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GENERAL AGREEMENT ON TARIFFS AND TRADE

COUNCIL
2 November 1982

MINUTES OF MEETING

Held in the Centre William Rappard on 2 November 1982

Chairman Mr. B.L. Das (India)

1. Latin American Economic System (LAES)

- Attendance at thirty-eighth session (L/5391)

The Chairman informed the Council that a communication had been received from the Permanent Secretariat of the Latin American Economic System seeking observer status at the thirty-eighth session of the CONTRACTING PARTIES.

The Council approved the request.

2. Committee on Tariff Concessions

- Report by the Chairman

The Chairman recalled that in January 1980 the Council had established the Committee on Tariff Concessions, with a mandate to supervise the task of keeping the GATT Schedules up to date, supervise the staging of tariff reductions, and provide a forum for discussion of questions relating to tariffs.

Mr. Lavorel (United States), Chairman of the Committee, said that the Committee had met four times in the course of the year. At its meeting on 13 July 1982, the Committee had noted that both the Geneva (1979) Protocol and the Supplementary Protocol had been accepted by all countries having schedules of concessions annexed to them. With regard to the implementation of the stage-by-stage tariff cuts granted in the Multilateral Trade Negotiations, the Committee had noted at its meeting on 1 April 1982 that all countries concerned had given the necessary information concerning the implementation of their tariff reductions granted during the MTN.

He said that thus far twenty contracting parties had submitted their schedules in loose-leaf form. He urged contracting parties which had not yet submitted their loose-leaf schedules to do so without delay, and invited all contracting parties concerned to speed up the process of checking schedules already circulated.

He mentioned that several delegations had raised technical problems related to the information to be provided in the loose-leaf schedules, and that a simplified method for indicating initial negotiating rights had been agreed. At its meeting on 21 October 1982 the Committee had discussed the legal status of the loose-leaf schedules. At the request of several delegations, the secretariat had circulated its views on this matter, (TAR/W/34).

He recalled that at its last meeting in 1981 the Committee had asked the secretariat to prepare a document on procedures to be followed in the renegotiations likely to take place in connexion with the introduction of the Harmonized System. The secretariat had drawn up guidelines to be applied in the renegotiations, which were submitted to the Committee at its meeting in October 1982.

He also recalled that at the Committee's meeting in October 1981 many members had asked for a secretariat document on the subject of tariff escalation. As a result, a pilot study on copper producing and copper consuming industries (TAR/W/26) and another paper setting out the difficulties encountered in measuring tariff escalation (TAR/W/29) had been issued. The Committee had decided to keep this item on the agenda for its future meetings. At the meeting of 21 October 1982 the question of the extension of the Tariff Study had also been discussed, and the secretariat had also been asked to make a study of the implications of the adoption of the Harmonized System for the Tariff Study work.

He said that the Committee had held an extra meeting on 21 April 1982 to examine its possible contribution to the Ministerial Meeting. In this context, the Committee had discussed tariff escalation and the Harmonized System, which were among the points contained in the draft Ministerial Declaration annexed to the final report by the Preparatory Committee.

The Council took note of the report.[1]

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[1]The text of the report was subsequently circulated in document TAR/63.

3. Pakistan - Renegotiation of Schedule

- Request for extension of waiver (C/W/397, L/5373)

The Chairman drew attention to document L/5373 containing a request from the Government of Pakistan for a further extension of the waiver from the provisions of Article II of the General Agreement. The text of a draft decision was contained in document C/W/398.

The representative of Pakistan recalled that the CONTRACTING PARTIES, by Decision of 29 November 1977, had suspended the application of the provisions of Article II of the General Agreement to the extent necessary to enable the Government of Pakistan to maintain in force the rates of duty provided in its revised customs tariff. These revised customs duties had become necessary due to the difficult financial position facing the country in 1977. Unfortunately, it had not been possible to complete the negotiations in time, making it necessary for Pakistan to request a further extension of the waiver until 31 December 1983. Since the last extension of the time-limit in November 1981, Pakistan had significantly carried forward the process of negotiations and intended to pursue this process more vigorously after the Ministerial meeting.

The Council approved the text of a draft decision extending the waiver until 31 December 1983 (C/W/397) and recommended its adoption by the CONTRACTING PARTIES by a vote at their thirty-eighth session.

4. Uruguay - Import Surcharges

- Request for extension of waiver (C/W/398, L/5381)

The Chairman drew attention to document L/5381 containing a request from the Government of Uruguay for a further extension of the waiver to enable it to maintain a surcharge on bound items. The text of a draft decision was contained in document C/W/398.

The representative of Uruguay stated that his Government was experiencing problems in the prevailing economic circumstances in adjusting the concessions included in Schedule XXXI to the new tariff structure now in force. He stressed that the request was confined to an extension of the waiver for six months only, in the hope that circumstances would permit the work underway to be concluded within that period.

The Council approved the text of a draft decision extending the waiver until 30 June 1983 (C/W/398) and recommended its adoption by the CONTRACTING PARTIES by a vote at their thirty-eighth session.

