

GENERAL AGREEMENT ON

RESTRICTED

TARIFFS AND TRADE

C/M/231
2 May 1989

Limited Distribution

COUNCIL
12 April 1989

MINUTES OF MEETING

Held in the Centre William Rappard
on 12 April 1989

Chairman: Mr. John M. Weekes (Canada)

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1. Matters arising from the December 1988 and April 1989 meetings of the Trade Negotiations Committee (C/W/585)

The Chairman drew attention to his communication in C/W/585, which contained draft decisions in Annexes I and II.

The Council adopted the draft decision in Annex I (Dispute Settlement)¹ and the draft decisions in Annex II (Functioning of the GATT System)². The Council also instructed the Committee on Budget, Finance and Administration to take appropriate action on the financial aspects of the Decision related to the Trade Policy Review Mechanism (TPRM).

The representative of Australia said that his country would like to see the review process under the TPRM begin as soon as possible. Australia was prepared to undergo review either in 1989 or 1990.

The representative of Sweden, speaking on behalf of the Nordic countries, expressed their satisfaction with the Decisions just taken. The Nordic countries were prepared to undergo review as soon as the CONTRACTING PARTIES were interested.

The Council took note of the statements.

2. CARIBCAN
- Communication from Canada (L/6478)

Under paragraph 7 of the CONTRACTING PARTIES' Decision of 28 November 1986 (BISD 33S/97), Canada is to submit an annual report on the implementation of the provisions of CARIBCAN covered by the Waiver, and the CONTRACTING PARTIES are, two years from the date of 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 Canada presented his Government's first annual report on the trade-related provisions of CARIBCAN (L/6478). CARIBCAN had been in place since June 1986, and was designed to enhance the trade and export earnings of the 18 Caribbean countries included in the Arrangement. Essentially, CARIBCAN provided unilateral preferential duty-free treatment to all eligible imports, with certain exemptions. Based on the results to date, the initiative had had a positive impact on the trade of beneficiary countries with Canada. Further details of the trade effects of the program were set out in the report.

¹L/6489.

²L/6490.

The representative of the United States said that his authorities had not had sufficient time to examine this detailed report thoroughly, as it had been circulated only recently. While his authorities did not expect to have any problem with the report, they asked that its consideration by the Council be deferred until a subsequent meeting.

The Council took note of the statements and of the information in L/6478 and agreed to revert to this item at a future meeting.

3. United States - Section 337 of the Tariff Act of 1930
- Panel report (L/6439, L/6487)

The Chairman recalled that in October 1987, the Council had agreed to establish a panel to examine the complaint by the European Communities. At its meetings on 8-9 February and 6 March, the Council had considered the Panel's report (L/6439), and on 6 March had agreed to revert to this item at the present meeting.

The representative of the European Communities noted that this report was before the Council for adoption for the third³ time. If the recently adopted Decision on dispute settlement procedures³ meant anything, this report should be adopted at the present meeting. The Community had stressed earlier that this report was sound, well-reasoned and important. The United States had made lengthy statements, largely misrepresenting the content of the report. The Community had refused to re-argue the case, but had now replied to the US comments in its own communication (L/6487) in order to set the record straight and to draw attention to what the Panel report actually said. It was clear that the report did nothing more than apply a well-established and sound interpretation of the fundamental national-treatment principle to specific procedures under US legislation concerning the enforcement of intellectual property rights. It could not be ignored that procedures could have discriminatory effects on imports as important as those of substantive laws. An interpretation which would leave room for discriminatory elements in enforcement procedures would call into question the attainment of the very objectives sought by the national-treatment provisions of the General Agreement -- one of the crucial pillars of the GATT system. The United States' comments on the Panel report sought to give the impression that adoption of the Panel's findings would have wide-ranging consequences for other contracting parties. It was important to bear in mind that those findings were in fact strictly limited to the application of Section 337 to patent-based cases. The United States appeared to be the only country which had a system such as that under Section 337. Consequently, the adoption of the Panel's findings would have no prima facie impact on the enforcement of unfair competition laws or intellectual property rights in any other contracting party. Also, the Panel report was important in clarifying the application of GATT Articles III and XX(d) to trade-related aspects of the enforcement of intellectual property rights. In order to avoid possibly negative

³See item no. 1.

repercussions on the Uruguay Round negotiations, the report should be adopted and implemented expeditiously.

The representatives of Canada, Japan, Switzerland, Norway on behalf of the Nordic countries, India, Hong Kong, Austria, Brazil, Argentina, Israel, Chile, Australia, Korea, Pakistan, Uruguay and Yugoslavia supported the adoption of the Panel report.

