organizations were working within their own spheres of competence to address a problem which affected not only the economic interests of intellectual property owners and producers of legitimate goods and component parts, but which also posed serious health and safety risks to consumers in many countries. GATT should not delay developing guidelines for dealing with the trade aspects of commercial counterfeiting, with the aim of curbing international trade in counterfeit goods while avoiding barriers to legitimate trade.

Mr. BLANKART (Switzerland) said that the scope and impact of the Group's work should not be underestimated; the Group's report had identified and analysed various aspects of a phenomenon which was becoming increasingly disturbing for international commerce in the field of trademarks, models and designation of product origin. The Preparatory Committee¹ would now have a basis for orienting future GATT work in this field, to the extent that this problem affected trade. Rules were needed so that this form of trade could be eliminated, without at the same time creating any new obstacles to legitimate trade, and so that work which was already being done at national and

¹ See SR.41/6, page 9.

international levels could be accompanied by operational measures to be negotiated within the GATT framework. In a pluri-disciplinary approach there was no conflict of competence with other institutions whose rôle GATT would not be challenging; by a synergic approach, action could be taken to avoid deception of customers, danger to trade interests and losses of national income, as pointed out in paragraph 9 of the Group's report.

Mr. LUYTEN (European Communities) said that GATT and WIPO had their respective fields of competence. He wondered what the Brazilian response would be if the Community were to maintain that since the Food and Agriculture Organization (FAO) dealt with agriculture, GATT had nothing to do with the matter. The Community would establish its own legislation to combat counterfeiting, and hoped that such legislation could be included in a framework established by the General Agreement; however, if there was to be no such framework, the Community's legislation would certainly be applied. Furthermore, if as some delegations maintained, the problem could not be discussed in GATT, then that legislation would not be liable to discussion in GATT either; this would expose Governments to great temptation. Consequently, the Community considered it important that progress be achieved in this field in an appropriate body or in an appropriate framework within GATT.

Mr. LOPEZ-NOGUEROL (Argentina), Mr. VARGAS (Nicaragua) and Mr. HAMZA (Egypt) supported Brazil's views.

Mr. RANDHAWA (India) said it was clear from the Group's report that there had been no consensus on whether intellectual property matters could appropriately be dealt with in GATT. India continued to maintain that the appropriate forum to deal with this question was WIPO, and noted that WIPO's Governing Body had recently set up its own inter-governmental group of experts to examine this question. The provisions of Article XX(d) of the General Agreement had sometimes been cited to support the view that it would be appropriate to deal with this question under the General Agreement. However, Article XX(d) only provided that the General Agreement would not stand in the way of any contracting party wanting to conduct or enforce measures "necessary to secure compliance with laws or regulations which are not consistent with the provisions of this Agreement, including those relating to customs enforcement ... the protection of patents, trade marks and copyrights, and the prevention of deceptive practices ..." Furthermore, Article XX stipulated that such measures may be adopted or enforced by any contracting party "subject to the requirement that such measures are not applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination ..., or a disguised restriction on international trade". India considered that Article XX therefore did not provide for the adoption of measures in GATT for protecting intellectual property rights or for enforcing measures to prevent commercial counterfeiting, but rather permitted any individual

contracting party to take such actions, subject to the requirements that such action did not constitute an arbitrary or unjustifiable discrimination, or a disguised restriction on international trade. India continued to believe that GATT should avoid duplicating the work of other relevant international organizations.

Mr. HILL (Jamaica) wondered whether, given that the problems of cheating of customers and loss of national income also applied to the services sector, the discussions on counterfeit goods could be extended to include services. Jamaica was prepared to look at this matter in an appropriate working party.

Mr. MARTINS (Brazil) proposed that the CONTRACTING PARTIES defer any decision on this sub-point until later in the Session.