5. Poland - Suspension of most-favoured-nation treatment by the United States (C/W/401, L/5390, L/5396 and Adds.1-3)

The Chairman drew attention to document L/5390, containing a communication from Poland, and to document L/5396 and the Addenda, containing communications from the United States and Poland related to this matter. He invited attention to document C/W/401 containing the text of a draft decision submitted only the previous day by Poland.

The representative of Poland said that the possible unilateral suspension of the most-favoured-nation tariff treatment of Poland by the United States, referred to in document L/5390, had now become effective. When the U.S. President had announced his decision on 9 October 1982 to suspend unilaterally MFN tariff treatment with regard to Poland, this had been presented exclusively in terms of a response to a legislative action taken by the Polish Parliament with regard to a domestic issue which did not affect the commercial, economic, political or security interests of any country. This motivation had been reiterated in subsequent U.S. statements made before and after the presidential proclamation was signed and became effective. He said that this proclamation had been used as a means of political pressure, and that no appearances of GATT legality could conceal this fact, which was unprecedented in the history of the GATT. In his view, the United States sought to make its action appear more legitimate by invoking paragraph 7 of the Protocol for the Accession of Poland. The United States had also claimed that bilateral consultations had taken place which did not lead to results. There had been no such consultations, even though Poland had indicated its readiness to enter into such bilateral contacts after having received a formal U.S. request.

Furthermore, he said that the United States had tried to justify the suspension of MFN tariff treatment of Poland by making reference to Poland's GATT obligations under its Schedule LXV. His delegation rejected this argument, since the question of Poland's import commitment under the GATT was a complex issue. He explained that Schedule LXV, providing for a 7 per cent annual increase of its imports from other contracting parties, had been established in 1967 when there was no customs tariff in Poland. The projections made at that time suggested a stable and moderate growth of trade for Poland and for other contracting parties. Furthermore, during the first eleven years after Poland had acceded to the GATT, there had been a steady increase in Polish imports from contracting parties at rates far in excess of Poland's commitment. He agreed that during the last four years Polish imports had not increased, due to the worsening balance-of-payments situation. This, however, was well known to the contracting parties.

He also recalled that Poland had suggested on several occasions an option related to the Polish customs tariff introduced in 1976 and had made efforts since 1978 to clarify, together with other contracting parties, the problem of Poland's import commitment in the light of the existing circumstances. These efforts had met with understanding on the part of Poland's trading partners, none of whom, including the United States, had reverted to paragraph 7 of the Protocol of Accession. His delegation believed, therefore, that the negative reaction of the United States could only be considered as an integral part of the present U.S. political attitude towards Poland.

He said that the suspension of Poland's MFN tariff treatment was also unacceptable in the context of Poland's bilateral negotiations with the United States during the Tokyo Round of Multilateral Trade Negotiations. Through an exchange of letters, effected on 28 February 1979 in Geneva, the delegations of both countries had come to an agreement in which the United States had qualified Poland's responses to U.S. non-tariff measure requests as adequate, and confirmed duty reductions on specific products principally supplied by Poland to the United States. The United States had confirmed that Poland would also

benefit from many other U.S. tariff concessions being granted by the United States to other countries in the framework of the MTN. In 1980 both Governments had formally decided to treat this exchange of letters as an agreement between them as contracting parties to the GATT. No reference was made in this agreement to Poland's import commitment under Schedule LXV.

In his view, these points indicated that the United States, by taking its action against Poland, had touched upon the most fundamental tenets and instruments on which the credibility of the GATT was established. Thus, he believed that the unconditional MFN tariff treatment to which Poland had full, legitimate and unconditional rights under Article I of the General Agreement had been suspended with a total disregard for the established letter of the GATT law and in contravention of U.S. contractual obligations undertaken towards Poland in the GATT. In approaching the Ministerial meeting, his delegation wondered why the United States had chosen this moment to inject into the pre-Ministerial debate a political element of unprecedented nature.

He then pointed out that Poland's economy was in a difficult position and that its trade relations were adversely affected by credit restrictions, high interest rates and unsettled debt problems. Poland was, however, determined to regain momentum in its foreign commercial relations and to live up to its financial commitments, on the assumption that adverse external factors would not frustrate these efforts. The U.S. action was inconsistent with this approach.

He said that the issues raised were related to the fundamental GATT principle of the most-favoured-nation clause and that this principle was in his view the first victim of the U.S. action. He said that the Council should take a clear stand on this issue and that in view of its serious implications, the Council should recommend to the United States to revoke the suspension of MFN tariff treatment of Poland. To this effect, his delegation had circulated a draft decision (C/W/401) for consideration by the Council.

The representative of the United States said that his Government had acted within its rights under the Protocol of Accession in taking the action in question. At the very minimum Poland had not honoured the commitment in its GATT Schedule LXV since at least 1978. He said that pursuant to paragraph 7 of the Protocol, a contracting party might suspend the application to Poland of such concessions or other obligations under the General Agreement as it considered necessary. The United States had held formal consultations with Poland on 22 October 1982, in accordance with paragraph 7, which were notified to the GATT. Following those consultations the U.S. action suspending most-favoured-nation tariff treatment had been implemented, and notified to the GATT.

