

GENERAL AGREEMENT ON

RESTRICTED

TARIFFS AND TRADE

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Forty-Third Session

SUMMARY RECORD OF THE FOURTH MEETING

Held at the International Conference Centre, Geneva
on Wednesday, 2 December 1987, at 3.45 p.m.

Chairman: Mr. Mansur Ahmad (Pakistan)

Subject discussed: Report of the Council (continued)

Report of the Council (L/6267)

The CHAIRMAN referred to the report of the Council of Representatives on its work since the Forty-Second Session. 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.

Point 20. Recourse to Articles XXII and XXIII

Sub-point 20(d)(ii). Japan - Restrictions on imports of certain agricultural products

The CHAIRMAN recalled that when the Order of Business had been approved, it was agreed that consideration of the Council's report would begin with the report (L/6253) of the Panel established in October 1986 to examine the complaint by the United States.

Mr. Simon, on behalf of Mr. Pasin, Chairman of the Panel, introduced the report. He said that the Panel had met three times with the two parties to the dispute, and had heard the views of three other contracting parties. It had presented its report to the two parties on 30 October 1987. He recalled the Panel's terms of reference and said that its report contained six chapters: (1) an introductory chapter setting out the Panel's terms of reference and composition; (2) a summary of the factual aspects of the Japanese import restrictions and relevant Japanese domestic measures relating to the products at issue; (3) a summary of the main arguments presented to the Panel by the parties to the dispute; (4) a summary of arguments presented to the Panel by other contracting parties; (5) the Panel's findings and (6) its conclusions. He stressed that the Panel's conclusions, and the reasons set out for its findings, had been reached and adopted by all Panel members unanimously.

Mr. Samuels (United States) said that his country strongly supported adoption of the report. This matter concerned discretionary, non-transparent agricultural import quotas maintained by Japan for many

years and which injured the commercial interests of US exporters of competitive value-added agricultural products to Japan. In the US view, any justification for these quotas had lapsed when Japan disinvoked Article XII -- twenty-five years earlier. The United States had raised the problem of these quotas many times with Japan bilaterally and in the GATT, and in 1986 had sought its final resolution through Article XXIII. The Panel had examined the complex legal issues involved in a network of twelve import quota systems, with over 600 pages of written submissions and three panel meetings. Although the United States had not achieved all that it had sought, it was satisfied that the Panel had examined the factual evidence and the legal issues in exhaustive detail. The factual and legal basis for the findings in the report were, in the US view, impeccable. The report demonstrated that GATT was meaningful and effective in the agricultural sphere as well as in other areas.

Mr. Hatano (Japan) said that the Panel had examined an extremely complex case involving many different agricultural items. Japan had undertaken numerous consultations with the United States in accordance with the basic objectives of dispute settlement in GATT. Since the submission of the Panel's draft report to the parties, Japan had worked for a realistic settlement by making its best possible offer concerning improvement of access, and was perplexed that despite such efforts, the United States had not withdrawn its complaint and had furthermore sought adoption of the Panel report by the CONTRACTING PARTIES. Regarding the background to Japan's position on this case, he made the following points: (1) Japan was the largest net importer of agricultural products in the world and had made many contributions to world trade in agricultural goods; (2) Japan had made voluntary efforts to improve market access on top of the results of multilateral negotiations; (3) production of the 12 items for which import restrictions remained was concentrated in certain areas and accounted for a major share in the incomes, employment and economy as a whole of these areas.

He then made specific comments on the report. Japan believed that there were problems regarding the Panel's interpretation of the relevant provisions of the General Agreement, and furthermore that no appropriate consideration had been given to the "pertinent elements" referred to in the terms of reference. Thus, the Panel had drawn conclusions which were considerably lacking in fairness. First, on "like products" and "perishability", the Panel's interpretation of Article XI:2(c), which provided exceptions to the general elimination of quantitative restrictions, was not only inappropriate but also in contradiction to the CONTRACTING PARTIES' findings in a similar panel case. The report failed to indicate clear criteria according to which "like products" could be determined. It simply concluded that a product in its original form and a product processed from that product were not "like products", because different requirements were established for restrictions on the importation of products that were like the product subject to domestic supply restrictions and for restrictions on the importation of products that are processed from a product that is like the product subject to domestic supply restrictions. Japan had serious doubts about such a narrow interpretation of the term "like products" in Article XI:2(c), according to which products other than products in their original form were to be

categorically denied the possibility of being deemed "like products" of the products subject to domestic supply restrictions.