The representative of Canada supported the Community's statement. As previously indicated, his delegation was of the opinion that the report was clearly presented and well drafted, and that the Panel's conclusions were sound. His delegation had carefully examined the arguments put forward by the United States at the March Council meeting, none of which would affect or change his delegation's views as to the soundness of the Panel's findings. His delegation urged that the report be adopted at the present meeting and that the United States implement the recommendation at an early date.

The representative of Japan recalled that Japan had expressed its views on this Panel report at the 8-9 February Council meeting. After having thoroughly examined the report and the United States' comments thereon, Japan was convinced that the Panel had produced a careful and well-reasoned report.

The representative of Switzerland recalled that his delegation had supported adoption of the Panel report when it had first been submitted at the 8-9 February Council meeting. His authorities had studied this important report further in the light of the subsequent detailed arguments which had been presented thereon. Switzerland believed that the report had been carefully reasoned and that its findings and recommendation were conclusive.

The representative of Norway, speaking on behalf of the Nordic countries, agreed that the Panel's report was highly complex. After careful study thereof, they had found that the Panel had done an excellent job in tackling the complex issues before it. The Panel had drawn the right conclusions when it had found Section 337 of the US Tariff Act of 1930 to be inconsistent with GATT's rules on national treatment. Against this background, they agreed with the Panel's recommendation.

The representative of India said that his delegation had not spoken on this issue earlier because his authorities had been engaged in a careful examination of this important issue. Having completed that examination, and due to the Panel's sound interpretations and recommendation, his authorities supported adoption of the report.

The representative of Hong Kong recalled that his delegation had given its initial reactions to the complex matters covered in this Panel report at the 8-9 February Council meeting, and had joined others in supporting the suggestion that more time was needed for a full examination. Since then, Hong Kong had very carefully considered the report and the statements made by representatives, and agreed with the Panel's findings. There were two considerations which might facilitate the early adoption of this

report. First, the growing support for the Panel's findings as evidenced by statements at the present meeting. In this regard, the latest comments by the European Communities (L/6487) were helpful, particularly in clarifying some of the issues raised by the United States at previous Council meetings. Second, at the present meeting, the Council had approved a set of improvements to the dispute settlement rules and procedures, which were aimed at ensuring the prompt and effective resolution of disputes.⁴ What could give better expression to this commitment than the prompt adoption of this Panel report and the prompt implementation of its recommendation?

The representative of Austria supported the statements by Canada, Japan, Switzerland, the Nordic countries and others. The Council had just adopted a Decision on dispute settlement; that Decision should be reinforced by adopting the Panel's report.

The representative of Brazil supported Hong Kong's views. Bearing in mind the Decision which had just been adopted aimed at the improvement of dispute settlement procedures, his delegation continued to believe that GATT had a relevant rôle to play in the identification and removal of trade barriers, including those established by national legislation. He emphasized that his delegation considered the Panel report to be very sound, carefully drafted and covering a complex issue.

The representative of Argentina said that his delegation agreed with the Panel's recommendation in paragraph 6.4 of its report.

The representative of Israel said that this excellent Panel report contained a very detailed analysis of a very complex issue. The Panel had examined the Section 337 issue from different aspects, including those raised in the Council by the United States. Israel's exports had faced Section 337 actions several times in the past, and it had bilaterally expressed concern regarding these actions on many occasions. His delegation agreed with the Panel's findings and recommendation. Israel joined others in stressing that prompt adoption of the report was essential for the good functioning of the GATT dispute settlement system, particularly in the light of the recent adoption of improved procedures in this area.

The representative of Chile said that his authorities had examined the Panel report and the pros and cons put forward by delegations. Chile could support its adoption with a view to emphasizing the importance of the dispute settlement system, to ensure that the work of panels not be impeded and that their conclusions be adopted.

The representative of Australia said that his Government had reviewed the Panel report as well as the United States' arguments, and considered the report to be sound.

⁴ See item no. 1.

The representative of Korea said that his delegation's views on the report as expressed at the 8-9 February Council meeting had not changed. Korea supported the Panel's conclusions.

The representative of Pakistan said that his authorities had given careful consideration to this report and had initially been somewhat confused by the conclusions in its paragraph 6.2 to the effect that the Panel had found no evidence that the elements of Section 337 which it had found to be GATT-inconsistent had been deliberately introduced so as to discriminate against foreign products. However, as this remark did not have any practical relevance to the issue involved, his authorities felt that it did not detract from the sound arguments which had led to the Panel's conclusion. The report was well-reasoned and sound, and upheld the basic GATT principle of national treatment.

The representative of Uruguay said that his delegation had already expressed its views on this matter. Adoption of the report would help to reinforce the GATT dispute settlement system.