He stated that Poland had clearly failed to meet the terms of its GATT concessions, and that his Government had shown patience and forebearance over an extended period of time concerning this failure. The U.S. rights had not been forfeited by its previous patience. Long before the United States had taken the decision to exercise its rights under the Protocol, Poland had been informed of the U.S. position through bilateral channels. He did not deny the importance of factors other than trade in the decision to exercise at this time the rights under the Protocol of Accession, and that this was well known to Poland and to other contracting parties. However, these other factors were outside the purview of the GATT.

The United States firmly rejected the notion that it had not conformed with the provisions of paragraph 7 of the Protocol, including the requirements for prior consultation and for notifications. He said that despite subsequent denials, Poland was well aware that the consultation on 22 October was held under paragraph 7 of the Protocol. There were no time periods specified for the procedures of paragraph 7; and the U.S. actions thereunder were not subject to prior or subsequent approval by the CONTRACTING PARTIES. The United States was aware that Poland in this situation also had rights under that same paragraph of the Protocol, which the United States did not seek to deny or abridge. However, he felt that the draft decision circulated by Poland in document C/W/401 was unwarranted.

The representative of Argentina said that this problem went beyond the interests of the two parties concerned, since it touched upon the credibility and jeopardized the legal basis of the General Agreement. He expressed regret that a contracting party was using its dominant position in international trade to apply coercive measures to another contracting party. He wondered whether a new philosophy was being introduced of using the contractual provisions of the General Agreement as a justification for policies which had nothing to do with the General Agreement. Long before the United States had taken the action under discussion, it had indicated its intention to apply economic sanctions against Poland. It, therefore, appeared to him that the action had been taken for political reasons and that only subsequently had there been put forward a legal justification. He raised the question of whether consultations had taken place between the United States and Poland. He also queried whether, in this case, the United States considered that the provisions of paragraph 7 of the Protocol should be considered as being isolated from the other legal commitments of the contracting parties under the Protocol, an interpretation which Argentina could not accept.

The representative of Poland stressed that the initial communication from his delegation in document L/5390 had been delivered to the secretariat on 21 October 1982. He drew attention to the fact that the U.S. request for consultations (L/5396) had been dated 22 October, which was the same date as that on which the United States later claimed that consultations had been held (L/5396/Add.2). Since the U.S. request for consultations had been received by his delegation only on 25 October, his delegation could not accept the explanation given by the representative of the United States. Moreover, the consultation claimed to have been held on 22 October had been a routine diplomatic contact with an official of the Polish Embassy in Washington, undertaken without an advance notice as to its substance and legal qualification under the GATT rules and procedures. Poland had officially notified its agreement to hold consultations with the United States on 29 October (L/5396/Add.1).

The representative of Brazil said that he had problems with the dates of the communications. In response to the U.S. request for consultations dated 22 October, Poland had proposed that they take place on 29 October. Thereafter, the United States had reported that consultations on 22 October had not been satisfactory. As the term "consultations" had a specific legal meaning under the General Agreement, it appeared to him that the rules on consultations, including those applicable to paragraph 7 of the Protocol of Accession, had not been properly applied. He reserved his delegation's position in respect of this matter.

The representative of Czechoslovakia expressed regret that this situation had arisen not only in relation to the two contracting parties directly concerned, but also because of its impact on the General Agreement. In his view, paragraph 7 of the Protocol of Accession could not be applied in isolation from paragraphs 5 and 6. Furthermore, basic provisions and principles of the General Agreement were directly relevant. The letter and spirit of both instruments did not favour immediate suspension of obligations except in cases of extreme urgency. As the Polish case was not of extreme urgency, any contracting party wishing to base its measures on the Protocol should first initiate actions under paragraphs 5 and 6. He believed that the suspension of application of obligations should have been preceded by consultation between the two parties concerned. He pointed out that in the Polish case the available means to prevent the deterioration of the situation had not been exhausted and that procedural safeguards as well as the right for due process provided in the General Agreement and the Protocol were not respected.

As to the argument advanced by the United States that Poland had not fulfilled its import commitments, he said that in the first half of the nineteen seventies Polish imports had been substantially greater than the import commitments. Later on, in the light of its serious economic situation, decline in monetary reserves and the general economic slow down in contracting parties, Poland had not been in a position to maintain the rate of imports of the previous years. He said that when considering the Polish economic and financial situation, Poland should not be given less favourable treatment than other contracting parties which, having similar economic and financial problems, were permitted to deviate from their obligations. The measures taken against Poland were far from being commensurate to the injury or threat thereof which the United States could have suffered by the slow-down of Polish imports. Attention should also be paid to the general balance of rights and obligations under the Protocol of Accession. It should not be overlooked that the date for termination of the transitional period for application of restrictive measures against Polish exports, as required by the Protocol, had still not been fixed and that Polish exports consequently could not have developed in a satisfactory way. He believed therefore that the measures taken against Poland were unjustifiable both under the General Agreement and under the Polish Protocol of Accession, and that consequently they should be revoked and GATT obligations fully restored between the two contracting parties concerned.

