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GENERAL AGREEMENT ON TARIFFS AND TRADE

COUNCIL
4 March 1987

MINUTES OF MEETING

Held in the Centre William Rappard
on 4 March 1987

Chairman: Mr. A. Oxley (Australia)

1. Trade in Textiles
   (a) Report of the Textiles Committee (COM.TEX/53)
   (b) Report of the Textiles Surveillance Body (COM.TEX/SB/1181 and Add.1)

Introducing this item, the Director-General, Chairman of the Textiles Committee, recalled that at its meeting in October, the Council had adopted the reports of the Textiles Committee (COM.TEX/49 and 50) concerning the renewal of the Multifibre Arrangement (MFA), and had taken note of the 1986 Protocol extending the Arrangement until July 1991. The Council now had before it the Textiles Committee's report (COM.TEX/53) on its first review of the operation of the Arrangement as extended by the 1986 Protocol. In conducting its review, the Committee had had before it a Secretariat survey on demand, production and trade in textiles and clothing (COM.TEX/W/186) as well as textiles and clothing statistics (COM.TEX/W/187), an oral report by the Chairman of the Sub-Committee on Adjustment, and a report by the Textiles Surveillance Body (COM.TEX/SB/1181 and Add. 1) which was also before the Council. The next report would provide the Committee, for its second annual review of the Arrangement in December 1987, a comprehensive picture of the Body's activities as of the entry into force of the 1986 Protocol. He added that at its meeting in December 1986, the Committee had agreed upon the membership of the TSB for 1987. He also informed the Council that as of 4 March 1987, the 1986 Protocol had been accepted by 31 signatories, counting the European Economic Community as one signatory.

The representative of Hong Kong, referring to his delegation's statement in the Committee (COM.TEX/53, paragraph 29), noted Hong Kong's view that the new MFA was more restrictive, had been renewed for a longer period and with wider coverage, and was an inevitable compromise between opposing interests concluded at a time of great protectionist pressure --

based more on politics than on economics -- in one of the major trading entities. He had also made reference in the Committee to the production statistics recorded on page 24 of COM.TEX/W/186, which clearly demonstrated the healthy state of the US textile industry. Unfortunately, there was a new manifestation of protectionist pressure in the United States in textiles, i.e., the Textile and Apparel Trade Bill of 1987 which had been introduced in the US Congress on 19 February. This Bill purported to determine that imports of all textiles and textile products and of non-rubber footwear, as a whole, were causing serious injury to US domestic producers. On the basis of that blanket assessment, the Bill provided for quotas on imports from all sources under each and every category of textiles and textile products and non-rubber footwear. The textiles quotas would grow at one per cent per annum, but the footwear quotas would remain at 1986 trade levels. The duration of these measures would be indefinite, but there would be a review after ten years. Compensation to affected foreign suppliers was envisaged, but only in the form of textile and footwear tariff reductions limited to 10 per cent and phased over five equal annual stages. The US President would be precluded from negotiating textile and footwear tariff reductions under any other US legal provision. This blatantly protectionist bill was claimed by its sponsors to be in accordance with Article XIX of the General Agreement and was already gaining support in Congress under the claim that it was a more reasonable and moderate measure than the Jenkins Bill, on which the Presidential veto had been so narrowly sustained in 1986. In fact, almost nothing about the Bill could be regarded as in any way consistent with either the GATT or the MFA. Article XIX provided for emergency action on imports of particular products. Not only was there no emergency (profits in the textile industry had almost doubled in 1986 and a further 20 per cent increase was predicted for 1987, and increased domestic shipments were predicted for 1987 by the US textiles industry itself), but Article XIX did not provide for long-term blanket protection to whole industries producing several hundred different products, each with quite a different market situation. The Bill would even include product categories in which there was no US production and never had been; it would also include products where the US industry was doing exceptionally well, such as cotton sweaters, where domestic production had increased in 1986 by six fold over 1980. As Hong Kong had already indicated in the meeting of the Surveillance Body on Standstill and Rollback under the Uruguay Round, this bill, if enacted, would have very serious implications for the Uruguay Round. First, it clearly violated the standstill commitment because it was inconsistent with GATT. It was also inconsistent with the MFA, as none of the existing MFA bilateral agreements providing for higher than one per cent growth could be honoured under the régime envisaged by the Bill. Second, the Bill would forestall any attempt to negotiate liberalization of world trade in textiles and a return of this sector to the GATT, in accordance with the Ministerial mandate, by legislating for increased protection for one of the largest markets on an

indefinite basis and in contravention of the GATT and the MFA. Finally, and perhaps most damaging for the Uruguay Round, the Bill would effectively remove US textile and footwear tariffs, which were among the highest remaining tariff peaks, from the scope of the Uruguay Round negotiations. If the United States were to do that, what would there be to prevent other countries from removing their measures from the table, such as on services and intellectual property? For this reason, the Bill could only be regarded as a recipe for the collapse of the Round. His delegation recognized that the Bill was neither proposed nor supported by the US Administration, that in 1986 the President had vetoed the Jenkins Bill, an equally dangerous piece of legislation, and that the Administration had also this year introduced a generic trade bill designed to promote US competitivity and not to promote sectoral protection. Hong Kong wished the US Administration continued success in this latter direction, but observed nevertheless that the Council should be aware of the dangers posed by the Textile and Apparel Trade Bill; there was not just the danger that it might be enacted, but also that it might not, in which case some price might be exacted in terms of promises to take some other type of protective action on textiles. The Bill reflected one such promise which dated from the run-up to the election of the present President -- that future import growth should be restricted to the level of growth in the domestic market as perceived by the domestic industry, i.e., one per cent. The most dangerous aspect of the Bill was its misrepresentation as GATT-consistent. Hong Kong believed it was important that the Council be aware of the true nature of this proposed legislation and of the threat it posed both for the GATT and the Uruguay Round.

The representative of Indonesia, speaking on behalf of the ASEAN contracting parties, said they had thought that international trade in textiles would for the next five years be governed by the MFA and the new Protocol, and that their only worries would be to ascertain that the few gains they had achieved in those difficult negotiations would be faithfully recognized in the bilateral agreements. They were therefore dismayed to see that in one of the major member countries -- and the first signatory of the 1986 Protocol -- efforts were being made to introduce a law to regulate trade in textiles which was not in conformity with the MFA and its Protocol of Extension. While they realised that the Bill was not final, and that a number of amendments might be introduced which might move it in an entirely different direction, they wanted to make two points. First, the Bill, if enacted, would do away with MFA IV, the Protocol of Extension, and the bilateral agreements, thus making of no use, for textile trade with the United States, the agonizing hours of negotiations of the summer of 1986. Second, the Bill had been drafted on the assumption that it would be in accordance with Article XIX of the General Agreement. While the Bill seemed to treat imports from all sources without discrimination and also mentioned

compensation, the compensation envisaged would take the form of a 10 per cent tariff concession within five years in annual stages, on products under import restrictions. In ASEAN's view, this was not a compensation in the sense of Article XIX. Their major worry was that the Bill's sponsors seemed to be giving an entirely new twist to Article XIX, which, if accepted, would have far-reaching effects on the whole GATT system. Article XIX could be applied as emergency action on imports of particular products; it was not meant to protect an entire industry for an indefinite period of time. If the Bill became law, and was implemented, and if GATT did not challenge its legitimacy, entire industry lines might come under this kind of protection, not only in the United States, but in other major trading countries as well. The ASEAN contracting parties' objective in raising this matter at this stage was to put on record, without going into other details, that the US Bill's interpretation of Article XIX was very harmful to the international trading system.

The representative of Turkey associated his delegation with the views of previous speakers and shared their concerns over the Bill. While its proponents presented the Bill as an attempt to return to Article XIX, its elements were far from achieving this aim. He hoped that the US Administration would make every effort and would succeed in resisting this proposal, thus eliminating the need to bring this issue to the Council or any other GATT body.