The representative of the United States said that, as his delegation had previously indicated, the US Administration and Congress continued to examine the broad implications of the Panel report. Since this examination was continuing, his Government was not prepared to adopt the report at the present meeting. The United States continued to have concerns regarding the Panel's interpretation of GATT Articles III and XX and their effect on complex regulatory procedures and laws.

As he had stated at a previous Council meeting, his Government's concerns regarding Article III focused on the requirement that contracting parties ensure de facto equality of effect of all laws, rules, regulations and procedures on imports in all instances. It believed that this requirement would reach not only the overall or ultimate effect of the law or procedure but would extend to each individual element of laws and procedures including those that applied to persons engaged in the importation, sale, distribution or use of imported products. The Panel's interpretation of Article III would effectively preclude any differences in treatment between imported goods and importers and domestically produced goods and manufacturers unless such differences were predictably always preferential to imports and importers.

Regarding the Panel's interpretation of the term "necessary" in Article XX(d), his Government was concerned that examination of measures which were allegedly necessary to secure compliance with laws not inconsistent with the General Agreement -- or, in other instances, laws necessary to protect human, animal or plant life or health -- would focus on each individual element of the reviewed measure in isolation. Elements that might not be considered "necessary" in isolation might be essential for the operation of other elements of the measure that were "necessary". Requiring changes in seemingly small details could render the entire measure or procedure inoperable. The United States also continued to be troubled by the Panel's conclusion that simply because other governments had adopted a certain law or procedure, that measure was reasonably

available to another contracting party. This conclusion disregarded systemic and political differences between governments.

In analyzing the report, his Government was still considering the balance between a very broad interpretation of Article III obligations and a narrow application of Article XX exceptions to those obligations. He would report to his authorities the views expressed at the present meeting so that these could be considered in his Government's ongoing examination.

The representative of the European Communities said that his delegation noted with a measure of satisfaction that the United States would report the sentiments expressed at the present meeting by a very large number of contracting parties on the adoption of the report. At the same time, the Community was concerned that the United States still appeared to be re-arguing the case which had been put before the Panel and on which the latter had reached a conclusion which was now being considered for the third time. This was a matter of extreme concern to the Community. In the absence of a positive outcome at the present meeting, the Community asked that this matter be put on the agenda of the next Council meeting.

The representative of Tanzania referred to the United States' remark regarding the need not to disregard systemic and political differences between governments. He was mindful of the fact that the dispute at hand was between industrialized countries, and yet these same differences seemed to be an obstacle.

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

4. Export of Domestically Prohibited Goods (C/W/580, L/6459, L/6467)

The Chairman recalled that at its meeting on 8-9 February, the Council had considered this item and that a draft decision (C/W/580) had been circulated at the request of African delegations. At its meeting on 6 March, the Council had agreed to revert to this item at the present meeting.

The representative of Nigeria said that there had been no appreciable progress on this matter. His and many other delegations, especially among the developing contracting parties -- which unfortunately were the recipients of domestically prohibited goods -- wanted to see work on this matter carried to its logical conclusion in GATT. The first step would be to set up a working group to examine the subject more closely. Regarding the work recently done in this area by the United Nations Environment Program, the conclusions of the Basel Conference of Plenipotentiaries on the Control of Transboundary Movements of Hazardous Wastes⁵ were very positive

⁵Convention on the Control of Transboundary Movements of Hazardous Wastes (UNEP/IG.80/3).

and would not prejudice any work to be undertaken in GATT. Nigeria asked that this item be included on the agenda of the next Council meeting.

The representative of Nicaragua recalled that his delegation had supported the draft decision in C/W/580 at the 8-9 February Council meeting. Nicaragua believed that a working group to study this matter should be established as soon as possible, bearing in mind the work being carried out in other international organizations. The populations and the environment in developing countries suffered from the export of such goods produced by the developed countries. Nicaragua fully supported Nigeria's statement and agreed that this matter should be kept under continuing examination and considered further in the Council.

The representative of the Côte d'Ivoire supported the statements by Nigeria and Nicaragua. The many recent meetings on the subject of toxic substances bore out the importance of this issue and the urgency of finding solutions. Her delegation appealed to those contracting parties which had expressed reservations regarding the endeavour in C/W/580 and to all those which had not taken up this issue as energetically as her own delegation.

The representative of Zaire emphasized the importance of this issue, which was of great concern to African delegations. The export of domestically prohibited goods and other hazardous substances posed a great danger to African countries and to developing countries in general. His delegation therefore urged all contracting parties to support the adoption of C/W/580. The establishment of a working group was the only solution to ensure a serious examination of this issue and to dispel the concerns of the developing -- in particular, African -- countries.