He pointed out that according to the official U.S. announcement of 9 October 1982 the suspension of MFN treatment had been based on reasons of a political nature and presented as a political response to a domestic legislative action of Poland which had no link to international trade. In his view, the use of trade measures for political reasons caused serious prejudice to international co-operation, could be adverse to GATT and would only undermine GATT's ability to deal with important problems now facing the organization. He stressed that if political differences were allowed to affect commercial treaties, the binding force of international agreements would be very seriously weakened and that none of the contracting parties to these treaties could be certain that their rights would not be impaired. His delegation was of the view that in the interest of maintaining the integrity of GATT in its application to the trade among contracting parties, the relations between the United States and Poland under GATT should be fully restored.

The representative of Cuba expressed regret that the GATT and its credibility were affected by the action taken by the United States. In her view, no true consultations had taken place between the two countries. The representative of the United States had said that his country was acting according to the provisions of the General Agreement, but was not willing to discuss the political reasons for this measure. This seriously jeopardized the credibility of the GATT, a point that should be considered at the forthcoming Ministerial meeting. She urged that MFN treatment be restored to Poland by the United States since GATT procedures had not been followed in this case.

The representative of Singapore said that his Government considered the MFN principle as the most fundamental principle of the GATT, and that there could be no legitimate derogations, exceptions or deviations from this principle, unless they were expressly provided for in the General Agreement. To be legal, the manner in which MFN treatment was to be withdrawn should be in strict compliance with GATT procedures. He had noted that paragraph 7 of the Protocol of Accession envisaged a situation in which MFN treatment could be withdrawn from Poland. However, having examined document L/5396 and its Addenda, his delegation had come to the conclusion that the procedure for the suspension had not been followed.

The representative of Hungary said that his delegation condemned the present action of the United States. He asked for an examination of the legal basis of the U.S. action, its conformity with GATT contractual obligations, and the impact of the action on the General Agreement. If the non-fulfillment of obligations by Poland under the Protocol of Accession were to be the legal basis of the U.S. action in question, then it was the task of the CONTRACTING PARTIES to compare that action and the procedure followed with the relevant provisions of the Protocol. He reserved his delegation's position on the validity of the legal basis put forward by the United States, especially in the light of paragraph 6 of the Protocol, which charged the CONTRACTING PARTIES to establish whether the Polish import commitment had fallen short. In the view of his delegation, the U.S. action and the procedure followed did not meet the contractual conditions and procedures under the General Agreement.

His delegation was very concerned about this action, not only because it harmed Poland's economic interests but because of its impact on the GATT system itself. He also criticized what he considered unfair action taken by a country which was among those accounting for a great part of world trade. He said that such tendencies, if not restrained, would simply destroy the multilateral GATT system. In the present case, a contractual obligation which constituted the very basis of the GATT system had been unilaterally disregarded. If contracting parties tolerated such actions without exercising any meaningful self-discipline, then other countries could be exposed to such actions, which could mean the end of the GATT. His delegation supported the draft decision submitted by Poland in document C/W/401.

The representative of Bulgaria, speaking as an observer, said that the case presented by Poland jeopardized the credibility of the GATT and affected adversely the integrity of the multilateral trading system. He emphasized that a fundamental GATT principle had been violated and that the multilateral discipline prescribed in paragraphs 6 and 7 of the Protocol of Accession had not been duly observed. His delegation regretted that the unilateral action taken by the United States was a

political response to an issue having no relation to trade. In his view, this showed the relevance of the proposal by some contracting parties to include in the declaration by the Ministers at the forthcoming session of the CONTRACTING PARTIES a reference to the tendency of certain countries to adopt trade restrictions in order to exert pressure by using their dominant position in the world market.

The representative of the European Communities said that only the GATT aspects of the problem should be considered by the Council, and that in this case the Protocol of Accession should be the basis for analysis, in particular paragraphs 5 and 7. In his view, there had been no violation of paragraph 5. Paragraph 7 applied whenever there were no consultations foreseen within the next three months, which was the present case. Poland had recognized that its economic situation had prevented it from fulfilling its commitment to increase imports. The United States had pointed to the non-fulfillment of Poland's commitments, but had refrained from taking action since 1978, which was its right. The United States had the right to act under the provisions of paragaph 7 of the Protocol, and Poland also had rights under that provision.

The representative of Canada said that the draft decision by Poland in document C/W/401 had been circulated to the Council only on the day of the meeting. The Council could, therefore, only look at the technical aspects of the problem related to paragraph 7 of the Protocol of Accession, which provided for consultations whenever commitments were not fulfilled. If the consultations were not successful, it gave the right for such action as was considered necessary. Annex B of the Protocol was in the same sense. He noted that there was no question of a precedent, as the provisions related only to Poland. The Council also did not have to focus on the question of motivation, but rather on the question of the legality of the action. Poland could have asked for a modification of the obligations under the Protocol or for a waiver, as had been done by other contracting parties, however, it had not chosen to do so. This, in his view, was important. The draft decision now submitted by Poland seemed tantamount to denying the right of a contracting party to exercise its rights under paragraph 7 of the Protocol. However, Poland also had rights under the Protocol, and it was up to Poland to decide what it would do, including the use of dispute settlement procedures. He reserved his delegation's position in respect of this matter.