The representative of Uruguay recalled his delegation's views (COM.TEX/53, paragraph 26) concerning the important decisions recently adopted by participants in the MFA and by the CONTRACTING PARTIES in the textiles field, namely the Protocol of Extension of the MFA, the Understandings on standstill and rollback in the Punta del Este Declaration, as well as the decision to undertake negotiations aimed at the eventual integration of this sector into the General Agreement. His delegation also attached great importance to surveillance in this area. Uruguay shared the concern expressed by Hong Kong and Indonesia, and maintained that whatever altered the balance achieved through the decisions adopted in 1987 in the field of textiles trade would have unforeseeable consequences, not only for many countries' economies, such as his own, but also for the normal development of GATT's activities and the Uruguay Round negotiations.

The representative of Pakistan referred to his delegation's statement at the Textiles Committee's December meeting (COM.TEX/53, paragraphs 19 and 20) and expressed concern at the timing and substance of the process to which the previous speakers had alluded. Pakistan supported Hong Kong's statement. In particular, the proposed US legislation was not only against the spirit and substance of the Uruguay Round standstill and rollback commitments, but was being presented in a way which contravened Article XIX, on which it was purported to be based. This did not augur well for the Uruguay Round. The Bill had all the

elements and potential for trade harassment in a sector vital to Pakistan and to a large number of developing countries. He hoped, therefore, that the standstill commitment would be observed faithfully in the textiles area by resistance to any present or future protectionist measures.

The representative of the United States said his delegation had no objection to the adoption of the two reports. As to the draft legislation which had been referred to, he noted the US Administration's opposition to the Bill in the US democratic process, and said that the legislative process in each country followed its own pace.

The representative of Brazil recalled his delegation's statement at the Textiles Committee's December meeting that protectionist pressures had not disappeared despite the favourable prospects for trade in textiles and clothing in the United States. The Bill was another attempt to break the rules of the system in a manner totally inconsistent with GATT. He hoped that the US delegation would report all the arguments put forward at the present meeting and in this way resist protectionist measures at home and make good its MFA and Uruguay Round commitment.

The representative of India referred to his delegation's views (COM.TEX/53, paragraph 23), which included disappointment at the turn of events which had led to the negotiation of the new Protocol of Extension and to protest regarding the extension of fibre coverage. India had also expressed concern that the forces of protectionism which had cast a shadow on those negotiations had still not diminished; the present situation needed careful surveillance. His delegation supported the statements by previous speakers and urged continued careful surveillance of developments.

The representative of Yugoslavia shared the concerns expressed by previous speakers over the US Bill. She appealed to the TSB and to the US Administration to observe all criteria in MFA IV in applying its provisions, particularly to indebted developing countries. Those bilateral agreements were more restrictive than had been expected when agreement was reached on the Protocol of Extension. She emphasized the need for careful review of those agreements by the TSB, and said that one year was probably too long a period on which to report to the Council on protectionist pressures, such as those in the United States.

The Council took note of the statements and of the report of the Textiles Surveillance Body (COM.TEX/SB/1181 and Add.1) and adopted the report of the Textiles Committee (COM.TEX/53).

2. United States - Caribbean Basin Economic Recovery Act (CBERA) - First biennial review under the Decision of 15 February 1985 (L/5779)

The Chairman recalled that under paragraph 7 of the CONTRACTING PARTIES' Decision of 15 February 1985 (L/5779), the United States is to submit an annual report on the implementation of the trade-related provisions of the Act, and the CONTRACTING PARTIES are, two years from the waiver's entry into force and biennially thereafter, to review its operation and consider if in the circumstances then prevailing any modifications to or termination of its provisions are required.

The representative of the United States said that his Government expected to submit in the near future its second annual report on the Caribbean Basin Economic Recovery Act (CBERA) in keeping with the terms of the waiver. This report would contain an assessment of the impact of the trade-related provisions of the Act, as called for by the waiver, based on trade through the end of 1986.

The representative of Cuba said that her delegation had expected at the present meeting a thorough analysis of the operation of the Act, and asked that such biennial reviews be carried out with sufficient advance notice. She said that Cuba's position on the Act was reflected in the report of the Working Party (L/5708) and in the Council minutes. Cuba, as a Caribbean country, had obtained scant results from the Act; this contrasted with the Act's objective which was to develop the economy of the Caribbean region. A number of protectionist features had appeared, covering products of interest, such as textiles and leather, to beneficiaries of the Act and causing a decrease in trade between this area and the United States. She quoted statistics to this effect from a 1981 study by the US Department of Commerce.

The representative of Nicaragua said that his delegation, too, deplored the fact that the United States had not submitted a complete, exhaustive report in writing on the results of the implementation of this Act. Nicaragua had made clear in the Working Party its position that the Act was discriminatory in character, and had sent a letter to the SIECA Secretary-General pointing out its negative effects.

The representative of the United States said that the second annual report on the Act was in the final stages of preparation and would be submitted to contracting parties very soon. The main reason for the delay was to include data for the full year 1986, not available until mid-February, so as to make the report more complete and more useful.

The representative of Australia said his delegation considered that the question of the review of the operation of the waiver should be addressed when contracting parties examined the US report. He proposed that this item be deferred until the next Council meeting.

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

3. Customs unions and free-trade areas; regional agreements - Third Lomé Convention (L/6109 and Add.1)

The Chairman drew attention to document L/6109, containing information on the Third ACP-EEC Convention of Lomé, which had entered into force on 1 May 1986. Very recently, delegations had received copies of the text of the Convention, which was circulated with document L/6109/Add.1.

The representative of the European Communities said that while the Convention was voluminous, the main differences between it and the previous Convention did not involve trade matters.

The representative of Canada said that while his delegation appreciated the basic objectives of the Lomé Convention, Canada reserved judgement as to its compatibility with the legal requirements of the General Agreement, and maintained the view that the Convention could in no way be considered as affecting Canada's rights under the General Agreement.

The representative of Colombia said that while his delegation welcomed the renewal of the Lomé Convention, it would nevertheless propose that a working party be established to study its compatibility with the General Agreement.

The representative of Jamaica referred to the discussion at the February 1987 Council meeting on the European Economic Community's Agreements with Austria, Finland, Iceland, Norway, Portugal, Sweden and Switzerland, and asked if different treatment was accorded to such regional agreements between the Community and other industrialized countries, than was accorded to agreements such as the one presently before the Council.

The representative of the European Communities said that the earlier discussion referred to by the representative of Jamaica had related to Agreements which had already been examined in working parties in 1973 and 1974 and which had not changed, whereas the Third Lomé Convention was, in form at least, a new Agreement.

The Chairman said that the views expressed at the February Council meeting on the applicability of the biennial reporting requirement had been statements of individual positions which had not been put to the Council for endorsement. He then proposed that the Council take note of

the statements and of the information in L/6109 as well as the text of the Convention circulated with L/6109/Add.1, and agree to establish a working party as follows:

Terms of Reference

"To examine, in the light of the relevant provisions of the General Agreement, the Third ACP-EEC Convention signed at Lomé on 8 December 1984, and to report to the Council."

Membership

Membership would be open to all contracting parties indicating their wish to serve on the Working Party.

Chairman

The Council would authorize its Chairman to designate the Chairman of the Working Party in consultation with interested delegations.

The Council so agreed.

4. China's status as a contracting party
- Memorandum on China's foreign trade régime (L/6125)

The representative of China, speaking as an observer, said that in pursuance of his Government's request in July 1986 for resumption of its status as a GATT contracting party, and in accordance with GATT practice, his delegation had forwarded to contracting parties the Memorandum on China's foreign trade régime contained in document L/6125. His delegation hoped that the Memorandum would give contracting parties a better understanding of China's reform of its economic structure and its policy of opening to the outside world, as well as its foreign trade policy and system. He asked that the next formal step be set in motion, and that a working party be established to examine China's request. China welcomed and was prepared to answer any comments or questions on the Memorandum; his delegation would be ready to enter into substantive negotiations with contracting parties at any convenient time. He stressed the importance to his country of the policy adopted in 1979 of reform and opening to the outside world, which had already greatly enhanced China's economic and trade relations with other countries. He cited statistics showing the increase in the volume of China's foreign trade for 1986, and said that China had promulgated more new laws and rules which it believed would further improve the environment for foreign investment and trade. China's request for resumption of its status as a contracting party was another step in this direction. He expressed his

delegation's appreciation for the positive reactions of many delegations to China's request, and its hope for their continued support and cooperation.