The representative of Sweden, speaking on behalf of the Nordic countries, reiterated that, as stated at the 6 March Council meeting, they could accept the draft decision in C/W/580. The Nordic countries thought it important that contracting parties have a generous attitude in dealing with requests for working parties on subjects which some contracting parties believed were trade-related.

The representative of Cameroon said that his delegation wanted to address the substantive aspects of the subject under discussion. He recalled that the export of domestically prohibited goods had been included in the 1982 Work Program (BISD 29S/19). Six years had since elapsed, yet the Council was still not in a position to respond to the appeals of African and other developing countries for a working group to examine this matter. At the December 1988 Ministerial meeting of the Trade Negotiations Committee (TNC) in Montreal, his delegation, along with Nigeria, Côte d'Ivoire, Zaire and Sri Lanka, had urged that this matter be examined on a priority basis within the Uruguay Round. Their request had not been accepted, but in order to facilitate the follow-up on this initiative, the Chairman of the TNC had suggested at that meeting that the Council take action in this regard. Since then, this item had been on the Council's agenda three times, but no decision had been taken to set up a

working group. This situation was regrettable, particularly as decisions on other matters flowing from the TNC had just been taken.⁶ He stressed the importance Cameroon placed on the question of international transactions in domestically prohibited goods and other hazardous substances. Cameroon had participated actively in the Basel Conference and its elaboration of a global convention on the control of transboundary movements of hazardous wastes. This represented progress in the implementation of a system to regulate trade in dangerous substances; however, his delegation wanted to stress that the existence of the Basel Convention should not prevent GATT from dealing with these subjects. There were serious loopholes in that Convention: there was no obligation on a country to keep such hazardous substances within its own boundaries, and some provisions might encourage the creation in the poorest countries, of treatment and recycling plants for dangerous substances. Cameroon did not want to promote this type of industrial development. If no decision could be taken on this matter at the present meeting, it would be incumbent on the Council Chairman and the Director-General to hold informal consultations to ensure that a working group was set up, at the latest, at the Council's May meeting.

The representative of Brazil noted that this item had been before the CONTRACTING PARTIES for quite a long time and its content subject to several rounds of informal consultations. The next step in the process, as proposed by a number of African delegations, would be to set up a formal working group to examine the trade aspects of this subject which had concrete and serious implications for a number of countries, particularly developing ones. Such a decision would be consistent with the international community's growing awareness of environmental issues. GATT would concentrate on the trade aspects of this question. Brazil therefore joined other contracting parties in supporting the establishment of a working group, under the terms set out in the relevant document.

The representative of Chile supported the establishment of a working group as proposed in C/W/580.

The representative of Cuba recalled that at the 8-9 February Council meeting, her delegation had supported adoption of the draft decision in C/W/580. Cuba was deeply concerned that some contracting parties were against this initiative, which dealt with the trade-related aspects of the subject in question.

The representative of Tanzania supported adoption of the draft decision in C/W/580. It was self-evident in the title of that document that it aimed at the trade-related aspects of the export of domestically prohibited goods and other hazardous substances. Tanzania hoped that the working group would address this problem seriously and without delay.

The representative of the European Communities said the Community had noted that in the discussion on this subject, some delegations had

⁶See item no. 1.

included, along with the export of domestically prohibited goods, the export of other hazardous substances. It was important to clarify exactly what this subject included. The Community had no objection to setting up a working group as requested by a number of African contracting parties. It went without saying that the terms of reference of that group and the results which would come out of it would have to be given careful reflection. The Community recognized that to set up such a group, consensus was necessary. However, consensus did not yet exist, because certain contracting parties did not see why this particular request for a working group should be granted while others, on other subjects, were not. It was necessary, without trying to establish any linkage, that the GATT institution work in a fair manner, and that there not be different weights and measures in taking decisions. That being said, it would be a mistake, even dangerous, for GATT to underestimate the acute political sensitivity which had just been expressed by a number of contracting parties regarding the matter at hand. The Council should render justice to those contracting parties which had requested the establishment of this working group, in view of the fact that this question had been raised a very long time ago. At the time of the launching of the Uruguay Round, the Chairman of the 1986 Ministerial meeting at Punta del Este had stated that he would like the question of hazardous substances to be discussed as well as the question of workers' rights. As an appeal had now been made to the Council Chairman and to the Director-General, contacts were needed in order to find a solution. The Community, for its part, was ready to facilitate this procedure, and even to undertake appropriate consultations itself in order to find a solution to this problem.

The representative of Canada said that while his delegation did not want to duplicate work on this important issue underway in other international fora, it could support the establishment of a working group in GATT to examine the matter raised by certain contracting parties, and would participate actively in such a group.