This was agreed.¹

Sub-point 1(h). Textiles and Clothing

The CHAIRMAN noted that the Council had forwarded the report of the Working Party on Textiles and Clothing (L/5892) to the CONTRACTING PARTIES for consideration and any appropriate action, taking into account the discussion in the Council.

Mr. SUN (Korea), speaking on behalf of developing country exporters of textiles and clothing, said that the Working Party's report revealed that little had been achieved so far, and that much remained to be done. After 25 years of discriminatory treatment, account should be taken of the present crisis facing developing countries' trade in textiles and clothing. It was imperative that the Working Party's task be carried forward; consideration of liberalization measures for trade in textiles and clothing, consistent with GATT principles and objectives, should be intensified. It was somewhat encouraging that the report had recorded general recognition that GATT provisions should ultimately apply to international trade in textiles and clothing. There had also been agreement on the need to continue consideration of how treatment of textiles and clothing could be improved, consistent with GATT objectives and with the 1982 Ministerial Declaration. The work now needed to be intensified to a more definitive stage which would involve identifying and agreeing upon the precise steps necessary to bring about full liberalization and ultimate return to the full application of GATT rules. The developing country exporters of textiles and clothing proposed that the Working Party be reconvened to pursue those tasks.

¹ See SR.41/3, page 11.

Mr. CARTLAND (United Kingdom on behalf of Hong Kong), Mr. MOSTAFA (Bangladesh), Mr. BAJWA (Pakistan), Mr. RANDHAWA (India), Mr. KUNERALP (Turkey), Mr. ROSSELLI (Uruguay), Mr. LOPEZ-NOGUEROL (Argentina), Mr. HAMZA (Egypt), Mr. ALEMAN (Nicaragua), Mrs. KLJAJIC (Yugoslavia), Miss ARCINIEGA (Peru), Mrs. SJAHRUDDIN (Indonesia) and Mr. AWORI (Uganda) endorsed Korea's statement.

Mr. MOSTAFA (Bangladesh) said the discussions in the Working Party and in the Textiles Committee had brought out the recent trend towards proliferation of restrictive measures against textiles and clothing imports from developing countries; even small suppliers, new entrants and least-developed nations which had persistent and increasing trade deficits were not being spared from such restrictions. Bangladesh, a least-developed country, had recently been subjected to harsh quota restrictions by major textile importing nations. Such restrictions were not only inconsistent with GATT provisions, but also went against the specific provisions of Article 6 and Annex A of the MFA (BISD 21S/3) and the 1981 Protocol of Extension (BISD 28S/3). Bangladesh considered that in any liberalization measures, those provisions should be strengthened and effectively implemented. His delegation generally agreed with the Working Party's conclusions in L/5892, notably that GATT provisions should apply to international trade in textiles and clothing. Bangladesh emphasized that this should be done as quickly as possible and within a time-bound frame.

Mr. EBERHARD (Switzerland) said that at this stage it might be unrealistic to envisage the possibility of a separate negotiation on textiles, and to expect any rapid outcome, i.e., in the coming months, since this would imply forgetting the global round of multilateral trade negotiations about to get underway. Switzerland could therefore support a further extension of the original MFA for a period to be determined, so that its future could be decided in the context of the new round. This attitude was based on two considerations. First, in order to repatriate textile trade into the "regular" GATT system, which should be the objective, one would first have to know what that system was, for it would undoubtedly undergo changes in the new round. Second, to the extent that there were certain prospects for success in the textile negotiations, their outcome should be complementary to the results of the new round. Furthermore, textile negotiations in advance of the new round could, to no useful purpose, prejudice the new round and in any case delay its opening. Precisely because Switzerland felt that the General Agreement should eventually apply fully to trade in textiles, his delegation considered the most realistic solution at this stage would be to temporarily extend the MFA. This approach should nevertheless not prevent signatory countries from terminating restrictions applied in derogation from the original MFA. If the MFA were to be applied on the basis of its original objective, i.e., to regulate restrictive measures and progressively reduce them, a significant step would already have been made in the direction of liberalization and of restoring confidence among the partners concerned.