The representative of the European Communities said that China's request for resumption of its status as a contracting party was of the utmost political importance to the Community and its member States, which without exception had promised their full and indefatigable support for it. This request was an important symbol of support for the multilateral trading system and for GATT when this was greatly needed. He referred to the magnitude of the change that was likely to result from this request, and said that when China fully occupied its seat in GATT, nothing would be the same -- the outlook, the balance of rights and obligations, the GATT itself would all be different. The Community and its member States believed that the GATT's future would be changed by China's re-instatement as a contracting party. However, this broad political viewpoint had to be translated into the everyday workings of GATT. Contracting parties had to try to integrate China into their collective contract and to define its contractual rights and obligations. Under the guise of the resumption of China's status as a contracting party, the negotiations on this matter had to define clearly the terms of China's integration into the present GATT as well as the future one which would emerge from the Uruguay Round. It would not be in China's interest for the GATT to address this problem lightly since this would only lead to misunderstandings in the future. China's Memorandum gave rise to a number of questions. The Community and its member States would devote all their energies to ensuring that the negotiations could be completed as quickly as possible so that China could be successfully integrated into the multilateral trading system.

The representatives of Chile, Korea, Brazil, Cuba, Colombia, Hungary, United States, Czechoslovakia, Nicaragua, Mexico, Turkey, Indonesia on behalf of the ASEAN contracting parties, Sri Lanka, Romania, Yugoslavia, Canada, New Zealand, Japan, Israel, Poland, Australia, Hong Kong, Switzerland, Sweden on behalf of the Nordic countries, Côte d'Ivoire, Argentina, Uruguay, Egypt and Austria welcomed the submission of China's Memorandum on its foreign trade régime and supported the establishment of a working party.

The representative of Jamaica said that his country had close political and trade relations with China, which already participated in GATT in the informal group of developing countries. He noted that China had claimed developing country status in GATT, and referred to the great potential and importance to all countries of the Chinese market as its economy was being reformed and opened to the outside world. Regarding China's resumption of its status as a contracting party and the impact of this on the balance of rights and obligations in GATT, Jamaica believed that this would be effected on the basis of negotiations unlike those in

the past which related to a mere market-opening commitment. His delegation would participate in consultations on all matters related to the working party.

The representative of Brazil stressed the importance his country attached to China's participation as a contracting party. Not only China but all, in particular the developing, contracting parties would benefit from China's significant political decision to open its economy to the outside world as well as to encourage economic development and base its trade relations on GATT disciplines.

The representative of Hungary said that from the beginning, his country had supported China's intention to resume its status as a contracting party. This would be beneficial for China and for world trade, and would enhance the effectiveness and prestige of the multilateral trading system. Hungary was ready to study objectively China's Memorandum and hoped that other contracting parties would do the same, concentrating on the merits of the case.

The representative of the United States said his delegation welcomed and would examine with great interest China's Memorandum on its foreign trade régime, and looked forward to discussing the reforms that country was undertaking in its economy and foreign trade policies, both multilaterally and bilaterally.

The representative of India said that it was essential to be clear about the legal basis of a decision to set up a working party and to draw up terms of reference. India was of the view that Article XXV did not furnish an appropriate basis either in terms of its provisions, its negotiating history or its past application. Furthermore, the substantive and procedural requirements visualized in Article XXXIII would need to be fulfilled in dealing with this matter. In order to achieve a satisfactory balance of rights and obligations, his delegation intended, in due course, to enter into negotiations with China with a view to securing suitable safeguards and adequate concessions. India hoped these points would be taken into account in the Council's decision in this regard.

The representative of Romania said that GATT now had the possibility of fulfilling its real vocation as an international trade organization. Romania hoped that contracting parties would adopt a pragmatic and dynamic position on China's request, which would adapt to the realities of China's place in the world as a socialist developing country.

The representative of Canada said that his delegation had noted with interest and pleasure the request by the representative of China to begin the formal procedures regarding China's request for resumption of its participation in GATT. Canada also welcomed China's statement that its Government was ready to enter bilateral negotiations.

The representative of New Zealand expressed the hope that informal consultations would lead speedily to agreement on the terms of reference and chairmanship of the working party and said his delegation would work to that end.

The representative of Japan said that questions regarding terms of reference and other matters related to the working party should be resolved expeditiously, and hoped that work would begin soon which would lead to a successful outcome.

The representative of Australia said that his country and China already shared a growing trade partnership which would be enhanced by China's full participation in GATT. The working party would take account of China's needs as well as those of the GATT itself.

The representative of Sweden, on behalf of the Nordic countries, welcomed China's fuller participation in GATT as a contracting party. The Memorandum included much useful information and also gave rise to a number of questions which could be answered in the working party. The Nordic countries expected the outcome to be highly beneficial to the trading community, to GATT and to China.

The Chairman proposed that the Council take note of the statements, agree to establish a working party open to all contracting parties indicating their wish to participate in the Working Party, authorize him to conduct consultations with interested parties on presiding arrangements, the terms of reference of the Working Party and any other matters related to the decision the Council had just taken. He further proposed that contracting parties aim to conclude these consultations within fifteen days so that he could report the outcome to the next Council meeting for its approval. All contracting parties were invited to submit questions concerning China's foreign trade régime, in writing, to the Secretariat, which would forward them to China.

This was agreed.

The representative of Pakistan expressed his delegation's satisfaction with the Council's decision to establish the Working Party and to initiate the related procedures and the process for considering China's request. However, his delegation would have preferred agreement on all the elements required and necessary for the Working Party to begin its work. Pakistan was certain that China's assumption of its rightful rôle in the multilateral trading system based on GATT would considerably strengthen GATT itself.

The Council took note of the statement.

5. United States - Trade measures affecting Nicaragua - Panel report (C/W/506, L/6053)

The Chairman recalled that at its February 1987 meeting, the Council had agreed to defer consideration of this item, which had been placed on the agenda of the present meeting at the request of Nicaragua. He informed the Council that he had been asked to consult informally with interested delegations on this matter and that it was his intention to do so after the meeting.

The Council took note of this information and agreed to defer consideration of this matter until its next meeting.

6. United States - Customs user fee (L/6113)
(a) Recourse to Article XXIII:2 by Canada (L/6130)
(b) Recourse to Article XXIII:2 by the European Economic Community (L/6131)

The Chairman recalled that at the Council's meeting in February 1987, the European Economic Community had indicated its intention to request the establishment of a panel to examine this matter. Since then, communications had been received from Canada and the European Economic Community and had been circulated by the Secretariat in L/6130 and L/6131 respectively. He suggested that the Council consider the two sub-items at the same time, and emphasized that each related to a separate complaint.

The representative of Canada recalled that his delegation had first raised this matter at the Council's meeting in October 1986.[1] Article XXII consultations had been held in December 1986 and in February 1987, during which Canada had made known its view that the ad valorem user fee as applied by the United States did not correspond to the cost of processing the importation of a product and resulted in revenues not commensurate with the cost of services rendered. Canada was not contesting that customs user fees were provided for under the General Agreement, but maintained that the US fees, as currently structured, were not consistent with GATT provisions, in particular Articles II:2(c) and VIII:1(a). As the Article XXII consultations had not resulted in a satisfactory resolution of this bilateral dispute, Canada was requesting that the Council establish a panel to examine this particular matter and to make such findings and recommendations as would be appropriate. Canada was asking the US delegation to agree to this request at the present meeting. In the expectation that the United States would also agree to the request by the European Communities, Canada was prepared to cooperate with the other parties to this dispute in establishing effective and efficient procedures to expedite the matter, on the understanding that this would not affect the substantive or procedural rights of any of the parties involved.

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[1] See C/M/202, item 9: United States - Omnibus Budget Reconciliation Act.