In examining the different conditions required for import restrictions to be permitted under Article XI:2(c), the Panel had focused on "perishability", and had decided on GATT consistency from that point of view. The Panel's conclusion regarding "perishability" was based on an abstract and formalistic judgement which was remote from the reality of trade in specific products. For example, the Panel had acknowledged that some of the dairy products at issue were in an early stage of processing and competed directly with fresh milk for manufacturing. It was well known that many dairy products were reversible to fresh milk; however, the Panel report seemed to conclude, without detailed examination on individual items and degree of processing, that no milk products other than fresh milk met the requirement of being processed products which would not be easily transported and stored, and which rendered ineffective the restriction on the production of fresh milk. However, dairy products such as evaporated milk, sweetened condensed milk, skimmed milk powder and whey powder were in direct competition with fresh milk and, as such, were perishable products. The Panel's finding was tantamount to affirming that, as far as dairy products were concerned, no import restrictions were allowed under Article XI:2(c)(i) except on fresh milk. Were such a finding to be accepted, import restrictions maintained by some contracting parties in order to make domestic supply restrictions effective would lose their justification.

The Panel report concluded that import restrictions on starch could not be justified under Article XI:2(c) because starch did not meet the requirement of perishability. In light of the nature of the product, such a conclusion was highly questionable, for the same reasons mentioned with respect to dairy products. Regarding the "perishability" of tomato juice and fruit products, the Panel's finding was the complete opposite of that of the Panel on the European Economic Community's program of minimum import prices, licenses and surety deposits for certain processed fruits and vegetables (BISD 25S/68), which had found that canned and barrelled tomato concentrates were perishable. This contradiction of a previous panel finding was highly questionable. The present Panel had decided that quantitative restrictions on starch and fruit products were not consistent with GATT, based on the fact that imports of fresh products which were materials for these products were not restricted. Regarding the materials concerned, Japan was trying to give utmost consideration to improvement of market access for imports. The logic of the Panel report could imply that Japan should restrict imports of raw materials in order to make import restrictions on starch consistent with GATT.

Second, the Panel's interpretation of the provisions regarding state trading not only totally ignored the drafting history of those provisions but also lacked legal precision. That drafting history made clear that the provisions regarding restrictions in the field of private trade and those concerning state-trading monopolies were originally moulded as two distinct sets of legal frameworks under the GATT. The Panel had concluded that the "General Elimination of Quantitative Restrictions" provided in Article XI:1 applied to import restrictions made effective through a state-trading

monopoly. Such a conclusion, drawn without further logical explanation, was inappropriate. The drafting history showed that the interpretive Note on Articles XI, XII, XIII, XIV and XVIII did not mean that the obligation to eliminate quantitative restrictions should apply to state-trading monopolies. The Panel had made an excessively policy-oriented judgement instead of developing a solid legal argument based on objective facts. The Panel had also concluded that the obligation to satisfy the full domestic demand stipulated in the Havana Charter applied to state-trading monopolies. However, it was clear from the provisions of Article II:4 of the General Agreement that the obligation to satisfy the full domestic demand applied only to products subject to import monopolies in respect of which the margin of protection, such as bound tariff rates, had been agreed upon. Products subject to an import monopoly, but in respect of which no concession on margins of protection had been made, were therefore outside the purview of such an obligation.

During the Panel proceedings, Japan had claimed that certain points should be taken into account as "pertinent elements"; however, the Panel had considered these irrelevant to its examination, without giving them any appropriate consideration. Some of these points were as follows: (1) In the field of trade in agricultural products, many countries imposed import restrictive measures -- such as those under the US waiver -- which were equivalent, in terms of their trade restrictive effects, to quantitative restrictions allowed under Article XI:2. (2) Current international trade in agricultural products, including dairy products and starch, was characterized by intensified competition through subsidized exports, because export subsidies for primary products were tolerated under Article XVI. On the other hand, according to the conclusion of the Panel, while import restrictions were tolerated in the case of waivers and variable levies, measures based on Article XI:2(c) were not, because of the requirement regarding "perishability". Such a conclusion was inequitable. (3) Contracting parties were currently negotiating in the Uruguay Round to establish fair, strengthened and more operationally effective GATT rules and disciplines for trade in agriculture; problems such as those he had mentioned should be treated in a comprehensive manner within such negotiations.

Japan had strong objections to some parts of the Panel report. Since 12 different items were at issue, it would not have been unnatural to set up 12 separate panels. There was no logical need to treat the 12 items in one set. At the same time, Japan believed that for GATT dispute settlement to be effective in solving bilateral disputes, a practical approach should always be sought. From such a viewpoint, Japan could accept adoption of the Panel report except the parts concerning certain dairy products and starch, and state-trading. He stressed that Japan did not reject the Panel report in its entirety, and would not oppose its adoption by the CONTRACTING PARTIES as far as the items other than certain dairy products and starch were concerned. Should the report be adopted in this way, his Government would take appropriate measures based on the Panel's recommendations, despite domestic difficulties.