Mr. BONDAD (Philippines) recalled that his delegation had put forward its view on this matter at the Textiles Committee meeting in July 1985. He reiterated the Philippines' view that a return to the original precepts and disciplines of the MFA would be a modest option for genuine trade liberalization and expansion. The Philippines were fully prepared to engage in common efforts to ensure the realization of genuine trade liberalization and expansion, bearing in mind that necessary adjustments should be made by participants in this sector of trade for an eventual return to a liberal régime under the General Agreement.

Mr. LOPEZ-NOGUEROL (Argentina) called for an immediate rollback of protectionist measures that had been introduced after the 1982 Ministerial meeting.

Mr. HAMZA (Egypt) drew attention to paragraph 7(viii) of the Ministerial Declaration, in which Ministers had undertaken "to examine ways and means of, and to pursue measures aimed at, liberalizing trade in textiles and clothing, including the eventual application of the General Agreement, after the expiry of the 1981 Protocol"

Mr. MURPHY (United States) said his delegation recognized the scope and need for further work in this area. Clearly there was no consensus at this stage; there were also difficult negotiations to come on the future of the MFA. The United States was prepared to continue the work.

Mr. QIU (China), speaking as an observer, noted that his delegation had been fully participating in the Working Party. The Working Party's report showed that useful discussions had been held over the past year and a half to examine modalities of further trade liberalization in textiles and clothing, including the possibilities for bringing about the full application of GATT provisions to this sector; however, there had been no substantive and concrete conclusions. The Working Party's results were unsatisfactory in terms of the importance attached to this subject by Ministers in 1982 and of the efforts made by delegations in the Working Party. China considered that this body should be continued so as to work in a more substantive manner for a more concrete result. His delegation hoped that two parallel courses on the future of the MFA, i.e., the Working Party and the Textiles Committee, would complement each other in achieving the common goal of liberalizing trade in textiles and clothing.

Mr. MURPHY (United States) proposed that any decision on this sub-point be postponed until later in the Session.

This was agreed.¹

¹See SR.41/3, page 10.

Sub-point 1(i). Problems of Trade in Certain Natural Resource Products

Mr. MORRISEY (Canada) noted that his delegation's views on this item were reflected in the summary records of the Senior Officials Group (SR.SOG/8). He recalled that Canada had strongly supported inclusion of the question of natural resource products in the 1982 Ministerial Work Program and had participated actively in the Working Party set up to examine problems of trade in this area. The work carried out by that body had demonstrated the continuing importance of tariff and non-tariff barriers to trade in resource-based products. There was still some work to be done in the Working Party. However, Canada considered that the problems which had been identified could only be resolved in the context of the new round of multilateral trade negotiations, which should be launched as soon as possible. Canada took the same view on the other issues under this agenda item.

Mr. BOUBACAR BA (Senegal) said that problems of trade in natural resource products directly affected African developing countries, in particular Senegal, which was especially interested in trade in fish and fisheries products. The problem in this sector was without doubt one of trade liberalization, i.e., eliminating restrictions to access in some markets. Negotiations on this question would have to bear exclusively on restrictions to access and not to resources; GATT's field of competence was to deal with trade, not resources. The Ministerial decision (BISD 29S/20) had been clear on this point. Negotiations to liberalize trade in fish and fisheries products should be undertaken as soon as possible. Senegal was open to discussing the form that such negotiations should take.

Mr. LUYTEN (European Communities) said his delegation's position was clearly reflected in the Council's report. The Community found it peculiar that when it wanted to discuss access to fishery resources, following international developments in this sector, a number of its partners had tied this question to access to markets; then, when the Community said in GATT that there was a linkage between access to markets and access to resources, those partners did not agree.

Mr. RANDHAWA (India) noted that his delegation's position on the question of access to resources and markets had been set out in the Senior Officials Group (SR.SOG/8).