The representative of the European Communities said that consultations under both Article XXII and XXIII had been held with the United States on this matter. The Community's concerns were similar to Canada's, in particular regarding the ad valorem basis of the fee. The Community considered that the customs user fee on an ad valorem basis did not correspond to the cost of providing the service of processing the import of a product and resulted in revenues not commensurate with the cost of services rendered. The fee was not consistent with the provisions of Articles II and VIII. The consultations had not resulted in a satisfactory solution; therefore the Community, like Canada, was requesting establishment of a panel and was ready to cooperate fully to reach a satisfactory procedural understanding in order that this panel could deal with the two requests at the same time.

The representative of the United States recalled that his delegation had addressed this matter on two previous occasions in the Council; its position had not changed. The United States therefore regretted that Canada and the Community had decided to seek dispute settlement on the heretofore unchallenged use of ad valorem customs user fees. His delegation continued to believe that the US fee was neither inconsistent with the General Agreement nor impairing trade. Articles II and VIII clearly permitted a contracting party to impose, on the importation of any product, fees or other charges commensurate with the cost of services rendered, as long as the user fee was limited to the approximate cost of services rendered and did not represent an indirect protection to domestic products or a taxation of imports for fiscal purposes. The United States had met all those criteria in designing a GATT-consistent user fee. The claim that ad valorem user fees were inherently inconsistent with GATT ignored the provisions of Articles II and VIII, and implied that customs services had to be provided gratis. His delegation did not believe that a panel or the CONTRACTING PARTIES would accept such a position. As he had noted at the February Council meeting, 17 other GATT contracting parties, including two member States of the Community, maintained similar fees, often at much higher rates, and certainly had a stake in the outcome of this dispute. He had asked the Council then to reflect carefully on the implications this matter had for a large number of contracting parties in addition to the United States, and was interested in hearing views on the question of ad valorem customs user fees at the present meeting. His delegation wondered if this matter might not be more appropriately examined in a working party than in a panel, given the interests of so many contracting parties in the issue. He also wanted to hear views on that question before the Council took any decision.

The representatives of Indonesia on behalf of the ASEAN contracting parties, Australia, Japan and India said that their delegations had participated in the aforementioned consultations, supported the establishment of a panel and reserved their right to make a submission to it.[1]

The representative of Indonesia, on behalf of the ASEAN contracting parties, expressed concern that the customs user fee would have adverse effects on exports to the United States.

The representative of Australia said that the issue before the Council was the request by Canada and by the Community to establish a panel to examine a specific measure introduced by the United States. Article XXII consultations on the customs user fee had made clear the widely held view that this fee was not in conformity with the United States' GATT obligations, as well as individual contracting parties' concerns over its impact on their trade. He suggested that if the United States had concerns over the legality of customs user fees applied by other contracting parties, it had its own scope for redress. However, access to redress under GATT for specific trade problems should not be conditional on general adherence to a provision of the General Agreement. His delegation therefore urged the United States to agree to the requests for a panel.

The representative of Japan said that in Japan's view, the imposition of an across-the-board customs user fee was inconsistent with Articles II and VIII.

The representative of Canada, noting the United States' preference for the establishment of a working party to examine this complaint, agreed that this issue was of broad interest, as the fee did affect a large number of contracting parties; Canada did not agree, however, that a working party would be an effective way to address this bilateral dispute. Canada's request for a panel related solely to the US fees. As the United States' largest single trading partner, Canada was affected more than any other contracting party by this measure. His delegation could not accept the establishment of a working party to examine this complaint, and repeated its request that a panel be established at the present meeting. Canada would not object to the setting up of a working party to examine the larger question of fees in general if contracting parties so decided, provided such a working party would be independent of the establishment of a panel and would not interfere with its work.

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[1] See Understanding regarding Notification, Consultation, Dispute Settlement and Surveillance, paragraph 15 (BISD 26S/213).

The representative of Jamaica, referring to the US preference for a working party to deal with what was clearly a dispute, asked whether such a working party would work more expeditiously than a panel, would look at the question of user fees across-the-board and examine those in force in the 18 contracting parties concerned and perhaps in others, and on that basis would make a recommendation to the Council.

The representative of the United States said that his delegation would not prevent a panel from being established on this matter if there was a consensus in the Council to do so. However, the United States continued to hold the view that this matter involved the interests of a large number of contracting parties. His delegation therefore suggested that if a panel were established, the Council Chairman be authorized to work out an arrangement for the participation of other interested parties, and to consult with all interested contracting parties to develop terms of reference that took into account the peculiar circumstances of this case.

The representative of the European Communities welcomed the fact that the United States was ready to accept the establishment of a panel to deal with the specific question at hand. While consultations could be held on the panel's terms of reference and composition, the procedural questions relating to a panel on an essentially bilateral, or in this case trilateral, dispute should not be mixed with questions of a more general character which might be submitted to a working party; the Community did not think the latter was appropriate at this stage.

The Chairman said that there appeared to be a consensus on the establishment of a panel and proposed that the Council take note of the statements, agree to establish a panel, and authorize him to draw up the terms of reference and to designate the Chairman and members of the panel in consultation with the parties concerned and with interested delegations.

The representative of Jamaica, referring to the Community's statement, said his delegation did not believe that consultations on terms of reference could go beyond the issues on which there had already been consultations, nor could terms of reference go beyond the specific complaints for which a panel was established. Customs user fees maintained by other contracting parties could not be examined by such a panel, but might be taken up by a working party.

The representative of Canada welcomed the consensus on the establishment of a panel. Canada could accept that delegations which had expressed an interest in this issue in the Council would be consulted. His delegation urged that the proposed terms of reference be clear.

The representative of Australia welcomed the United States' positive approach to the dispute settlement process.

The representative of the United States reserved the right to pursue the interests he had expressed earlier, in drawing up the terms of reference and in discussing participation in the panel.

The representative of the European Communities said that this matter involved two bilateral disputes. The Community would cooperate in working out procedures to expedite this matter and would agree to have one panel examine both requests. Standard terms of reference and standard procedures should be applied, and the panel should examine the two requests and nothing more.

The representative of Canada said that the Community's statement clarified the situation. The "understanding" to which he had referred earlier was the 1979 Understanding regarding Notification, Consultation, Dispute Settlement and Surveillance[1] and nothing else.

The Council took note of the statements, agreed to establish a panel, and authorized the Council Chairman to draw up the terms of reference and to designate the Chairman and members of the Panel in consultation with the parties concerned and with interested delegations.

7. Japan - Restrictions on imports of herring, pollock and surimi - Recourse to Article XXIII:2 by the United States (L/6070)

The Chairman recalled that this matter had been considered by the Council and by the CONTRACTING PARTIES in November 1986, and again at the Council's February meeting. The item had been put on the agenda of the present meeting at the request of the United States.

The representative of the United States said that from 24 through 27 February, Japan and the United States had held a fifth round of Article XXIII:1 consultations in an effort to resolve their differences. In light of the progress made, the United States did not believe it necessary to press for establishment of a panel at this time, but reserved its right to do so at a future date should the issue not be resolved to its satisfaction.

The representative of Japan confirmed that progress had been made on this matter. Japan agreed that it was not necessary to establish a panel.

The Council took note of the statements.

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[1] BISD 26S/210.

8. Canada - Restrictions on exports of unprocessed salmon and herring - Recourse to Article XXIII:2 by the United States (L/6132)

The representative of the United States recalled that on 16 May 1986, his delegation had requested Article XXIII:1 consultations with Canada regarding that country's prohibition on the export of unprocessed herring and pink and sockeye salmon. Consultations had been held in September and October 1986. Canada had stated that the restrictions in question were permissible under the General Agreement and that it would not remove them or allow US processors effective access to unprocessed Canadian herring and salmon. The United States believed that these restrictions were not permitted under Article XI and were not covered by any of the special provisions of Articles XI or XX. The primary purpose and effect of the restrictions was to keep jobs in Canada by requiring Canadian processing as a condition of export; US processors were thus denied adequate access to supplies of unprocessed Canadian herring and salmon. The United States maintained no comparable restriction, and in recent years Canadian buyers had made sizeable purchases of unprocessed fish caught in US waters. Therefore, his Government believed that it was appropriate and necessary to submit this issue to a panel for a recommendation as soon as possible.