The representative of Romania considered that the decision of one contracting party to suspend most-favoured-nation treatment was a violation of the most important GATT principle. Such action caused injury and affected the credibility of the GATT multilateral trading system. He felt that a solution should be found to this matter by using the dispute settlement procedures, since there were doubts that the GATT rules had been fully observed, particulary those pertaining to the Protocol of Accession. His delegation shared the interpretation given to this matter by the representative of Hungary as to the provisions of paragraphs 6 and 7 of the Protocol. He was concerned that this matter could set a serious precedent for the functioning of the General Agreement. His delegation was opposed to trade measures imposed for non-economic reasons, and supported the draft decision submitted by Poland.

The representative of Yugoslavia said that all contracting parties should strictly observe the GATT rules. Yugoslavia was basically against any kind of discrimination and against restrictive trade measures for political reasons. His delegation shared the views expressed by some other delegations that the contracting parties involved should first exhaust the conciliation procedures on the basis of consultations, using, inter alia, the good offices of the Director-General.

The representative of New Zealand said that based upon the documents submitted by both parties, it had been difficult for his delegation to establish the precise events that had led to the present situation. He felt, however, that the United States had taken action which was strictly and broadly compatible with rights available to it under the Protocol of Accession. His delegation had taken note of document L/5396/Add.3 wherein the Polish authorities had reserved their position as to whatever further action could be required to protect their legitimate GATT rights. This position appeared to be entirely in keeping with Poland's rights as a contracting party, and his delegation could support it in this connexion. As to the draft decision just received from the delegation of Poland, New Zealand could not take a position at this meeting of the Council. He wondered, however, whether this was a prudent or effective proposal, taking into account all the factors that needed to be considered.

The representative of India said that the withdrawing of most-favoured-nation concessions, which was the cornerstone of the GATT, should be exercised with utmost caution, as it could lead to the erosion of the basic principles of GATT. The matter under consideration required a thorough examination; and his delegation was prepared to participate in it.

The representative of the Philippines, speaking on behalf of the ASEAN countries, said that ASEAN reiterated its belief in the principle and importance of MFN treatment, and that GATT rights should be exercised in an equitable and balanced way. Since the draft decision submitted by Poland had only been received on the day of the meeting, there was a need to clarify the facts in this case through consultations, perhaps under the guidance of the Chairman of the Council, with a view to arriving at an acceptable decision. He expressed the hope that this would also contribute to a better climate for the forthcoming Ministerial meeting.

The representative of Switzerland noted that following the request made by the United States for consultations with Poland, dated 22 October 1982, consultations were to take place on 29 October. On the other hand, the Council had then been informed by the United States that consultations had taken place on 22 October. There thus existed an obscurity as to the dates, which did not make it easy to arrive at a clear picture of what had taken place. It was, therefore, not possible for his delegation to arrive at any conclusions. As to the procedures under paragraph 7 of the Protocol of Accession, it seemed to him that they were not yet exhausted. His delegation was accordingly prepared to deal with this matter under the provisions of paragraph 7 for which more time was needed. While reserving the position of his Government, he emphasized that if, as stated by the representative of Poland, the motives behind the U.S. action were political, Switzerland, subject to the provisions of Article XXI, was clearly opposed to commercial measures for a political end.

The representative of Argentina said it had become clear from the discussion that the trade restrictions had been adopted for political reasons. This should be rejected by the Council. Moreover, the prescribed procedures had not been observed. His delegation was not in a position to take action at the present meeting on the draft decision proposed by Poland in document C/W/401. He suggested that a solution for this matter might be found by using the good offices of the Director-General. This matter should then be referred to the forthcoming session of the CONTRACTING PARTIES; and his delegation reserved the right to make a final decision on this matter at the session.

The Chairman said that the discussion reflected the importance of the matter, which should be considered on its own and not in relation to any other matter. Some representatives had indicated that since the draft decision had been circulated only on the day of the meeting, they needed to consult their capitals.

The Council agreed to revert to this matter at the next meeting of the Council, which would take place after the forthcoming CONTRACTING PARTIES' session. The text of the draft decision would be reflected in the Minutes of this meeting and in the corresponding part of the Council's report to the CONTRACTING PARTIES. As such, it would be before the CONTRACTING PARTIES at the session when the report was considered, and at that point any contracting party would be free to intervene in the discussion.

The representative of Poland said that having this matter considered at the session of the CONTRACTING PARTIES met the expectations of his delegation. He distinguished two aspects of this matter: (1) the fundamental character of MFN treatment and of the procedures to be followed and (2) the specific commitments of a contracting party to the GATT. His delegation was ready to discuss these points at any time and place.