The CONTRACTING PARTIES adopted the report of the Working Party on Trade in Certain Natural Resource Products (L/5895) relating to fish and fisheries products and adopted the Working Party Chairman's report (MDF/23) relating to forestry products.

¹See L/5933.

Sub-point 1(j). Services

Mr. MARTINS (Brazil) said that the Chairman's report to the CONTRACTING PARTIES (L/5911) did not give enough elements to enable a decision to be taken on this matter. The report's inconclusive character was reflected in several other documents, including MDF/17 and Addenda, and MDF/W/58. It was evident from the Chairman's report that not all developed contracting parties had submitted national examinations; three had only recently done so, and their documents had not been studied. No developing countries had yet submitted national examinations, though some might be in the process of preparing them. It was also clear from the report that MDF/17 had not been sufficiently considered. The Chairman's report showed that there were difficulties in defining the term "services"; that there were difficulties in defining trade in services, particularly as opposed to investment; that statistics on service activities were unsatisfactory; and that there were not even vaguely accepted parameters for establishing what constituted an obstacle to trade in services. He added that notwithstanding the difficulties that had been identified, and the incomplete nature of the exchange of information, some delegations had already concluded that multilateral action on services was appropriate, that GATT was a forum for negotiations on services, and that these should be carried out in the context of the proposed new round. Brazil considered that such a conclusion prejudged the nature of the Ministerial decision (BISD 29S/21), given that contracting parties had so far been unable to ascertain whether multilateral action was necessary or, particularly, whether it should be undertaken in GATT. In Brazil's view, the only point of convergence in the long debate on this question was that this matter was not now within the competence of the General Agreement.

Brazil did not dispute the right of any contracting party to propose changes to the General Agreement in order to extend its coverage to new subjects, eventually amending GATT. Such a process implied, however, a formal amendment of the General Agreement, for which a certain sequence would have to be observed which would culminate in a collective decision on adoption of the amendment, and a subsequent individual decision, by each contracting party, on whether such an amendment was acceptable to it. In conformity with Article XXX, the amendment would become effective only upon its acceptance by all contracting parties in the case of Part I, or upon acceptance by two-thirds of the contracting parties in the case of other amendments. Even if the CONTRACTING PARTIES decided, in accordance with the 1982 decision and the 1984 Agreed Conclusions (BISD 31S/15), that multilateral action on services was appropriate and desirable, and that it would take place in GATT, such a conclusion would not mean that the negotiations should be automatically included in the new round without a prior amendment of the General Agreement. Multilateral negotiations in GATT could only deal with matters already included in the General Agreement.

GATT was now faced with a serious difficulty in handling a great backlog of unfinished business, due to the demand that for work to proceed in GATT's recognized area of competence, there must be agreement to include services as an item for negotiation in the proposed new round. This demand amounted to a precondition for liberalizing and strengthening the multilateral trading system through a new round. Legal issues had been dismissed by some as obstructive, and political pressure had been exerted to obtain agreement where persuasion had failed to support the contention that negotiations on services would benefit all contracting parties. Brazil felt that the misgivings of the unconvinced should not be put aside so easily.

Brazil's difficulties in accepting proposals for negotiations on services were, on one hand, legal and, on the other, the expression of its firm belief that such proposals were not in its overall economic interest. Such proposals would not contribute to Brazil's development or growth, while they presented the serious risk of increasing its dependence on more developed economies and of diminishing opportunities for its citizens.

Document MDF/17 showed that Latin American nations participating in the Latin American Economic System (SELA) agreed that "the idea of holding international negotiations on the service trade ... only enjoys the firm support of a limited number of industrialized countries". SELA asserted that "the benefits that developing countries might eventually obtain from international negotiations on trade in services have not been clearly determined". Developing countries from regions other than Latin America had also voiced opposition to proposals for negotiation on services in GATT.