The representative of the United States said that his delegation had listened carefully to the statements and had taken part fully in the consultations on this subject. The United States associated itself with the views of the Community regarding the need for GATT to respond equitably to contracting parties' requests for the establishment of a working group to examine issues of concern to them. His delegation looked forward to further consultations on this matter and on other matters that had been related to it.

The representative of Cameroon welcomed the Community's statement, which indicated a positive movement on the part of that delegation, particularly as it had said that no link should be made between the matter under consideration and other matters which had been raised in the Council. His delegation hoped that informal consultations would lead to the establishment of a working group, which he felt almost no contracting party opposed.

The Chairman said it was clear that this was an important issue, which had been on the Council's agenda for a considerable time. There seemed to be a general desire to get on with informal consultations to see if

consideration of this matter could not be expedited at the Council's next meeting. He would discuss the situation with the Director-General, and such consultations would be organized prior to the next Council meeting.

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

5. Harmonized System - Transposition by the United States

The Chairman recalled that at the Council meeting in December 1988, the European Communities had raised this matter, and that the Council had considered it again at its meeting on 8-9 February. It was on the Agenda of the present meeting at the request of the European Communities.

The representative of the European Communities said it was regrettable that the Council had to come back once again to the subject of the United States' transposition of its tariff schedule to the Harmonized System (HS) -- a matter which should have been resolved a considerable time earlier. The Community had raised this matter in the Council in December, and had explained its position in detail at the 8-9 February Council meeting at which it had asked that the matter be submitted to arbitration by the Director-General. The Community had explained that the negotiations on the US transposition had not been concluded to the Community's satisfaction, most notably in the textiles and clothing sector. It had stated that the interests had not been met and its benefits under the guidelines set out for the HS negotiations (L/5470/Rev.1) had been nullified or impaired. The Community had stated its view that the United States should have engaged in separate Article XXVIII negotiations for the specific purpose of adjusting its tariffs in the textiles sector consequent to the HS transposition. The United States had declined the proposal to submit the dispute to arbitration on the grounds that the Community's case was, in its view, not well-suited to arbitration and that what was needed -- a broad-gauged evaluation of the results of the HS transposition -- could not be achieved through arbitration. This reasoning was difficult to follow. It should not be difficult for an independent arbitration authority to conduct a fairly narrow evaluation on a range of textile products, particularly since the United States itself had already recognized impairment on the items at issue by making an offer of compensation in the negotiations. What was necessary was an independent examination of the adequacy, in quality and value, of the US offer; in the Community's view, the offer was inadequate. In light of the Council's very recent adoption of improved dispute settlement procedures⁷ which included a section on agreed arbitration between parties, the Community had an even stronger case, and appealed to the United States to agree to arbitration in order to resolve the case at hand.

The representative of the United States said that the Community had summed up his own country's views completely. It was indeed regrettable that the Council had to address this item once again; his authorities

⁷ See item no. 1.

regretted that the Community continued to believe it was disadvantaged by the United States' HS conversion. That conversion -- in which the United States had achieved a balance globally and bilaterally -- was fully consistent with its GATT obligations. The Community's complaint was based on an extremely selective presentation of the issues involved. At the 8-9 February Council meeting, the Community had suggested that on the basis of 1986 figures, it would incur US\$5 million in extra duties because of the US conversion. This analysis took liberties with the terms of the HS exercise, which was conducted on the basis of 1981-1983 trade figures. The selective use of 1986 trade figures and a unilateral alteration of the agreed basis for the negotiations was bound to be misleading. Clearly, if one looked at recent trade patterns, increases and decreases had occurred in every participant's duties collected. The Community's statement would lead one to believe that the United States had admitted impairment and had made some offer of compensation in this case; this was false on both counts. The Community's presentation also ignored outstanding US grievances with respect to the Community's own HS conversion. At the 8-9 February Council meeting, his delegation had said that any examination of HS conversions had to cover the overall balance of concessions on both sides; that was the nature of the HS exercise. The United States still did not consider that arbitration was a tool well suited for such an evaluation. The United States continued to believe that the Uruguay Round provided a logical context for addressing the Community's concerns.

The representative of Hong Kong said that his delegation's view on this complex issue was recorded in the Minutes of the 8-9 February Council meeting. The complex, confused nature of this disagreement was evidenced by the two earlier interventions. Hong Kong therefore merely reiterated its support for the Community's request for arbitration. There were clearly defined objectives and procedures for Article XXVIII negotiations which seemed to indicate that arbitration would be an appropriate device for facilitating the resolution of this issue. He recalled that any arbitration award should not nullify or impair benefits accorded to any contracting party.