The representative of Argentina said that if no decision on this matter were taken at the session of the CONTRACTING PARTIES, the status of this matter before the Council would remain unchanged.

6. European Economic Community - Imports of citrus fruit and products

- Recourse to Article XXIII:2 by the United States (L/5337, L/5339)

The Chairman recalled that the matter had been before the Council at its three previous meetings. The Council had agreed at its meeting on 1 October 1982 to revert to the matter at its next meeting.

The representative of the United States repeated his Government's request that the Council establish a panel to examine the dispute between the United States and the European Economic Community concerning imports of citrus fruit and products. He recalled that a number of delegations had supported the U.S. request at the previous meetings when this item was discussed. He also noted that certain other delegations, speaking on a different matter, had firmly supported the right of a contracting party to a panel upon request, and referred in this context to C/M/161, pages 16, 17 and 20.

The representative of the European Communities noted that the matter was not a dispute between two contracting parties alone, but called into question preferences accorded to certain developing countries under various agreements that had been examined by working parties. These other interested parties had to be heard and associated as well. Some contracting parties considered that a panel was not appropriate to such a problem. The EEC regretted the U.S. insistence on a panel, but would not oppose, should the Council decide to establish one.

The representative of Canada expressed the view that a contracting party had the right to a panel upon request, and that it was up to the complaining party to choose whether a panel or working party should be established.

The representative of Spain recalled that his delegation had proposed the establishment of a working party, as the matter affected the direct interests of a number of countries as well as the agreements they had signed with the EEC. These agreements had never been the subject of objection by the CONTRACTING PARTIES. If concessions were to be withdrawn, for which counterconcessions had been received in the past, confidence in the GATT would be shaken, as the representative of Austria had pointed out at the Council meeting on 1 October. He noted that paragraph 15 of the Understanding[1] as well as paragraph 6(iv) in the Annex thereto, provided the possibility for any contracting party having a substantial interest in the matter before a panel, to be given an opportunity to be heard. In his view, this was insufficient, as the presentation would be made by an interested party without knowledge of what the two parties to the complaint had said to the panel. Similarly insufficient was the provision in paragraph 19 that an interested contracting party had the right to enquire about and be given appropriate information as regards a mutually satisfactory solution between the parties to a dispute. Interested parties could then not influence the solution. It was for these considerations that Spain had asked for a working party. He reserved the right to be consulted on the terms of reference of a panel, if one were to be established.

The representative of Brazil stated that the United States had asked for a panel rather than a working party, as was its right under paragraph 10 of the Understanding. He supported the establishment of a panel and reiterated his country's interest in citrus fruit and products.

The representative of Australia stated that the existence of preferential arrangements did not preclude or nullify the right to resort to dispute settlement. The United States had a right to the establishment of a panel as requested. Other interested parties could be heard by the Panel, as was the common practice. In the opinion of Australia the preferential arrangements in question had not been accepted by the CONTRACTING PARTIES as being in conformity with the General Agreement.

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[1]Understanding regarding Notification, Consultation, Dispute Settlement and Surveillance (BISD 26S/210).

The representative of Chile supported the establishment of a panel. He expressed concern lest the way in which this matter had been treated so far became a precedent. Were Chile to request a panel in the future, his delegation would not want the request to be discussed during several meetings in the Council while other contracting parties asked for a working party.

The representative of Uruguay shared the views expressed by the representative of Chile and agreed that a panel should be established.

The representative of the European Communities stated that the preferential arrangements in question had been presented and examined under the standard procedure of working parties. The reports thereof had been adopted. If there had been no formal approval by the CONTRACTING PARTIES, neither had there been a formal disapproval. Therefore, the arrangements had been recognized by the CONTRACTING PARTIES. He said that all that remained were nuances in certain cases, expressed in the reports of particular working parties.

The representative of Tunisia underlined the interests that certain developing countries had in the continuation of this form of cooperation with the EEC under the arrangements concerned. He considered that the matter should be dealt with in a body larger than a panel, as had been proposed by the representative of Spain.

The representative of Spain said that he had not claimed that the arrangements had been approved by the CONTRACTING PARTIES, but rather that there had been no objections expressed by them. This did not mean that each and every contracting party had accepted them.

The representative of Argentina stated that by taking note of the agreements the Council had not implied either rejection or acceptance of them.

The representative of Senegal supported the proposal for a working party which would associate all interested parties.

The representative of Turkey did not agree that there was a right to a panel. In his view, there was a right to request a panel but there was no automaticity in that request being granted, it being up to the Council to decide whether or not to approve the establishment of a panel. He enquired why the United States was seeking a panel, and in this connexion he referred to a similar question posed by the representative of Switzerland at the meeting of the Council on 1 October. In his view, the re-opening of a negotiation on an article of an agreement was not a trade dispute or an issue for a panel. His delegation preferred the establishment of a working party.