Mr. Fortune (New Zealand) said that his delegation supported adoption of the Panel report in its entirety. Agriculture was at the centre of the

Uruguay Round negotiations, rather than at the periphery as had so often been the case in past rounds. Within the framework of those negotiations, market access was clearly one of the most important elements. It was basic to GATT's purpose that markets were progressively opened up to more competitive imports. New Zealand believed that the existing disciplines in Article XI regarding quantitative restrictions on agricultural products were inadequate and that ultimately, those provisions and other exceptions relating to primary products -- including the US waiver -- had to be eliminated. In the meantime, existing disciplines had to be respected. Problems would not wait ten years for solutions. While longer-term improvements would arise out of the Uruguay Round negotiations, the Panel report provided clear-cut reinforcement of existing GATT disciplines on agricultural quantitative restrictions. New Zealand opposed the suggestion that parts of the report might be adopted and others set aside. Apart from the intrinsic merits of the Panel's finding, such an approach would raise the possibility of contracting parties treating any panel report in this way. The GATT system needed sound panel findings and a clear-cut, straightforward process of adopting and implementing them, and the report at hand should be no exception.

Mr. Tettamanti (Argentina) said that his delegation could not agree with Japan's arguments. While Argentina appreciated the difficulties Japan was having in this case and in the area of market opening for agricultural products, this was the key point considered in the Uruguay Round, and no difficulty could be allowed to impede attainment of those objectives. In Argentina's view, Article XI should be amended, but one of the few occasions on which this Article had provided effective results was in panels. This was an important case in GATT dispute settlement as the Panel had unanimously made recommendations at a time when the Uruguay Round was just getting underway; consequently, it would be a contradiction not to accept those recommendations, or to accept them partially. The CONTRACTING PARTIES should adopt the Panel report in its entirety.

Mr. Thomas (Australia) said that the Panel had exhaustively examined the issues before it. Australia considered that it would be inappropriate and inconsistent with the purpose of GATT dispute settlement for the CONTRACTING PARTIES to adopt only those parts of a report which were acceptable to the party maintaining the measures in question. Clear findings had been made regarding all of the 12 categories of products covered by the Panel's terms of reference. Therefore, these findings should be treated with equal weight and the whole report adopted. It was incumbent on Japan to acknowledge and accept the findings and recommendations in the report, and to move expeditiously to eliminate the measures which had so far denied or severely limited access to its market, for efficiently produced and fairly traded agricultural products.

Mr. Roselli (Uruguay) said that his country had been among those which had shown interest and concern over the measures at issue in this case. His delegation understood that the Panel had taken on its task seriously, systematically and soundly, dealing with the different legal aspects of this dispute. The Panel's findings were impeccable, and the arguments put forward by Japan were not convincing enough to call into

question the validity or nature of those findings. Therefore, the CONTRACTING PARTIES should adopt the report in its entirety.

Mr. Maglaque (Philippines), speaking on behalf of the ASEAN contracting parties, said that they had followed the Panel's work with great interest and were gratified that it had concluded its work in reasonably good time. The ASEAN contracting parties were particularly satisfied with the Panel's findings and conclusions, and wanted to see the report adopted at the present Session. They shared the belief that the maintenance of GATT's credibility depended on the efficient functioning of its dispute settlement procedures. In the 1979 Understanding regarding Notification, Consultation, Dispute Settlement and Surveillance (BISD 26S/210), the CONTRACTING PARTIES had recognized that the efficient functioning of the system depended on their will to abide by that Understanding. At this juncture in GATT's history in particular, it was incumbent on contracting parties to demonstrate their resolve to maintain and reinforce the credibility of the General Agreement. While the ASEAN contracting parties understood the difficulty Japan faced, they believed that expeditious consideration of the Panel's report would contribute to GATT's credibility and to confidence in the international trading system, and could demonstrate the recognition of a shared responsibility for the maintenance of that system. With the requisite political commitment, it could be proven that GATT rules and disciplines were respected and that GATT would work for the benefit of all contracting parties. In this spirit, the ASEAN contracting parties endorsed adoption of the report in its entirety. Fragmentation of the conclusions in the report would set an undesirable precedent, particularly at a time when contracting parties were embarked on a vigorous effort to improve further the dispute settlement system.

Mr. Morales (Chile) said that his delegation agreed with the statements by Argentina, Australia, Uruguay, New Zealand and the ASEAN contracting parties. The Panel's work was opportune in that it dealt with two fundamental issues -- access to markets for agricultural products, and dispute settlement procedures. It was not possible to pick and choose among a panel's findings and conclusions. The Panel report should be accepted in its totality, and Chile invited Japan to do so. This would give real political impetus to negotiations at a global level. For these reasons, Chile fully supported the Panel's recommendations.

Mr. Furulyás (Hungary) said that his country regarded dispute settlement as one of the cornerstones of the smooth operation of GATT and a key to strengthening the GATT system, for which contracting parties were currently making common efforts. The Panel report was an important step in that direction; its specific value was that it covered issues relating to liberalization of trade in agriculture, which was an accepted objective of the Uruguay Round. Therefore, his delegation supported adoption of the report.