He concluded by saying that differences over the desirability and appropriateness of multilateral action on services had clearly not been narrowed as a result of the exchange of information carried out so far; the case for multilateral action on services could not be said to have been established to the satisfaction of the CONTRACTING PARTIES. Brazil would accept that the exchange of information be continued, while making clear that its answer, at this stage, to the question of appropriateness and desirability as contained in paragraph 3 of the Ministerial decision, could only be negative. To continue the exchange of information would be a more adequate course of action than to discontinue the exercise which had been undertaken in pursuance of the 1982 and 1984 decisions by the CONTRACTING PARTIES. The absence of a decision to prolong the exchange would leave the contracting parties without any legal basis to continue to discuss in GATT the question of appropriateness and desirability of multilateral action on services.

Mr. SMITH (United States) said it might not be in Brazil's interest to negotiate on services in GATT, but it certainly was in the US interest. A large number of other important contracting parties also felt it was in their interest to explore the possibilities of

negotiating on services within GATT's multilateral framework. As for the legal aspect, the United States refuted the claim that GATT was not competent to deliberate on this issue. That claim was incorrect and had the potential, if misunderstood, to stunt progress in GATT. The question of competence raised the issue of what the CONTRACTING PARTIES and GATT as an institution could and could not do; more specifically, the issue of whether they could begin serious consultations on the issue of services trade in a Preparatory Committee.

The issue was not whether the CONTRACTING PARTIES could impose new obligations on unwilling governments; clearly, they could not. The United States had never suggested that GATT was an instrument which could be used to impose new obligations on unwilling parties. Similarly, the issue was not one of how the GATT framework would address trade in services; that question would be best decided in the course of negotiations. For now, the question was simply whether the contracting parties could consult on the issue of services trade in a Preparatory Committee, with a view to letting those contracting parties which wanted to negotiate, do so.

In the Senior Officials Group, the United States had stated its legal position on GATT competence (SR.SOG/9) and had pointed out the breadth of the economic objectives set forth in the Preamble of the General Agreement. Those objectives called upon the contracting parties to conduct trade and economic endeavour with a view to "...raising standards of living, ensuring full employment and a large and steadily growing volume of real income and effective demand, developing the full use of the resources of the world and expanding the production and exchange of goods..." It was in pursuit of those broad economic objectives that GATT as an institution had been formed. Article XXV:1 was the mechanism which authorized the contracting parties to continue that pursuit and to meet "... with a view to facilitating the operation and furthering the objectives of this Agreement."

Thus, it was clear from the text of the General Agreement that, taken together, Article XXV and the Preamble permitted those contracting parties which wanted to negotiate on services within GATT to do so, if the CONTRACTING PARTIES decided that such negotiations might further the economic objectives of the Preamble. Many contracting parties clearly believed that the importance of services in world trade had grown dramatically and was now central to the attainment of those objectives.

The United States considered that GATT had, in several ways, shown that it understood the inextricable relationship between services and the attainment of the objectives in the Preamble. For example, Article III referred to the transportation of foreign produced goods. Article XVII required that services by state trading enterprises and marketing boards (such as buying, selling and transporting goods) must be conducted without discrimination and in accordance with commercial considerations. Articles IV, V, VIII, and XXIX also touched upon

services. In the Tokyo Round, GATT members had again demonstrated their understanding that individual contracting parties' control of services bore heavily upon international trade. The Agreement on Government Procurement (BISD 26S/33) covered the procurement of "services incidental to the supply of products" and committed the signatories to "explore the possibility of expanding the coverage to include service contracts."

Many examples could be found in the past, aside from services, of how GATT had deliberated topics not explicitly mentioned in the text of the General Agreement, from issues such as transport insurance and investment to ones such as trade in television programs and restrictive business practices. Looking to the future, GATT had to be seen as an institution which would continue to deliberate and negotiate on new challenges. The only interpretation that one could possibly give to Article XXV and the Preamble was that they authorized and encouraged contracting parties to address new issues in the world economy as they arose. Were this not to be the case, GATT would be destined for obsolescence, since an institution had to change and grow with the sphere of activity it was attempting to govern; otherwise, it would become antiquated and useless.