The representative of Canada said that the measures maintained by Canada were in full conformity with its GATT obligations. The purpose of the measures, as previously indicated, was the conservation of a Canadian resource. Nevertheless, his delegation recognized the US concerns. Canada supported the effective operation of the dispute settlement process in the GATT, and thus could agree to establish a panel in the full confidence that the measures would be vindicated. However, his delegation was not in a position to agree on precise terms of reference and wanted to consult with its capital beforehand.

The Chairman proposed that the Council take note of the statements, agree to establish a panel, and authorize him to draw up the terms of reference and to designate the Chairman and members of the Panel in consultation with the parties concerned.

The Council so agreed.

9. Japan - Trade in semi-conductors - Recourse to Article XXIII:2 by the European Economic Community (L/6129, L/6076)

The Chairman drew attention to the communication from the European Economic Community in L/6129.

The representative of the European Communities recalled that the US/Japan arrangement on trade in semi-conductors, signed on 2 September 1986, had been notified to GATT on 27 October 1986 (L/6076). Not considering this notification sufficient, the Community had held Article XXII consultations with the two signatories in November 1986 and January 1987, in which a large number of other contracting parties had participated. Despite the clarifications provided by the two parties, the Community considered that the arrangement involved collusion by two giants in this field to manage international trade in semi-conductors. The Community was particularly concerned with the provision for Japan's price monitoring of semi-conductor exports to countries other than the United States. It was not acceptable that two countries had entered into an arrangement which included provisions concerning third parties. The Community had equal concerns regarding access to the Japanese market. The products in question were used by all high-technology industries, and the Community was dependent mainly on Japan but also on the United States for them. In the spirit of the multilateral trading system, the Community had tried other ways to deal with this matter, but the only solution left was recourse to Article XXIII:2. Accordingly, the Community was asking the Council to establish a panel to examine the monitoring measures applied by Japan, which it considered as contravening Articles XI and VI of the General Agreement, as well as the provisions and procedures governing access to the Japanese market. The Community had already invoked the special dispute settlement procedures of the Anti-Dumping Code (BISD 26S/171), which should be seen as going in parallel with the present request.

The representative of Japan referred to the three points raised by the Community regarding trade in semi-conductors, namely, third-country monitoring, access to the Japanese market for semi-conductors, and transparency surrounding the arrangement between Japan and the United States, and said that each had been explained fully at the consultation under Article 15 of the Anti-Dumping Code and at the consultations held under Article XXII:1, which had been attended by a large number of interested countries. He said that third-country monitoring was an attempt by the exporting country to prevent dumping by monitoring costs and export prices; it could not be classified as any of the anti-dumping measures stipulated either in the General Agreement or in the Code. Measures concerning access to the Japanese market were intended for all foreign-based semi-conductor firms, and contravened neither the spirit nor the letter of the General Agreement, since they involved no discrimination among foreign suppliers. Concerning transparency, the text of the arrangement and other related documents made public so far represented the totality of the arrangements between Japan and the United States. Japan was ready to continue the Article XXII:1 consultations on this issue should the Community have any further questions or comments. If the Community claimed that the third-country monitoring was a dumping issue, consultations should preferably be continued under Article 15 of

the Code which stipulated that if disputes arose between parties relating to rights and obligations under the Code, parties should complete the dispute settlement procedures under it before availing themselves of any GATT rights. His delegation understood that the Community had no such intention, and for that reason Japan was ready to address the matter in Article XXII:1 consultations. Moreover, if the Community should claim that any benefit accruing to it had been nullified or impaired, as described in Article XXIII, as a result of the conclusion of the arrangement, it should first present in detail the nature of the damage it had suffered; a request for Article XXIII:1 consultations would be appropriate for that purpose, and Japan would give sympathetic consideration to it. However, for the reasons mentioned above, Japan could not accept the Community's request for the establishment of a panel.

The representative of the United States recalled that this issue had most recently been before the Council on 27 October 1986, and that the United States had welcomed the opportunity to discuss the US/Japan arrangement in the two lengthy Article XXII:1 consultations requested by the European Communities. The United States had prepared detailed answers to questions raised and had hoped that when these and the US presentation had been reviewed and reflected on, it would have been clear that there were no issues to be raised in dispute settlement. On market access, the United States had been definitive; the terms of the arrangement and its implementation applied to all foreign-based semi-conductor firms. The Community's ability to take advantage of this market-opening opportunity was limited only by the effort expended by its semi-conductor companies. The Community's claim that the "anti-dumping aspect" was the subject of a dispute settlement procedure under the Code was incorrect. The Community had requested consultations under Article 15 of the Code, which had been held on 5 November 1986; however, the United States had made clear then, and at the Article XXII:1 consultations on 20 November, that since the issue did not concern anti-dumping action by an importing country, there could be no further action under Article 15. There was no nullification or impairment under GATT Article XI. Under the arrangement, Japan monitored exports of designated semi-conductor products; the Community had not alleged any restriction on exports to the Community, nor could it do so. Thus, there could not possibly be any basis for the Community's contention nor any factual underpinning for the complaint; accordingly, there was no basis for establishment of a panel. Although it was not common that one country assured access for another's products along with its own in negotiations, one could hope that in a similar situation, the Community would act as the United States had done to open a market for all suppliers. Until the Community could establish that its companies were being discriminated against, which it could not do, there was no basis for its claim of nullification and impairment and again no basis for a panel. The United States also found no basis for the Community's

claim regarding Japan's third-country monitoring; Article VI was inapplicable. As the United States had said repeatedly during the Article XXII:1 consultations, Japan's monitoring was not an anti-dumping action, since the provisions of Article VI and the Code referred to actions taken by an importing country.

The representative of Hong Kong supported the Community's request for establishment of a panel at the present meeting because of the damage and disruption to trade already being caused by the practices in question. Hong Kong had a substantial interest in this matter and had imported between eight and ten per cent of total Japanese semi-conductor exports over the past four years. Semi-conductors were used as components in electronic products for export all over the world and not just to the United States. Hong Kong considered its interests to have been adversely affected by certain provisions of the arrangement and wanted to be associated with the panel proceedings and to make a submission to it, having regard to paragraph 15 of the Understanding regarding Notification, Consultation, Dispute Settlement and Surveillance (BISD 26S/213). He stressed that Hong Kong's interests in this matter were not necessarily identical to the Community's and that it was Hong Kong's understanding that the present disruption to world trade in semi-conductors could not be blamed solely on Japan. The arrangement could be interpreted as an attempt to establish a price cartel between the world's two largest semi-conductor producers that would deny open competition and comparative advantage, and force third parties out of the market; that was already happening. Hong Kong reserved its right to seek a separate panel at some future meeting of the Council and, if necessary, to do so against both the United States and Japan.

The representatives of Canada, Singapore, Switzerland and Malaysia said they had participated in the Article XXII:1 consultations and had voiced their concerns, which were similar to those expressed by Hong Kong. The same representatives, together with Sweden, speaking on behalf of the Nordic countries, supported the request for the establishment of a panel and reserved their rights to make a submission to it under paragraph 15 of the Understanding.

The representative of the European Communities said that Japan's argument was unusual, in that it was reversing the process and asking the complainant to justify its case to the Council before the panel could examine whether or not there was a violation. It was for the panel itself to examine the case and make recommendations to the Council. If Japan and the United States were so convinced of the GATT-conformity of the arrangement, they had nothing to fear in a panel. It seemed that Japan frequently blocked the dispute settlement process by refusing to establish a panel. He also welcomed the fact that at this meeting Canada

and the United States had each accepted panels.[1] He noted that many contracting parties had supported the establishment of a panel; this should be done at the present meeting, and the panel should start its work as soon as possible. There was no reason to refuse establishment of a panel. To do so would create a dangerous precedent for the future.

The representative of Japan said that Japan was not refusing a panel, but rather was saying that this matter had to be studied carefully. Japan had tried to do this through the Article XXII:1 consultations and was willing to continue to do so through Article XXIII:1. One could then assess whether points had been missed on the Community's concerns and if damages had been incurred. His delegation therefore suggested a continuation of either Article XXII:1 or XXIII:1 consultations.