The representative of Australia said that his delegation had concerns about this matter. An Australian exporter of worsted upholstery fabrics had experienced a problem similar to the Community's regarding the US transposition to the HS. The product concerned was chiefly a wool, with a value of US\$2 per pound, with a duty bound prior to 1 January 1989 of seven per cent under T.S.U.S. item 36715 and with a duty of roughly 30 cents. These fabrics were now classified in the HS as items 511220 or 511230 with a duty of 48.5 cents per kilo plus 38 per cent. Thus, the duty on this product had increased from 30 cents to roughly US\$2.15. In the concordance tables provided by the US authorities in 1986 for Article XXVIII negotiations, there had been no acknowledgement of the possibility of a change in duty of this magnitude. Australia had made representations to the US Trade Representative, which had acknowledged an anomaly but had made clear that it had no intention of correcting it. Australia was only a small supplier of this product and had no formal Article XXVIII rights, but it had informed the United States that it wished to see this matter resolved satisfactorily.

The representative of Chile reserved his country's rights under Article XXVIII and other relevant provisions of the General Agreement, regarding the US transposition to the HS.

The representative of the European Communities said that the United States' response was extremely unsatisfactory and most regrettable. The Community did not have to apologize for seeking arbitration in an issue where it believed the negotiations were not completed and where it had every argument on its side. The United States had stated that it had made no offer of compensation. Clearly, as part of the negotiating process, the United States had recognized impairment in relation to its first transposition, which had involved considerable imbalance and where a level of compensation had been offered. That compensation was, in the Community's judgement, insufficient, and it was that level of compensation which should be the issue of arbitration. This seemed to be a case eminently suited to arbitration by an independent party -- the Director-General -- to examine the issues and advise the two parties which should commit themselves to accept the solution as binding in the manner provided for in the recently adopted Decision on dispute settlement⁸. However, since the United States had elected not to respond positively to the Community's now more detailed request for arbitration, it was clear that the Community would have to look at alternative options in detail, and when specific decisions had been taken on the subject of its Article XXVIII:3 rights, it would notify GATT of the measures it intended to take.

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

6. United States - Increase in the rates of duty on certain products of the European Economic Community (Presidential Proclamation No. 5759 of 24 December 1987)
- Communication from the European Communities (L/6438)
- Recourse to Article XXIII:2 by the European Economic Community

The Chairman recalled that at its meeting on 6 March, the Council had considered this item and had agreed to revert to it at the present meeting.

The representative of the European Communities said that the Community's request was before the Council and asked what the Council's decision was.

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

7. United States - Proposed trade action in respect of salmon and herring
- Communication from Canada (L/6268, L/6483)

The representative of Canada said that on 28 March 1989, the US Trade Representative had made public a determination of unfair international

⁸ See item no. 1.

trade practice under Section 304 of the US Trade Act in relation to the Panel report on measures on exports of unprocessed salmon and herring (L/6268). That announcement had been accompanied by a list of Canadian products which could be subject to retaliatory action, either in the form of increased duties or other import restrictions.

Canada was concerned by this action on two grounds. First, the United States had not indicated any intention to seek the CONTRACTING PARTIES' authorization before withdrawing concessions. Any unilateral action on the part of the United States without such authorization would be inconsistent with its GATT obligations. Second, Canada would consider any action by the United States to withdraw concessions, whether unilaterally or within GATT procedures, to be unjustified in the case at hand. Canada had indicated in the Council its readiness to implement the Panel's findings. In fact, action on such implementation was imminent, and the United States was fully aware of this. If the United States was not satisfied with the measures Canada would take with respect to the legitimate conservation and management concerns for the species in question, it was free to raise these concerns in GATT, but the United States should not prejudge the nature or the trade effect of the conservation measures Canada would institute.

The United States had indicated to the Council that the objectives of the US Omnibus Trade and Competitiveness Act of 1988 were focused on trade liberalization, not restriction, and that the assumption by some that Section 301 actions would eventually lead the United States into conflict with its GATT obligations had not been realized. However, the United States seemed to be opting for unilateral action in the case at hand, rather than the GATT dispute settlement procedures which were clearly available.

The representative of the United States said that his Government had taken no action against any product from Canada, and that it was the United States' strong preference that such action be proven unnecessary. He reminded the Council of the reasons why the United States had found it necessary to seek public comment on the possibility of withdrawing concessions. Canada's complete export embargo of fresh salmon and herring had been found by the Panel examining the US complaint to be inconsistent with Canada's GATT obligations. Indisputably, the measures had disadvantaged US interests which were entitled to the protection of GATT provisions. As his delegation had advised the Council on several previous occasions, Canada had proposed to replace this GATT-illegal restriction with a landing requirement having the same effect. For months, his Government had sought bilaterally to remedy this situation; however, Canada had given no effective response. His Government could not stand by and allow legitimate US interests to be sacrificed when no effective response, or even commitment to response, had been given.