The representative of Israel stated his delegation's preference for a working party to examine this matter. At the same time, he believed that the United States had the right to ask for a panel and to obtain it in accordance with paragraph 10 of the Understanding. Referring to the views expressed by the representatives of Australia and Argentina, he stated that the GATT had not accepted the arrangements because there was no provision in the General Agreement either to accept or to reject the arrangements. Article XXIV:7 provided only for the CONTRACTING PARTIES to make recommendations. The CONTRACTING PARTIES had taken note

of the arrangements without making recommendations. This fact was of capital importance and reflected positively on these arrangements. His delegation reserved its position on the terms of reference of a panel until it knew the exact wording thereof.

The representative of the Ivory Coast stressed that the matter was of great importance to the developing countries concerned, and preferred that a working party study the matter.

The representative of Portugal stated that the matter was sensitive for the EEC and for the Mediterranean countries. He also queried the motivation of the United States on the matter.

The representative of Yugoslavia supported the proposal for a working party.

The representative of Canada expressed disagreement with the interpretation that in not rejecting the agreements, the CONTRACTING PARTIES had accepted them. He referred to the reports of the Working Parties which had examined the EEC agreements with Algeria, Morocco and Tunisia respectively. It had been stipulated in those reports that some members of the Working Parties had held the view that it was doubtful that these agreements were entirely compatible with the requirements of the General Agreement (BISD 24S/80, 88, 97). Moreover, the reports of the Working Parties which had examined the agreements of Malta, Cyprus and Israel respectively, all indicated that some members held views on these agreements similar to the view expressed above (BISD 19S/90, 21S/94, 23S/55). In at least one specific case, members reserved their rights under the General Agreement (BISD 19S/96).

The representative of Malta supported the view expressed by the representative of the European Communities regarding the GATT conformity of the agreements and supported the proposal for a working party.

The Chairman stated that while some delegations had indicated a clear preference for a working party, no strong objection had been raised to the establishment of a panel. He referred to paragraph 10 of the Understanding, which stipulated that "if a contracting party invoking Article XXIII:2 requested the establishment of a panel to assist the CONTRACTING PARTIES to deal with the matter, the CONTRACTING PARTIES would decide on its establishment in accordance with standing practice". He also referred to paragraph 15, wherein "any contracting party having a substantial interest in the matter before a panel, and having notified this to the Council, should have an opportunity to be heard by the panel".

The Council took note of the statements and agreed to establish a panel. The Chairman of the Council was authorized to decide on appropriate terms of reference in consultation with the two parties concerned and with other contracting parties who had indicated an interest in the matter, and in consultation with the two parties concerned, to designate the Chairman and the members of the Panel.

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

- Biennial reports

The Chairman drew attention to documents L/5378, L/5379 and L/5389 containing information submitted, under the procedure established by the Council for the distribution of biennial reports, by the parties to the following regional agreements.

(a) EEC-Cyprus Association Agreement (L/5379)

The Council took note of the report.

(b) EEC-Malta Association Agreement (L/5378)

The Council took note of the report.

(c) EEC-Turkey Association Agreement (L/5389)

The Council took note of the report.

8. United States - Imports of certain automotive spring assemblies

- Report of the Panel (C/W/396, C/W/400, L/5333)

The Chairman recalled that at its meeting on 1 October 1982 the Council had agreed to revert to this item at its next meeting. He drew attention to document C/W/396, containing the full text of the statement made by the representative of Canada at that meeting, and to document C/W/400, containing a subsequent communication from the United States.

The representative of the United States said that after having examined with care the Canadian position on this matter, the United States continued to believe that the Panel report should be adopted. The U.S. response to the Canadian position was set out in document C/W/400. While the United States would prefer that the Council adopt the Panel report at the present meeting, his delegation requested that substantive consideration of this item be deferred until the next Council meeting after the forthcoming thirty-eighth session so as to enable third contracting parties to examine and to reflect carefully on the matter in the light of the very recent communication from his delegation. He added that decisions on panel reports were a serious matter and that if the Council were to set panel reports aside lightly, the dispute settlement process could quickly break down.

The representative of Canada noted that a number of contracting parties would not yet have had an opportunity to examine the communication from the United States, in document C/W/400. He expressed disagreement with the major thesis therein and regretted that the Council appeared unable at the present meeting to follow the Canadian proposal to put the Panel report aside. Under the circumstances, however, he was willing to have the item deferred until the next meeting after the session.

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

9. Finland - Internal regulations having an effect on imports of certain parts for footwear

- Establishment of Panel (L/5369, L/5394)

The Chairman recalled that at its meeting on 1 October 1982 the Council had agreed to revert to this item at its next meeting. He drew attention to a communication recently received from the delegation of Finland (L/5394).

The representative of the European Communities said that numerous consultations with Finland over several months had not made it possible to find a satisfactory solution to this matter. At the last meeting of the Council the EEC had reserved all its rights and had envisaged the possible establishment of a panel at an appropriate time. With regret, in the absence of satisfactory results, he now requested the Council to establish a panel to settle this dispute between Finland and the EEC.