The representative of the European Communities reminded Japan of the 1960 Decision[2] which provided for going directly from Article XXII:1 consultations to Article XXIII:2. Many countries had participated in the Article XXII:1 consultations and further consultations of any kind would be pointless.

The representative of Hong Kong recalled that at a previous Council meeting, his delegation had drawn attention to the undesirable consequences for the dispute settlement mechanism of the refusal of parties complained against to establish a panel. The case before the Council was clearly a dispute, and it was a panel's responsibility to hear the arguments, make a judgement and report its findings to the Council. He urged that such a panel be allowed to proceed with its work.

The representative of the European Communities said that this situation was extremely dangerous. The refusal by Japan, supported by the United States, could have serious consequences, giving the Community, in similar circumstances, no choice but to adopt the same attitude and to block the whole dispute settlement system. If a panel were requested, it should be agreed to unless there were vital reasons not to do so. The same rules should apply to all trading partners, whatever their size; major partners had a particular responsibility in this respect. This case was an example of an inadequate balance of benefits where a contracting party hid behind the letter of the rules rather than complying with their spirit. He called on the Chairman to hold consultations, since in the absence of minimum satisfaction for the Community's concerns by the next Council meeting, the situation would

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[1] Item nos. 6 and 8 respectively.

[2] (BISD 9S/19, paragraph 9)

become explosive, with grave consequences for the Uruguay Round. He emphasized the seriousness of this political warning; this situation could lead to a blockage of the whole system and of the Uruguay Round.

The representative of Nigeria referred to the larger interests of the General Agreement and said that the issues raised by the Community were extremely important. All contracting parties should consider the political consequences for the Uruguay Round of a departure from GATT tradition and practice regarding the virtually automatic acceptance of panels. He appealed to the delegations opposed to establishing a panel to think again so that agreement could be reached at the next meeting.

The representative of Hong Kong said that to defer this matter until the next meeting was not sufficient. He suggested that the Chairman use his good offices to consult with interested parties on an informal basis in order to avoid a similar blockage at the next meeting and to ensure that an agreed basis to move forward with a panel existed by that time.

The representative of Japan said that some statements appeared exaggerated in that they generalized specific questions. Japan's view was that a request for a panel should be accompanied by sufficient justification for its establishment. Even after the Article XXII:1 consultations, Japan did not know what the remaining issues were. The establishment of a panel, if done without careful examination, would also be dangerous for the system.

The representative of the European Communities reiterated that the major trading partners should act responsibly; that was why he had spoken of the complicity of the second major partner. He noted that four of the points raised under "Other Business" at the present meeting concerned the Community and that some of them might lead to panel requests. If the Community were to block those requests for reasons of national pride, it would lead to a blockage not only of the operation of the GATT but also of the Uruguay Round. He reiterated that this warning was serious and should not be underestimated. If the present request for a panel was refused, the matter was sufficiently critical to risk blocking the whole system.

The representative of Singapore said that, as the representatives of the European Communities and Hong Kong had mentioned, it was a basic principle of the GATT and a fundamental right of any contracting party to have a panel examine its complaint. Singapore had supported the establishment of a panel for two reasons: serious and genuine concerns had been voiced over provisions of the arrangement, and transparency was needed. The establishment of a panel did not prejudice the outcome of the case or the views expressed. Singapore agreed that the establishment of a panel should not be left to the next meeting.

The representative of Yugoslavia referred to both European and US press coverage of the arrangement, which showed that the US economy was not satisfied with it. Her delegation agreed with Hong Kong as to how the Council should proceed.

The Chairman, said that there seemed to be a majority of statements in favour of establishing a panel, and asked Japan and the United States whether it would be possible to have a consensus to establish a panel at the present meeting.

The representative of Japan said that for reasons already explained in detail, his delegation could not accept the establishment of a panel. However, Japan would not prevent the Chairman from undertaking consultations.

The representative of the United States said that his delegation saw no basis for a panel.

The representative of the European Communities warned of the dangers that abuse of the concept of consensus could cause. While the Community understood that the Japanese and US representatives had to consult with their capitals, he could not allow them to prevent the Chairman from consulting. The Community was compelled to be patient and to hope that consultation would lead to satisfactory results.

The Chairman proposed that the Council take note of the statements and of the strong wish to settle this matter at the next Council meeting, and revert to this item at that meeting, when he would report on the results of his consultations with the parties concerned. He would include in those consultations all matters relevant to the item in the interest of advancing settlement of the issues raised under it.

The representative of the European Communities asked the Chairman to include the terms of reference and the composition of the Panel in his consultations.

The representative of the United States said that his delegation wanted to reflect on some of the statements made on this item. He noted that at the February Council meeting, the United States had agreed to a panel on the "Superfund" issue the first time it arose[1]; at the present meeting, the United States had agreed to another panel (item no. 6) the first time it was requested. The United States believed that an effective dispute settlement process was extremely important for GATT, and was pleased that the Community was now expressing views that in the

[1] (C/M/206, item no. 8.)

past it was criticized for not having. The United States would in the future watch closely the Community's and all other countries' behaviour on dispute settlement requests. He noted the particular approach taken by the Community towards securing a consensus at the present meeting. The United States would think of consensus in the same way as the Community, and hoped that all contracting parties would do likewise.

The Council agreed to the Chairman's proposal.

10. Pension and salary matters (Spec(87)10)

The Chairman drew attention to a recently circulated document (Spec(87)10) containing the report from the Chairman of the Informal Advisory Group established in July 1986 by the then Chairman of the CONTRACTING PARTIES "to advise on ways of finding solutions to the problems concerning the salaries and pensions of the GATT professional and higher category officers". The Chairman of the Informal Advisory Group, Mr. Feij (Netherlands), had sent his report to the present Chairman of the CONTRACTING PARTIES, who had forwarded a copy of the report to the Council Chairman with the suggestion that it might be placed before the Council at the present meeting. The Chairman of the CONTRACTING PARTIES had also sent copies of the report to the Chairman of the Committee on Budget, Finance and Administration as well as to the Director-General, for their information.

The Chairman of the Informal Advisory Group, Mr. Feij, introduced the report, recalling that it had been almost a year since the GATT Staff Council's first representation to the Chairman of the CONTRACTING PARTIES about the erosion of salaries and pensions due to the decline of the value of the US dollar. The situation had since worsened, especially regarding salaries. A recent further decline of the dollar had shown that the so-called "remuneration correction factor" introduced in September 1986 had not had the stabilizing effect anticipated. For this reason, the Advisory Group had decided to present at the present stage the introductory part of its report and the chapter on salaries. He drew attention to paragraph 28, which contained a procedural recommendation that the Council invite the Budget Committee to examine some of the options and to report to the Council at its meeting in May. So as to avoid further delay, he urged the Council to follow this recommendation at the present meeting. With regard to the pension problems, the effect of the decline in the dollar's value would be felt only at a later stage, but in view of the equally serious concerns about these problems, the Advisory Group hoped to present the remaining chapter of the report in the next few weeks.

The Director-General recalled that his previous statements on this subject at Council meetings had been under "Other Business" in May 1986 and under general matters pertaining to the Budget Committee in July. He was pleased to see that the matter had moved up in status to become a formal and specific item on the agenda of the present meeting, and took this as a welcome sign of recognition of the importance of this subject and the critical relationship it had to the welfare and morale of the GATT Secretariat. Another difference was that previously, he had given his views without any specific or formal documentation accompanying them. The Council now had before it the formal report of the Advisory Group. He expressed his gratitude and that of the Secretariat and, he hoped, all members of the Council to the Advisory Group for all its efforts and particularly to Mr. Feij for his introduction to the report. Mr. Feij's views would certainly help contracting parties to focus more clearly on the report's more important elements. He was sure that the two major points of concern to the staff, namely, the erosion of take-home salaries and the question of pensions, were very well known to all, and he expressed his sincere hope that the questions and issues raised in the report would be considered very seriously by all contracting parties and with a genuine sense of urgency. He emphasized that there was a need for positive action aimed at protecting the excellent working environment enjoyed in the GATT. He stressed that he was seeking durable solutions inside the common system, indeed a representative of the Secretariat was currently in New York attending inter-agency meetings at which the problem of currency fluctuations would be addressed. It was the fervent hope of every executive head in Geneva that a good long-term way of dealing with this problem would be found, but the wheels of the common system ground slowly, while the staff's problem, as the report stated, was urgent and acute. His request for action should be seen in this light. Pending the outcome of deliberations in New York, the GATT should act now in some appropriate and feasible manner to offset the adverse effects of currency fluctuations on take-home pay and to restore some parity with conditions enjoyed at UN Headquarters in New York. It was gratifying to note that the Advisory Group had approached these questions in this same constructive spirit. The report before the Council not only analysed and described the origins of the problem and the growing deterioration of the staff's salaries and pensions but went further and made concrete recommendations for action by the CONTRACTING PARTIES. He hoped that these recommendations would receive the attention they deserved.