He summed up the US position on this issue as follows: legally, if contracting parties decided that the regulation of services might further the economic objectives set forth in the Preamble, they could take action under Article XXV to launch negotiations or consultations on such regulation. Politically, no contracting party had anything to lose by a GATT negotiation on services because a long-standing rule of international law prevented any group of contracting parties from imposing new international obligations on unwilling parties. Institutionally, the fact remained that the contracting parties had a responsibility to address new challenges such as services, since the GATT had to adapt to changes in world trade; otherwise, it would be destined to become outmoded by changes in the sphere of activity that it was attempting to govern.

Mr. RANDHAWA (India) said his delegation's views concerning legality and GATT's competence in this issue were reflected in SR.SOG/9. He noted that the US intervention had not addressed the specific subject of the exchange of information on services. Referring to the Chairman's report, he said that while the exchange of information had made a useful beginning in examining the complex subject of services, it had not yet provided a basis to enable the CONTRACTING PARTIES to arrive at any conclusions on the appropriateness and desirability of multilateral action. India had noted serious deficiencies in the exchange of information so far. The exchange had been based on only 16 national examinations, which could not be considered to be representative. Only three of those examinations had become available in 1985, which pointed to the complexities involved in examining this issue.

As was clear from the report, no degree of finality had been reached so far in the deliberations on any of the issues raised during the examination, including the questions of definition of the term "services", trade in services, coverage and statistics. Moreover, there had been no in-depth examination so far of the rôle of other relevant international organizations, several of which had a full mandate to deal with individual service sectors. Unless there was an adequate understanding of the rôle of such organizations, it would be impossible to arrive at any definite understanding on the scope of further multilateral action on services.

India considered that the Chairman's report provided a strong case for continuation of the exchange of information. That work should be extended to enable the CONTRACTING PARTIES to try to arrive at a decision on paragraph 3 of the 1982 Ministerial decision. In order to improve the exchange, it would be appropriate to provide for greater involvement by the relevant international organizations, especially since the report recognized that not enough was known about so many vital aspects of the various service sectors.

Mr. LUYTEN (European Communities) said his delegation's views on this subject had been circulated in the Community's communication concerning the new round (L/5835) and in SR.SOG/9. Given the fact that views on services were so divergent, he proposed that any decision on this sub-point be postponed until later in the Session.

Mr. ENDO (Japan) said his delegation's preliminary views on this subject were reflected in its communication concerning the new round (L/5833) and in SR.SOG/9. Japan considered that services was one of the areas where GATT should respond, through multilateral action, to the changing trading environment. Japan remained willing to discuss this issue in the Preparatory Committee.

Mr. LOPEZ-NOGUEROL (Argentina) said that the Chairman's report revealed clearly some of the problems that had emerged in the exchange of information, such as the lack of sufficiently reliable and comparable statistics for proper evaluation. Also, the information available was generally not in a disaggregated form, so the matter could be viewed only from a global aspect. Services was a new topic, the complexity of which had not yet been recognized. Consequently, Argentina felt that the discussion so far had to be considered as only a preliminary stage of exploration. The subject should be examined in more depth, with greater scientific rigour in national studies, since some of them had been no more than a brief introduction to this topic. It was important to underline that all the national studies presented so far came from developed countries, and therefore tended to give only a partial, and therefore unrepresentative picture of the services sector. Furthermore, it was clear that even among those contracting parties calling for multilateral action in this area, there were different if not contradictory approaches. Consequently, it would be difficult for the CONTRACTING PARTIES to take any decision at this stage as to whether

multilateral action was appropriate and desirable. Argentina considered that the exchange of information should be continued so as to promote improved knowledge of the subject.