The representative of Japan said it was his Government's position that unilateral actions without the CONTRACTING PARTIES' prior authorization would lead to a loss of credibility and to a weakening of the GATT system. His delegation had made its position clear at the 8-9 February Council meeting, and now called upon the United States to resolve this issue in

accordance with GATT rules and procedures. At the same time, he called upon Canada to ensure that it was taking measures necessary to comply fully with the Panel's recommendations.

The representative of the European Communities said that the Community, like Japan, felt obliged to voice two broad concerns in this matter. The first related to the timely implementation of panel reports, and the Community urged Canada to do what it had promised for some time. At the same time, the Community urged the United States to do itself what it expected of others -- for example, to implement the Panel reports on "Superfund" (L/6175) and the US customs user fee (L/6264), both of which had been awaiting implementation for an even longer time than the Panel report on salmon and herring. The second concern related to respect for the procedures under Article XXIII:2 regarding the authorization of retaliatory action. The Community urged the United States to respect these multilateral procedures while at the same time not blocking others from using them, as it had done so far regarding the Superfund case. The Community hoped that such difficulties could be avoided in the similar case of the US customs user fee.

The Council took note of the statements.

8. Accession of Bulgaria
- Consultations on procedural aspects of the Working Party

The Chairman recalled that at the 8-9 February Council meeting, he had indicated that further consultations on this matter would be held. Such consultations had taken place, and it was his view that further consultations were needed.

The representative of Bulgaria, speaking as an observer, recalled that in his Government's communication to the Director-General (L/6023 and Add.1) on its decision to seek accession to GATT two and a half years earlier, Bulgaria had stated its resolve to contribute to furthering the objectives of the General Agreement. That resolve remained, based on the conformity of the guidelines of the reform of Bulgaria's trade and economic policy instruments with the basic principles and objectives of the GATT. In the period since Bulgaria's submission of the Memorandum on its foreign trade régime (L/6364) in June 1988, new legislation had been enacted and practical actions undertaken significantly furthering the implementation of economic reform.

In January 1989, the State Council of Bulgaria had adopted a new Decree on Economic Activity, which spelled out the legal basis for reorganising business entities as independent profit-oriented firms, interacting through supply-and-demand mechanisms rather than in accordance with administered targets. In the ensuing period, the process of formation of market-driven firms had gotten well underway.

The Decree also stipulated the corresponding transformation of the foreign trade régime as a further major step in the progressive opening of the economy. The main features of the new trade régime included the

following: (1) The effective abolition of the remaining features of state monopoly over foreign trade -- Article 17 of the Decree allowed firms to engage in foreign business activities independently and freely, without seeking permission from a government authority. In accordance with this principle, the provisions on state monopoly in the Law on Foreign Trade of 1969 had been repealed. (2) The Decree explicitly envisaged that the positions of chief executive and president of the board of directors of new firms could be filled by foreign nationals. (3) All foreign companies doing business in Bulgaria were to operate under the conditions of the same Decree. They could maintain their own branch offices, operate wholly-owned subsidiaries or engage in joint ventures with local partners. (4) Foreign nationals' business activities were protected by the State which provided equal conditions for all foreign operators; their investments could not be subject to administrative seizure.

He said that the new round of changes in the trade and business régimes introduced with the Decree of January 1989 represented a further series of practical steps enabling Bulgaria to assume meaningfully the appropriate rights and obligations under the General Agreement. The aim had been to draft and undertake them in fullest possible conformity with GATT rules and principles, and was based on the real need to introduce and promote competitive forces in the national economy in line with the criteria of economic efficiency. At the same time, the new legislation included possibilities for achieving a mutually accorded balance of advantages with foreign trading partners.

He recalled that in November 1986, the Council had agreed that the usual procedure for examining Bulgaria's accession request should be followed and that a Working Party should be established. His delegation expected that the further informal consultations to be held prior to the Council's May meeting would enable a decision to be taken at that meeting on the procedural aspects of the Working Party. Meanwhile, Bulgaria would submit information on the evolution of the trade and economic policy instruments. A substantive examination in the framework of the Working Party would be important also as an input in the further elaboration of those instruments.

The representative of Tanzania said that his delegation fully supported Bulgaria's desire to accede to GATT as early as possible. Bulgaria's decision to join GATT was of utmost political importance, and he hoped that all contracting parties would facilitate its accession process.

The Chairman suggested that the Council take note of the statements and that it was his understanding that further consultations were needed, and agree to revert to this matter when there had been sufficient progress in those consultations to make consideration before the Council useful.

The Council so agreed.