Mr. Samuels (United States) said that the proposal that the Panel report should be adopted for only 10 of the 12 products was completely unacceptable to the United States and, in its view, should be to all contracting parties. His delegation was pleased that so many other

contracting parties seemed to hold the same view and urged Japan to listen to those views. Legally, GATT treated panel reports as units; parties could not pick and choose which findings to accept. Partial adoption of a report was unprecedented in GATT. The dispute settlement process would be meaningless if the defendant could pick and choose for adoption only the favourable parts of a panel's report. Efforts to block adoption of the report at hand, in part or entirely, would have lasting negative effects on the Uruguay Round, and the timing of this action, at GATT's 40th anniversary, would be particularly unfortunate. His delegation urged Japan to reconsider its position.

Mr. Watanabe (Japan) said that his delegation was not proposing adoption of only part of a panel's report as a general practice; Japan was proposing the adoption of the contents of the report at hand except for the parts related to dairy products and starch. The report dealt with 12 independent items and should therefore be divisible. He then reiterated some of the points his delegation had already made. Regarding the definition of perishability, the Panel's finding, if adopted, would set a precedent that would eliminate the justification for restrictions maintained by some contracting parties in order to make domestic supply restrictions effective. The findings on perishability also ran counter to the precedent established by another panel (L/4687). The Panel report not only posed questions -- and serious ones for Japanese agriculture -- but also posed problems for contracting parties as a whole. He proposed that the CONTRACTING PARTIES revert to this matter the following day. In the meantime, his delegation would reflect on and study further what Japan's position should be on these very difficult problems.

Mr. Martins (Brazil) said that his country's traditional position on such matters was to strengthen GATT's dispute settlement procedures. In the case at hand, Brazil was prepared to adopt the report in its entirety.

Mr. Waas (Austria) said that the report, which was comprehensively prepared, dealt with important matters under discussion in GATT, not just with respect to Japan. Agriculture was one of the outstanding issues in GATT where imbalances resulted from the application of measures in violation of GATT on the basis of waivers or other exceptions to GATT rules. The proper functioning of dispute settlement was an indispensable prerequisite to the operation and credibility of the GATT system. Consequently, panel findings should be respected by contracting parties. This applied as well to the report at hand. His delegation would have serious problems with splitting the report and accepting only parts of it, which would set a serious precedent undermining the effectiveness of dispute settlement procedures. However, Austria understood that the brief postponement of consideration of this matter would be of help to Japan, and therefore supported the proposal to that effect.

The CHAIRMAN suggested that the CONTRACTING PARTIES revert to this matter later in the Session.

This was agreed.

Point 1. Work Program resulting from the 1982 Ministerial Meeting

Sub-point 1(c). Export of Domestically Prohibited Goods

The CHAIRMAN noted that at their Forty-Second Session, the CONTRACTING PARTIES had agreed that contracting parties should undertake consultations with a view to establishing guidelines for action relating to trade in domestically prohibited goods, and that a report on such consultations should be submitted to the present Session (BISD 33S/54). Consultations had taken place, but it was felt that more time was required. He therefore proposed that the CONTRACTING PARTIES take note of this information and agree that a further report on the consultations be presented to the Forty-Fourth Session.

The CONTRACTING PARTIES so agreed.

Point 2. Reviews of developments in the trading system (special meetings on Notification, Consultation, Dispute Settlement and Surveillance)

Mr. Samuels (United States) said that his country believed that the special Council meetings could be a valuable tool for contracting parties in reviewing developments in the trading system in a broader framework than was normally permitted in GATT deliberations. The Council's current mandate was sufficiently broad to permit discussion on any topics of interest to contracting parties, and the Secretariat's background document compiling recent developments was quite helpful in allowing events to be discussed in their broader context. However, improvements in the current system would help invigorate discussions in that forum. First, the United States strongly urged that the background document for these meetings be issued at least four weeks in advance of the special Council meeting, to allow contracting parties sufficient time to reflect on the information contained in it and on the trends suggested by that information. Second, a firmer agenda, proposed by interested contracting parties, would be helpful in focussing discussion. Since the subject matter was somewhat broader than for a regular Council meeting, ten days might not be enough time for this. His delegation appreciated the suggestions made at the 11 November special Council meeting to (1) coordinate the availability of the Secretariat's background document and the Annual Report, (2) have the Secretariat identify two or three central themes emerging from the document on which discussion could be focused, and (3) have the Secretariat produce a brief summary of the discussion of these themes, in addition to the Minutes of these meetings. The United States strongly supported the first of these suggestions, but believed more reflection was necessary on the Secretariat's rôle in the special Council deliberations and in the formulation of its agenda, before the CONTRACTING PARTIES should consider instituting the other two suggestions, even on a temporary basis. Further discussion was clearly necessary among contracting parties and in the Uruguay Round Negotiating Group on the Functioning of the GATT System, to determine how the current special Council meeting process could be enhanced and what new rôles it might productively undertake.