The representative of the United States said that his delegation shared the Director-General's concern over the erosion of professional staff salaries and pensions resulting from exchange rate fluctuation. He could attest that those representatives who were paid in dollars had similar concerns. His delegation shared the Director-General's hope that the current meeting at UN Headquarters would solve these problems. However, if the mechanism and application of the UN common system were

not resolving this situation, and if, as the Advisory Group had found, GATT professional staff were being unfairly disadvantaged, then any remedial proposals should be examined seriously and expeditiously. His delegation therefore hoped that the budgetary implications of such proposals could be examined soon so that the Council could have the benefit of the Budget Committee's advice when it next took up this problem. He expressed his delegation's appreciation for the truly professional attitude and performance of the GATT staff. Contracting parties owed it to the staff -- and to themselves -- to resolve this matter in a fair and equitable manner.

The representative of Japan, on behalf of Mr. Chiba, the former Chairman of the CONTRACTING PARTIES who had established the Informal Advisory Group, expressed appreciation to the body led by Mr. Feij. Japan recognized the matters of salaries and pensions as serious problems affecting the living conditions and thereby the morale of the GATT staff, who played an important rôle in the GATT system and also in the successful carrying out of the Uruguay Round. His delegation felt that the Budget Committee should look both at the intermediate and long-term options recommended in the report.

The Chairman noted that both the US representative and the Advisory Group had proposed that the matter be considered by the Budget Committee and that the Group had highlighted two recommendations in particular. He suggested that the Council take note of the statements by Mr. Feij, the Director-General and representatives, as well as the information contained in Spec(87)10. He also suggested that the Council agree to refer this matter to the Committee on Budget, Finance and Administration for consideration and to ask it to make appropriate recommendations for consideration, if possible, by the May meeting of the Council. He invited the Chairman of the Committee on Budget, Finance and Administration to reflect on the desirability for the Committee to initiate its meetings sooner rather than later in order to provide enough time to examine this matter and to prepare recommendations to be considered by the Council at its May meeting.

The Council so agreed.

11. Italy - EEC import duties on bananas (L/6138)

The representative of Colombia, speaking under "Other Business", noted that on 25 February 1987 his delegation had formally requested Article XXII:1 consultations with the European Economic Community regarding Colombian banana exports to Italy. Draft legislation had been introduced in the Italian Parliament which would eliminate the consumer tax for bananas imported from the ACP and other overseas countries. Colombia felt that its banana exports would be discriminated against, in

violation of Articles I and III of the General Agreement. He hoped that consultations would lead to a satisfactory solution and that the tax would be eliminated in accordance with GATT principles and rules.

The representative of the European Communities said that Colombia's statement would be reported to, and reviewed with, the Community and the Italian authorities. The Community naturally accepted the request for Article XXII:1 consultations to be held in the near future.

The representative of the Philippines expressed his delegation's interest in participating in any Article XXII:1 consultations on this matter.

The Council took note of the statements.

12. European Economic Community - Proposed internal tax on edible fats and oils

The representative of Indonesia on behalf of the ASEAN contracting parties, speaking under "Other Business", referred to a proposal for an internal tax on edible fats and oils under consideration within the European Economic Community. The ASEAN member Governments were extremely concerned over the proposed tax which, on top of an already discriminatory customs tariffs régime on crude and processed oils, could very seriously undermine their exports of palm oil, palm kernel oil and coconut oil to the Community. The proposed tax represented an attempt to raise revenue for the Community's farm sector at the expense and to the detriment of less-developed contracting parties such as the ASEAN countries, and would not be in keeping with the commitments in Part IV of the General Agreement. Opportunities for exports to the Community had already suffered from practices against entry of processed and manufactured products as well as the subsidization of farm products inside and outside the Community. Not only would ASEAN countries be faced with the prospect of a much depleted Community market for vegetable oils, but their export opportunities elsewhere would be threatened. The proposed tax would also depress world market prices for vegetable oils and fats at a time when ASEAN countries were still struggling to get out of the throes of recession and low commodity prices. He cited statistics showing how very important vegetable oils were to their export sectors. In the context of the Punta del Este commitments, ASEAN viewed the contemplated measures as retrogressive and as undermining confidence in the Uruguay Round, and urged the Community's member States to disapprove the proposed tax.

The representative of Iceland expressed his Government's grave concern over the proposed tax on oils and fats, including marine oils. If applied as proposed, the tax could have a serious impact on Iceland's

economy. Iceland had held bilateral talks with the European Communities at the highest level. He expressed the hope, also on behalf of Norway which had raised the matter with the Community, that the Commission would reconsider the proposal.

The representative of Australia supported the previous statements asking the Community to reconsider the proposed tax, and urged it not to proceed with the measure.

The representative of Hungary joined the previous speakers in expressing concern with the proposed tax; Hungary had been a traditional supplier of vegetable oils, especially sunflower, to the Community. Market access for other agricultural products had already been squeezed due to different changes in the Community's tax system; a similar situation in vegetable oils should be avoided.

The representative of Canada said that Canada was an important vegetable oil exporter to the Community, and associated his delegation with the concerns expressed by other representatives.

The representative of the United States noted that the recently approved fats and oils tax would restrict US exports of oilseeds and fish oil, which constituted the largest US agricultural export to the Community, accounting for 40 per cent of such exports. The United States urged the Community to consider seriously the implications of approving the tax and to reconsider the proposal.

The representative of Argentina expressed his delegation's concern with this new restriction which could have unpredictable and serious consequences, and urged the Community to reconsider the proposal.

The representative of the European Communities referred to the democratic process whereby one could, just as the case of the United States, follow the preparation of the Community's trade measures, react to proposals and request discussions. His delegation had taken note of the statements and of the information given by Indonesia. He cautioned, however, against mistaking a proposal for an adopted measure. Regarding Indonesia's claim that the measure would exacerbate an already discriminatory situation, he said that the so-called "internal tax" should not be considered in isolation from the overall context. The Community had introduced considerable changes in the Common Agricultural Policy in recent years. In the framework of the current prices "package", it sought: to bring more balance to the various markets for its products, to avoid surplus stocks and to keep the Community's agriculture budget under control. It was in this context that for 1987-88, the Commission had proposed a range of measures for vegetable oils and fats. He outlined the policy which had been proposed to the European Council of Ministers and said that to speak of an internal tax

when a price stabilization policy was at issue was perhaps correct but incomplete. The proposed tax measure should be seen in the proper context of the Community's general agricultural policy, which aimed at creating stable prices, the Uruguay Round negotiations and the Community's ambitions and objectives therein. He would report to his authorities in detail the fears expressed. He was confident that if the measures were to be adopted, this would be done in full conformity with the Community's GATT obligations and in the spirit of Punta del Este.

The Council took note of the statements.

13. European Economic Community - Proposed import restrictions on certain agricultural products

The representative of Chile, speaking under "Other Business", said that his delegation had been informed of the intention of certain countries to apply import restrictions on certain agricultural products, in particular apples, during the export season for this product in the southern hemisphere. Exporting countries had been officially informed that should they refuse voluntary restraints, quotas would be applied through a combination of licenses and prior import deposits. Such measures, if applied, would cause Chile to suffer losses of more than US$7 million, as well as indirect costs to its economy, thus impeding its efforts to honour foreign debt commitments. Such threats caused great instability and uncertainty in international agricultural trade which was already in a critical situation, and worked against the credibility and confidence necessary for the beginning of the Uruguay Round. Such measures, if implemented, would endanger the Punta del Este standstill commitment, would be contrary to Articles XI and XIII and would ignore the contents of the Panel report adopted in November 1980[1]. Chile asked all contracting parties to respect strictly the solid political commitment on standstill and the provisions of the General Agreement.