9. United States - Taxes on petroleum and certain imported substances
- Follow-up on the Panel report (L/6175)

The Chairman recalled that at its meeting on 8-9 February, the Council had considered this matter. It was on the Agenda of the present meeting at the request of Canada.

The representative of Canada said that Canada was concerned over the United States' failure to implement the recommendation in this Panel report (L/6175), which had been adopted in June 1987. The United States had had nearly two years to modify its discriminatory tax on imported oil, but that tax remained in place. Canada, along with the European Community and Mexico, had repeatedly urged the United States to abide by this GATT ruling. To date, the United States had been unable to indicate when the necessary changes would be made. Canada had also proposed that the United States provide compensation, pending removal of the tax. To date, the United States had not responded. Canada considered that it had exhausted all other options to protect its GATT rights, and would now begin the process of preparing a request under Article XXIII:2 for authority to withdraw concessions from the United States. Canada was not interested in retaliation for its own sake, nor would it act unilaterally. It intended to follow GATT provisions to re-balance concessions. He emphasized that Canada's preference would be for the United States to implement the Panel's recommendation.

The representative of Mexico said that this question was also very important for Mexico, which found itself in the same situation as Canada. As to the form of the settlement of this question, Mexico strongly preferred the implementation of the Panel's recommendation, i.e., the removal of the discriminatory tax. If that were not achieved, Mexico would favour a trade-creating solution in the form of compensation.

The representative of Nigeria expressed regret at the United States' failure to implement the Panel's recommendation, and urged the United States to do so.

The representative of the European Communities pointed out that this matter had been on the Council's agenda 12 times over the past two years. In March 1988, the Community had sought the Council's authorization to withdraw concessions. More than one year had passed and nothing had happened. This was making a mockery of the dispute settlement process. His delegation wondered what the United States would have done if a contracting party, having introduced a discriminatory tax later found by a panel to be GATT-inconsistent, refused to remove it.

The representative of the United States said that his Government regretted Canada's decision to announce its intention to seek retaliation in this matter. The United States had stated clearly and definitively that the preferred remedy was to remove the GATT-inconsistent practice, e.g., to equalize the tax. A proposal to do that was being prepared and would be forwarded to the US Congress. His Government had also stated clearly in the Council that if it was unable to secure legislation that would bring the tax into conformity with GATT, it would negotiate appropriate

compensation. The views expressed at the present meeting would be conveyed to his authorities.

The Council took note of the statements.

10. Establishment of a streamlined mechanism for reconciling the interests of contracting parties in the event of trade-damaging acts

The representative of Chile, speaking under "Other Business", recalled that GATT Article XX(b) allowed contracting parties to apply measures aimed at the protection of human life or health, provided that such measures were necessary and did not constitute arbitrary or unjustifiable discrimination or a disguised restriction. Chile had paid special attention to this provision and its practical application, and had promoted the inclusion of sanitary and phytosanitary restrictions in the Uruguay Round negotiations on agriculture. However, Chile had encountered a recent problem in this area. On 13 March 1989, the United States and Canada had decided to suspend Chile's exports of fruits and horticultural products in connection with allegedly infected grapes. Other importing countries had followed with similar measures, with serious effects on Chile's employment and trade balance. The crisis had been settled and the measures progressively lifted through close cooperation with US and Canadian authorities and with other governments. This matter deserved reflection, as it could well affect other contracting parties in the future. It was thus necessary to balance, on the one hand, a contracting party's right to protect its consumers' health, and on the other, the legitimate right of an exporting contracting party to count on free and stable international trade, in order to avoid measures which, in the absence of consultations, might become disproportionate. The international community should send a clear signal to reaffirm its commitment to unfettered trade and to strengthen collective security in the face of sabotage actions or economic terrorism. Consultations should be held aimed at establishing a GATT mechanism which would deal with emergency situations of the type described and which would require governments to act rapidly and confidentially to preserve their mutual interests. He asked that this item be put on the agenda of the next Council meeting, when Chile would provide a fuller explanation of this matter.

The Council took note of the statement.

11. Canada - United States Free-Trade Agreement

The Chairman recalled that at its meeting on 8-9 February, the Council had agreed to establish a working party to examine the Canada - United States Free-Trade Agreement. He had been authorized, in consultation with the primarily interested contracting parties, to draw up the Working Party's terms of reference and to designate its Chairman. He informed the Council that in consultations conducted on his behalf, the terms of reference and Chairmanship of the Working Party had been agreed as follows:

Terms of reference:

"To examine, in the light of the provisions of the General Agreement, the Canada - United States Free-Trade Agreement concluded on 2 January 1988 and which entered into force on 1 January 1989, and to report to the Council."

Chairman:

Amb. Graham C. Fortune (New Zealand)

The Council took note of this information.