Mr. Beck (European Communities) said that the Community also had an interest in expanding somewhat the scope of the special Council meetings. An experiment had been attempted at the 11 November special meeting. The Community felt that experiment was worthy of support, and to see whether the procedure of identifying themes was one that in the longer term was appropriate, and to discuss further the idea of a summing-up by the Secretariat to see whether that could make the special Council meetings a more fruitful exercise. The Community was entirely open to the idea of further work in order to improve the procedures for these meetings.

Mr. Garrido (Mexico) said that his delegation agreed with the suggestions regarding future work in this area aimed at putting the special Council meetings on more tangible ground. The US proposal was very useful, and contracting parties should already begin to try to identify trends in order to develop and enlarge the Council's work in its special meetings.

Point 3. Consultative Group of Eighteen

The Director-General, Chairman of the Consultative Group of Eighteen, said that he had hoped to be in a position to propose to the Session the Group's composition for 1988. However, consultations were still taking place among delegations concerning the rotation of membership and the size of the Group itself. He therefore proposed that the CONTRACTING PARTIES agree to defer the decision on the composition of the Group for 1988 until the first meeting of the Council in 1988. He would hold intensive consultations on the matter during January.

Mr. Waas (Austria) said that his delegation appreciated the Group's activities. This body had proved its value in addressing important matters, and Austria proposed that it meet more often than in the past -- at least once or twice a year -- and that it maintain its present shape and composition.

Mr. Barros (Chile) said that his delegation had understood that the Group's composition had been provisionally fixed at 22 for one year. He asked for confirmation that this would remain valid until its next meeting.

The Director-General said that there were two problems -- the Group's size and the rotation of the members of the Group's informal constituencies.

The CONTRACTING PARTIES agreed that the question of the Group's composition for 1988 be referred to the Council for further consideration and appropriate action.

Point 4. Tariff matters

Mr. Morales (Chile) said that his delegation appreciated the report (TAR/142) made by the Chairman of the Committee on Tariff Concessions to the Council. However, as his delegation had stated at the Council's

10-11 November meeting, Chile did not agree with the passage in paragraph 4 of the report to the effect that Japan, Finland, Sweden, Norway and New Zealand had concluded consultations on tariff rates to be included in the Protocol regarding the Harmonized System. One of these countries had not yet concluded negotiations with Chile, and his delegation reserved all its rights under Article XXVIII regarding that country.

Point 5. Harmonized System

The CHAIRMAN drew attention to the communications from Thailand, Yugoslavia, Malaysia and Israel in documents W.43/3, 4, 5 and 6 respectively, in which each of these Governments requested a waiver in connection with its implementation of the Harmonized System.

Mr. Beck (European Communities) said that the Community welcomed the decisions to implement the Harmonized System on 1 January 1988. It had noted that in transposing existing tariffs into the Harmonized System, the intention was to preserve existing GATT concessions. The Community supported the application of a waiver to allow for any necessary consultations with interested parties and hoped that all contracting parties implementing the Harmonized System which had not already undertaken Article XXVIII consultations would adopt this procedure. One contracting party which had introduced the Harmonized System in April 1986 had not yet done this, and the Community asked that the Article XXVIII procedures be followed. In transposing existing bound tariffs into the Harmonized System, the objective was to avoid significant or arbitrary increases in bound rates. This was equally true for unbound rates, and there the standstill provisions in the Punta del Este Declaration were relevant.

Mr. Martins (Brazil) said that his delegation wanted to reiterate its concern over the fact that a number of developed contracting parties had unilaterally closed their negotiations under Article XXVIII consequent to the transposition of their schedules of tariff concessions to the Harmonized System nomenclature. Such a procedure affected not only Brazil but also other contracting parties entitled to exercise their legitimate rights and to protect their export interests, in the light of the provisions of Article XXVIII as well as of the rules and procedures set out in document L/5470/Rev.1. Disregard of the basic principles established for the adoption of the Harmonized System, and particularly the modification of concessions in which Brazil had a principal supplying interest, would negatively affect his country's trade in many of its export products. Therefore, his delegation reserved its rights under Article XXVIII.

Mr. Weekes (Canada) said that his delegation welcomed the decisions to implement the Harmonized System and could support the waivers requested, but urged the countries involved to submit appropriate documentation as soon as possible so that other interested parties could examine where their export interest lay in this conversion.

Mr. Schyberg (Sweden), speaking on behalf of the Nordic countries, welcomed the decisions to implement the Harmonized System and could agree

to the waivers requested. However, the Nordic countries expected that all the transpositions would be circulated speedily and would be trade neutral, which was a requirement of the Harmonized System exercise.

The CHAIRMAN said that the documentation still to be submitted and any negotiations or consultations that might be required should follow the special procedures relating to the transposition of the current GATT concessions into the Harmonized System, adopted by the Council on 12 July 1983 and contained in document L/5470/Rev.1.