The representative of New Zealand expressed his authorities' concern at the measures being considered by the European Economic Community to restrain apple imports from southern hemisphere suppliers. Such trade was of long-standing importance to New Zealand and had been built on the security of a GATT binding. Apple imports from the southern hemisphere merely supplemented northern hemisphere apple supplies, and had constituted only slightly more than 6 per cent of the Community's

[1]Panel report on EEC Restrictions on Imports of Apples from Chile (BISD 27S/98).

domestic production in 1985. Consequently, New Zealand could see no basis for the imposition of restraints on these imports, or for any claim, according to GATT criteria, that such imports could cause or threaten serious injury to the Community's domestic producers, and thus permit the suspension of obligations under a GATT binding. The discussion of such restraints had already created uncertainty in the trade, at a time when contracting parties had made a commitment to standstill at the highest political level. New Zealand was continuing bilateral discussions and expected, against the background of the standstill commitment, that the proposed measures would not be adopted.

The representative of Argentina said that the proposed measures amounted to a proposal for voluntary restraints, which was contrary to the Community's commitment in the Punta del Este Ministerial Declaration. The small percentage of the Community's domestic market which these imports comprised could not justify restrictions, and Argentina appealed to the EC Commission to modify its position on this proposal.

The representative of Australia supported the statements by Chile, New Zealand and Argentina. While these were only proposed measures, they were nevertheless disruptive. His country, too, had already made shipping arrangements for these products. He asked the Community to bear this, and its Punta del Este commitment, in mind and to put the proposal aside.

The representative of the European Communities said that the Punta del Este Declaration was a political commitment of great value which had to be evaluated correctly. That commitment did not suggest that contracting parties had abandoned their right to take any action, but that whatever measures they took should be in conformity with the General Agreement and should not be excessive. The Community had preferred, before taking any action, to discuss contracting parties' concerns, and bilateral discussions had taken place to allow interested parties to register such concerns. He noted that the Community had as yet taken no action; therefore, expressions of concern should not be stated as accusations. He assured contracting parties that whatever decision the Community took would be in conformity with its obligations and commitments, which the Community took very seriously, and would not be excessive.

The representative of Chile said that his delegation had not mentioned the Community in its statement precisely because the measures in question had not yet been taken. He quoted from the Punta del Este Ministerial Declaration which states that each participant agrees "not to take any trade measures in such a manner as to improve its negotiating positions" (MIN.DEC, page 4).

The Council took note of the statements.

14. European Economic Community - Proposed amendment to anti-dumping regulations

The representative of Japan, speaking under "Other Business", said that on 11 February 1987, the Commission of the European Communities had announced its decision to submit to the EC Council of Ministers an amendment to the Community anti-dumping regulations, to the effect that anti-dumping duties on finished products would automatically be applied to their parts and components. The Commission had explained that the decision was necessary to prevent circumvention of duties. This explanation merely referred to the amendment's purpose; it was not clear on what GATT grounds the amendment could be justified. The proposed measures would constitute a type of anti-dumping system which had, so far, never been introduced by any contracting party, and would contravene the provisions of the General Agreement. Japan seriously questioned the proposed measures, which would treat parts and components in the same manner as finished products; anti-dumping duties on finished products would thus be applied, without a separate anti-dumping investigation, to their parts and components, if shipped separately. In addition, such duties would be applied only if the company importing parts and components was related to a manufacturing company in the exporting country; thus, they were discriminatory. Japan believed that the proposed system would restrain foreign investments, restrict and hamper trade and hinder sound economic development within the Community. Such a system would also go against the Punta del Este commitments on standstill. Japan asked the Commission to withdraw it without delay, and reserved its right to proceed with dispute settlement procedures should the Community implement the proposed measure.

The representative of Korea said his delegation shared Japan's concerns and reserved its rights in this matter.

The representative of the European Communities noted that the proposed amendment was still under examination. The intent of the regulation was to address the problem of "screwdriver assembly", whereby components were imported and assembled with a minimum labour input by a subsidiary of the parent company in the exporting country. The proposed measure was meant to ensure that assembled goods, not the parts and components, did not circumvent anti-dumping duties that would have been applied had the finished goods been imported directly. His delegation believed that the specific nature of this matter meant that it could be more appropriately dealt with in the Committee on Anti-dumping Practices. He emphasized that this type of measure was not new and recalled that other parties to the Code (BISD 26S/171) had faced the same problem and had acted on it without creating controversy. He suggested that Japan's statement showed that it might be over-reacting without full knowledge of the content of the regulations. He pointed to the inappropriateness of using standstill as a catch-all argument where all else failed.

The representative of Singapore said that his delegation was speaking as a potential components supplier, and as a small country seeking foreign investment for industrial growth and for upgrading its economy. From what he understood, the proposed measures might have a trade-distorting or even investment-diverting effect by favouring local products and diverting foreign investment, under threat of anti-dumping measures, to the Community's members at the expense of other countries. Singapore wanted to examine the proposed measure's implications and to monitor its developments closely.

The representative of Hong Kong said that while his delegation could sympathize with the Community's desire to prevent what it perceived as circumvention of its anti-dumping measure, it was nevertheless questionable whether the proposed measure was in conformity to the letter and spirit of Article VI and to the Code. In particular, there was no provision for anti-dumping action to be extended at will from a product to its component parts. Hong Kong's interest in this issue was as a signatory to the Code and not as a participant in screwdriver assembly operations. The provisions of Article VI of the General Agreement and those of the Code applied as much to components as to a product manufactured from those components. Comparison of prices of like products and determination of injury were among their basic principles, and any unilateral moves that might undermine or set aside such principles were a matter of concern. Hong Kong therefore urged the Community to reconsider its proposal and reserved all its rights in this regard under the GATT and the Code.

The representative of Canada expressed his delegation's interest in the problems raised, but was not prepared to discuss them at the present meeting. However, those problems could not be ignored, and Canada was currently reviewing very carefully the proposed EC regulations.

The representative of the European Communities said that as a components supplier, Singapore need have no fears because the proposed regulation would not apply to components as such but to finished goods.

The Council took note of the statements.

15. Mexico - Accession obligations (L/6137 and Add.1)

The representative of the United States, speaking under "Other Business", recalled that during the negotiations on Mexico's accession to GATT, it had been recognized that in conformity with its policy of gradual substitution of tariff protection for prior import permits, Mexico would continue to eliminate the latter to the fullest extent possible, and that remaining quantitative restrictions and import permit requirements would be notified and justified in accordance with relevant

GATT provisions within six months of accession. He noted that Mexico had submitted a notification (L/6137) regarding prior import permits, and his delegation looked forward to receiving further notifications with respect to remaining quantitative restrictions and import permits in accordance with relevant GATT provisions. Mexico had also indicated that within six months of accession, it would notify its intention to accede to several of the GATT non-tariff barrier Codes, including those on licensing, customs valuation standards and anti-dumping. The United States appreciated Mexico's recent communications[1] indicating that it would sign these Codes in May, and the notification concerning the Code on subsidies and countervailing duties.

The representative of Mexico confirmed his Government's intention to sign the aforementioned Codes in May. Regarding the Subsidies Code (BISD 26S/56), Mexico had informed the Director-General and all the contracting parties concerned of its intention to carry out consultations and to enter into negotiations on its accession to this Code. Regarding the tariff items still subject to prior import permit requirements (L/6137 and Add.1), Mexico had notified its intention to substitute tariffs for the latter, respecting the timetable notified. Mexico would continue to notify products for which permits were still required. As to "residual" restrictions, his delegation wanted to discuss these in more detail with the Secretariat and any other interested delegation in order to justify them.

The Council took note of the statements.

[1] SCM/81, ADP/33, LIC/11, TBT/27, VAL/29.