Mrs. KLJAJIC (Yugoslavia) said her country understood the reasons why some contracting parties had a special interest in removing barriers to trade in services. However, it was difficult for Yugoslavia to pronounce itself in favour of negotiations on this sector, which was so important to its development, without sufficient knowledge of the subject. Her delegation did not question the need for multilateral action on services, but the principles, timing and place for such action were still open to question. It was difficult for Yugoslavia to agree that by bringing negotiations on services into GATT, without cooperation from other relevant international organizations and without thorough examination of all aspects of the subject, in particular the development aspect, it would be possible to search for solutions that would be acceptable to all contracting parties. Her delegation therefore proposed that the exploratory stage of the exchange of information be continued and that additional national submissions be analysed. The Secretariat should be asked to provide, in cooperation with other appropriate international organizations, the necessary support for this further exploratory stage.

Mr. HAMZA (Egypt) reiterated the views which his delegation had expressed on this subject in the Senior Officials Group (SR.SOG/9). He said that the exchange of information on services should continue, within the parameters of the 1982 and 1984 decisions by the CONTRACTING PARTIES; this could lead to a decision later on whether multilateral action was appropriate and desirable. The views of other international organizations should also be taken into account.

Mr. EWERLOF (Sweden on behalf of the Nordic countries) said that the Nordic countries' views were fully reflected in SR.SOG/9. He noted that services was a major issue of the present Session, and was closely linked to the question of setting up a Preparatory Committee for the new round, which would be discussed under Agenda Items 2 and 3. The Nordic countries hoped that the discussion on those two agenda items could begin as soon as possible.

Mr. HILL (Jamaica) said that further exploratory work on services should be carried out within GATT, and that at the present Session the CONTRACTING PARTIES should take a decision based on the 1982 and 1984 decisions. Jamaica hoped that such a decision would go beyond general exploratory exchanges to a more focused discussion on this subject. Jamaica favoured a more clear-cut approach to the question of whether services, if they were to be included in GATT, should not follow a determination of principle that GATT's legal coverage should be extended and, if so, whether such an extension might entail an amendment to the General Agreement. As for the link between services and the proposed new round, he referred to his delegation's detailed views as set out in SR.SOG/8.

Mr. BEESLEY (Canada) said his delegation would return to this subject during the discussion on Agenda Items 2 and 3. Canada continued to favour a pragmatic approach on the issue of services. The contracting parties should not force themselves unnecessarily into a straightjacket on this question, as there was room for flexibility and pragmatism. Canada considered that the continued exchange of information on services should neither be abandoned nor extended indefinitely. He emphasized that it was not possible under international law for the CONTRACTING PARTIES to impose treaty obligations on any individual contracting party. Under the existing General Agreement there was ample provision for developing rules on services which would not bind those contracting parties which did not choose to be bound.

Mr. AWORI (Uganda) said his delegation wanted further study of this matter before considering any negotiations.

Mrs. GARCIA (Cuba) said that treatment of services in GATT since the 1982 Ministerial meeting had not demonstrated the need for multilateral action. She supported the statement by Argentina. Cuba recognized that a number of contracting parties considered that multilateral action on services was desirable in GATT, but wanted to point out that a great number of other contracting parties felt that GATT had been set up to deal with trade in goods, which was GATT's priority area. Furthermore, there were other bodies competent to deal with services. Cuba favoured continued exploratory exchanges of information before deciding whether multilateral action in GATT was appropriate and desirable.

Mr. PAREDES PORTELLA (Peru) said that GATT had been created to liberalize trade in goods. His delegation favoured further exploratory discussions on services before deciding whether any multilateral action was appropriate and desirable.

The CHAIRMAN proposed that¹ the CONTRACTING PARTIES revert to this sub-point later in the Session.

This was agreed.

The meeting adjourned at 1 p.m.

¹ See SR.41/6, page 9 and SR.41/7, page 2.