The decisions were adopted as follows: Thailand (L/6284) by 55 votes in favour and none against; Yugoslavia (L/6285) by 57 votes in favour and none against; Malaysia (L/6286) by 55 votes in favour and none against; and Israel (L/6287) by 50 votes in favour and none against.

Point 8. Committee on Balance-of-Payments Restrictions

Mr. Beck (European Communities) said that the Community believed that the Committee on Balance-of-Payments Restrictions played an essential surveillance role in ensuring the proper application of the GATT balance-of-payments exception. The four consultations held in 1987 had provided a good opportunity for a useful exchange of views on the relationship between trade restrictions and the external financial position of the consulting countries. In certain cases, important divergencies of interpretation of GATT rules had become apparent, and it was in the interest of all contracting parties to seek a common understanding which would clarify and update the rules and procedures on the maintenance of trade restrictions taken for balance-of-payments purposes.

Point 10. Measures affecting the world market for copper ores and concentrates

The CHAIRMAN informed the CONTRACTING PARTIES that the European Economic Community and Japan had jointly requested conciliation by the Director-General under paragraph 8 of the Understanding regarding Notification, Consultation, Dispute Settlement and Surveillance (BISD 26S/210) in their dispute concerning certain pricing and trading practices in Japan. In this light, he understood that the two parties had agreed that the report of the Group of Governmental Experts on Measures affecting the World Market for Copper Ores and Concentrates (L/6167) could be adopted, and suggested that the CONTRACTING PARTIES so agree.

The CONTRACTING PARTIES adopted the Group's report in L/6167.

Point 19. Implementation of Generalized System of Preferences (GSP) schemes

Mr. Martins (Brazil) recalled that at the Council's meeting in April 1987, his delegation had expressed concern over the fact that developed contracting parties were clearly moving away from observance of the basic

principles set out in the CONTRACTING PARTIES' Decisions of 25 June 1971¹ and 28 November 1979² on the granting of preferential treatment to products originating in developing countries. Developed contracting parties acting individually were authorized to grant such treatment, provided the schemes and arrangements were of a generalized, non-discriminatory and non-reciprocal nature. The fact that such schemes were of a voluntary character and did not constitute a binding obligation for the preference-giving countries did not, in Brazil's view, give them the right to ignore the legal framework under which they had been authorized to implement such schemes. Brazil still believed that preference-giving countries should notify to GATT any modifications in their programs not yet notified, and in future notify in advance to GATT any modifications they might want to introduce, in a manner which could enable the determination of the conformity of those modifications with the CONTRACTING PARTIES' Decisions on such schemes. Withdrawals of benefits from countries judged to be no longer in need of preferences on particular products continued to have an adverse impact on developing countries' trade, and were increasingly based on arbitrary criteria and in a manner that did not comply with the relevant Decisions. Brazil, therefore, considered that the issue of implementation of GSP schemes should be kept under review by the Council in the coming year.

Mr. Morales (Chile) recalled that his delegation had supported Brazil's proposal when this matter had been discussed in the Council. Chile supported and agreed with Brazil's current proposal, which aimed at priority review of this question in the Council. GSP schemes were based on the principle of non-discrimination, as set out in the Enabling Clause. The sine qua non requirement for GSP schemes was the full observance of that principle. Such schemes were themselves an exception to GATT rules, and according to principles of legal interpretation, exceptions had to be interpreted strictly. Therefore, no form of discrimination could be introduced in GSP schemes.

Point 20. Recourse to Articles XXII and XXIII

Sub-point 20(e)(ii). United States - Trade measures affecting Nicaragua

Mrs. Iereira (Nicaragua) recalled that the question of the embargo imposed on her country by the United States had been discussed at the CONTRACTING PARTIES' Session the previous year, at which time it had seemed that a solution might be possible but that more time was needed. The Council had been mandated to proceed with consultations in order to reach an agreement. One year later, no solution had been found. The International Court of Justice in its decision of 27 June 1986 had declared

¹Generalized System of Preferences (BISD 18S/24)

²Differential and More Favourable Treatment, Reciprocity and Fuller Participation of Developing Countries - "Enabling Clause" (BISD 26S/203).

the embargo illegal and had ordered that fair and adequate compensation be paid for the damage caused. Prior to that, the Latin American Economic System had found that the embargo violated the most fundamental principles governing relations between nations in that hemisphere. The current United Nations General Assembly was in the process of asking, for the third time, that the embargo be lifted. The US response to all of this was that Article XXI of the General Agreement authorized the measures in question. This matter had first been considered in GATT in May 1985. The Council had agreed that consultations should be held, but unfortunately this had yielded no results, and Nicaragua had been obliged to have recourse to dispute settlement under Articles XXII and XXIII of the General Agreement.

The Panel had been composed in April 1986 and had submitted its report (L/6093) in October 1986. A year later, Nicaragua was still waiting for the CONTRACTING PARTIES to adopt recommendations allowing for the re-establishment of its rights and the lessening of the damage to its economy. Her Government had made great efforts to find a solution that would protect Nicaragua's legitimate rights, as well as preserve the multilateral trading system and respect GATT norms and practices. Her delegation had submitted to the Council in July 1987 a draft decision (C/W/524) that, in its view, could have been adopted by the CONTRACTING PARTIES. Neither that document nor the draft declaration (C/W/525) proposed by the group of six Latin American contracting parties which were part of the Contadora Group had been discussed. Answers to the fundamental questions posed by this case could have an important impact on the functioning of the multilateral trading system. Was GATT capable of defending the rights of the economically weaker contracting parties? Of what value to developing contracting parties was the right to retaliate, and of what meaning was the differential and special treatment provided for in paragraph 21 of the Understanding regarding Notification, Consultation, Dispute Settlement and Surveillance (BISD 26S/210)? Contracting parties had not examined the significance of consensus when one of the parties to a dispute refused to talk with the other. The Panel's report was commendable and constituted a valid advisory opinion. It was now up to the CONTRACTING PARTIES to assume their responsibilities and to make recommendations to permit the re-establishment of Nicaragua's benefits, taking into account the serious repercussions of the embargo on Nicaragua's economy. Were Nicaragua to renounce its rights, it would set a precedent which would not aid in defending developing contracting parties' interests in future and would not be helpful in the context of the Uruguay Round.

On 7 August 1987, the five countries of the Central American region had signed an agreement expressing their political will to resolve conflicts through dialogue and respect for the legitimate interests of all countries and peoples. The international community should support this agreement. She referred to the recent meeting in Acapulco of the Contadora and Support Group which had appealed to all countries with interests in the Central American region to contribute to the peace process and to respect the principle of non-intervention and free action. Contracting parties had to reaffirm that measures taken for narrow national interests through discriminatory implementation of the General Agreement were contrary to international law and put in question the very survival of the rules of the multilateral system, and in particular, its dispute settlement mechanism.

Parts of the Acapulco Understanding³ might help the CONTRACTING PARTIES to find a solution to this case. Paragraph 28 referred to the need to improve the economic and social situation of the Central American countries, in particular, measures to stimulate those countries' economies and to improve market access for their exports. Paragraph 29 suggested that this effort be shared among all countries working towards peace and development in the region, as well as by the institutions for Central American integration, and the regional and international economic institutions.

Mr. Martins (Brazil) said that his country had defended, in all international fora, the need for peaceful solutions to problems in Central America, based on the principles of international law and, in particular, on the United Nations Charter. Brazil had deplored the application of unilateral economic measures which impeded negotiated solutions and had a negative impact on the social and economic development of a developing contracting party. Brazil had been one of the six countries which had submitted a draft decision (C/W/525) aimed at finding a solution based on a consensus decision. Recently, eight Latin American countries had reiterated their concern over the peace and stability of the Central American region in the Acapulco Understanding, and had appealed for respect for the principles of non-intervention and free action in that area. The heads of State at that meeting had expressed concern over the negative impact of unilateral decisions based on national interests that might put in question the disciplines and rules of GATT and of international law.

Mrs. Garcia de Gonzalez (Cuba) reaffirmed the position her delegation had taken in the past on this issue, which had been discussed for a long time. The CONTRACTING PARTIES had to recognize the legitimate rights of Nicaragua as a contracting party and, therefore, had to meet its request. The United States claimed that national security was the reason for the embargo against Nicaragua, and the same reason had been given for its embargo against Cuba implemented 25 years earlier. If two small countries could pose a threat to an enormous military and economic power such as the United States, many countries might find themselves subject to similar measures by that country. Such arbitrary measures had to be stopped, all the more so when a number of international institutions had recognized their illegality. The CONTRACTING PARTIES, too, had to play their rôle when the future of contracting parties which had decided their own future was challenged.

Mr. Tettamanti (Argentina) said that his delegation's position on the use of economic measures for political reasons and on the interpretation of Article XXI were well-known. Argentina regretted that in the present case, despite the Panel's recommendations, the Council had not been able to reach a consensus on an equitable solution. Argentina was one of the Latin American countries which had submitted a draft decision in C/W/525 that could have been the basis for a satisfactory understanding and solution.

³ Acapulco Understanding on Peace, Development and Democracy,
29 November 1987.

His country was convinced that, as stated at the recent meeting in Acapulco, peace and democracy had to be restored in the Central American region. The United States should take measures leading to the progressive or total lifting of the embargo, and thus cooperate in the search for a solution to this problem. Argentina still hoped that on the basis of these elements, the Council would very soon be able to find a solution to this problem which came up again and again in its deliberations.

Mr. Tello (Mexico) said that his delegation, as it had already done in a session of the CONTRACTING PARTIES and in Council meetings, wanted once more to appeal to the United States to lift the embargo imposed on Nicaragua. Mexico had been one of the six Latin American countries which had submitted in document C/W/525 a possible formula for solution of this problem based on consensus. Mexico repeated that appeal, taking into account what it saw as positive recent developments regarding the understanding reached in Guatemala among the five heads of State in the region. This was an expression of the sovereign political will of those governments to find a solution to conflicts through dialogue and outside of an East-West confrontation, taking into account the legitimate interests of all countries in the region. This had been reaffirmed in the Acapulco Understanding.

Mr. Jaramillo (Colombia) said that his delegation had already taken a position on this matter in the Council and was among those countries which had sponsored document C/W/525. It had been hoped that that initiative would help find a consensus decision on the Panel's report. Colombia had also signed the Acapulco Understanding which called for development and peace in the Central American region. For that reason, it was hoped that a consensus could be found on this matter so that the United States would lift the embargo in question as soon as possible.

Mr. Romero (Peru) said that his delegation's position on this matter had been stated both in the Council and at the Forty-Second Session. He recalled the initiative in C/W/525 undertaken by a number of Latin American countries, which unfortunately had not made headway. His delegation reiterated its rejection of the use of unilateral economic measures for political coercion, and underlined paragraph 16 of the Acapulco Understanding, which emphasized that the problems confronting Latin American countries in international trade were exacerbated by the resort to unilateral measures in violation of the principles of the General Agreement. It also pointed out that discriminatory and coercive measures between contracting parties were a direct attack on international law and called into question the very survival of the rules of the multilateral trading system, and particularly its dispute settlement mechanism. Peru hoped that appropriate measures could be found as soon as possible for a just solution leading to the lifting of the US embargo.

Mr. Dolgu (Romania) reiterated his country's support for the sovereign independence of every country. Once again, Romania rejected the use of economic measures for political coercion. His delegation wanted to see a positive solution to the matter at hand and a lifting of the embargo.

Mr. Rosselli (Uruguay) reiterated his delegation's position on this matter and said it was clear that the subject of this dispute had its place in a much broader political context rather than simply in GATT. In Uruguay's view, a possible solution to this problem would be facilitated by the immediate lifting of the embargo, which was seriously damaging Nicaragua's trading interests. Therefore, his delegation urged the United States to withdraw this unilateral and discriminatory measure.

Mr. Samuels (United States) said that his delegation had little to add to the statements it had previously made in the Council on this subject. The United States continued to believe that the Panel's finding confirmed the US position that this dispute should never have been brought to GATT. By its traditions, its competence and the terms of Article XXI, GATT could not resolve cases where trade sanctions had been imposed for national security reasons. Furthermore, his delegation condemned the attempt to try to politicize GATT by constantly raising this issue in GATT meetings. The United States believed that the adjudication of the Panel report on this dispute lay fully within the competence of GATT, and strongly objected to Nicaragua's continuing efforts to raise this issue in other inappropriate fora, such as the UN General Assembly's Second Committee. The Panel had reached sound conclusions in a difficult case, and its report should be adopted without additional suggestions that the Panel had not made.

Sub-point 20(a). Canada - Measures on exports of unprocessed salmon and herring

The CHAIRMAN recalled that in March 1987, the Council had established a Panel to examine the complaint by the United States concerning Canadian measures affecting the exports of unprocessed salmon and herring. The Panel had submitted its report in document L/6268.

Mr. Nyerges, Chairman of the Panel, introduced its report. The Panel had begun its work in late April 1987, had met twice with the parties to the dispute and had submitted its report to them on 4 November 1987. The report contained five sections: an introduction, a section outlining the factual aspects of the matter, a summary of the main arguments presented to the Panel by the parties, a section presenting the Panel's findings, and one containing its conclusions. He then read out the full text of the Panel's conclusions contained in paragraphs 5.1, 5.2 and 5.3 of its report, and noted that the Panel had reached them unanimously.

Mr. Samuels (United States) noted that the Panel's decision had been provided to the two parties on 4 November and circulated to contracting parties on 20 November. His Government believed that the report was well-reasoned and that the Panel's decision was clearly presented and sound. His delegation strongly urged prompt adoption of the report, and hoped that Canada would move expeditiously to implement its findings.

Mr. Weekes (Canada) noted that the report had only recently been circulated. Canada believed that the Panel's interpretations appeared to raise important issues which went beyond the particular measures in question. His Government was studying the Panel's findings carefully in this context, and expected that other contracting parties would want to do

the same. Canada considered that the implications of the report required thorough discussion and wanted to return to this matter when the report was considered at the Council's next meeting.

Mr. Samuels (United States) said his delegation did not agree that more time was needed to study the Panel's finding. The report had been issued to the affected parties almost a month earlier. Its reasoning was lucid and its recommendation clear. The United States urged prompt adoption of the report.

The CONTRACTING PARTIES agreed that this matter should be considered by the Council at its first meeting in 1988.

The meeting adjourned at 6 p.m.