The representative of Finland referred to the position of his Government as stated at the Council meeting on 1 October 1982 and as set out in document L/5394. Finland considered the EEC claim to be without legal justification under the General Agreement, and therefore considered a panel as unnecessary. His Government had always maintained, however, that the agreed dispute settlement procedures recognized a contracting party's right to have a panel. Accordingly, Finland did not oppose the establishment of a panel in the present case.

The representative of the United States supported the request for the establishment of a panel.

The Council took note of the statements.

The Council agreed to establish a panel with the following terms of reference:

Terms of reference

"To examine, in the light of the relevant GATT provisions, the matter referred to the CONTRACTING PARTIES by the European Communities in document L/5369 and to make such findings as will assist the CONTRACTING PARTIES in making the recommendations or in giving the rulings provided for in Article XXIII:2."

The Council authorized the Chairman of the Council to designate the Chairman and members of the Panel in consultation with the two parties concerned.

10. Structural Adjustment and Trade Policy

- Report by the Chairman of the Working Party

Ambassador Blankart (Switzerland), Chairman of the Working Party on Structural Adjustment and Trade Policy, said that the Working Party had held six meetings over the past year. He recalled that the objectives of the work undertaken by the Working Party were to provide for a better understanding of the adjustment process and to aim at facilitating trade policy measures directed towards the expansion of international trade.

The work should also provide for an examination of the interaction between structural adjustment and the fulfilment of the objectives of the GATT in furthering the expansion and liberalization of trade, including in particular the trade of developing countries.

He said that the Working Party had examined a note by the secretariat on the relevance of the Articles and instruments of GATT to the process of structural adjustment (L/5316), as well as a study carried out by the secretariat examining the structural changes in production, employment and trade since 1963. In July 1982 the Working Party had sent a report to the Preparatory Committee with a view to providing relevant information which could serve as a contribution to the work of that body (L/5347).

He stated that the Working Party was currently engaged in a detailed examination of submissions provided by a substantial number of governments outlining their respective approaches to the question of adjustment and the considerations underlying the adoption of specific policies in this area. This work was not expected to finish until sometime in the first half of 1983.

The Council took note of the report.

11. Provisional Accession of Tunisia

- Extension of time-limit (L/5386)

The Chairman recalled that the Declaration of 12 November 1959 on the Provisional Accession of Tunisia, as extended by the Thirteenth Procès-Verbal of 24 November 1981 (BISD 28S/9), and the Decision of the CONTRACTING PARTIES which provided for the Participation of Tunisia in the Work of the CONTRACTING PARTIES (BISD 28S/18), were due to expire on 31 December 1982. A request by the Government of Tunisia for an extension of these arrangements had been circulated in document L/5386.

The Council approved the text of the Fourteenth Procès-Verbal Extending the Declaration to 31 December 1983 (L/5386, Annex 1) and agreed that the Procès-Verbal would be opened for acceptance by the parties to the Declaration. The Council also approved the text of the Decision (L/5386, Annex 2) extending the invitation to Tunisia to participate in the work of the CONTRACTING PARTIES to 31 December 1983 and recommended its adoption by the CONTRACTING PARTIES at their thirty-eighth session.

12. Trade restrictions affecting Argentina applied for non-economic reasons (C/W/402)

The Chairman recalled that at the meeting of the Council on 1 October 1982 the Council had agreed that the Chairman might hold informal consultations with the interested delegations with a view to arriving at some suggestions as to how this matter might be resolved. He said that the subsequent consultations that he had held with delegations had not resulted in conclusions that could lead to such suggestions.

The representative of Argentina thanked the Chairman for his efforts and emphasized the importance that his delegation attached to the consultations, even though they had not led to concrete proposals. He recalled that the main aim of his delegation was to secure a note interpreting Article XXI of the General Agreement. The issue presently before the Council was not the specific question of the measures taken against Argentina, but the principles on which the invocation of Article XXI had been based. Although the consultations held by the Chairman had not resulted in specific proposals in regard to the interpretation of Article XXI, they had brought out, in his view, the convergence of the thinking of some contracting parties on the need for certain factors to be taken into account when action under Article XXI was being taken. He continued to believe that Article XXI did not provide for an open-ended derogation from GATT obligations, but was very specific in its application. Article XXI authorized any contracting party to withhold any information that it considered contrary to its essential security interests, and to take action necessary for the protection of its essential security interests in three specific situations detailed in the Article. In the last part of the Article, reference was made to such action based on obligations in connexion with the United Nations Charter.

He said that the fundamental question remained the need to define more clearly the scope of Article XXI and the compatibility of specific trade measures with that Article. This question would need to be further discussed in the future in the GATT, so as to clarify the legal rights and obligations of contracting parties in this connexion. Accordingly, without prejudice to its right to pursue further the question of the need for a full legal interpretation of Article XXI, Argentina was submitting to the Council a draft decision (C/W/402) concerning Article XXI for consideration and adoption on the occasion of the thirty-eighth session of the CONTRACTING PARTIES.

The Chairman said that the text of the draft decision and the statement of the representative of Argentina would be reflected in the minutes of the present meeting as well as in the corresponding part of its report to the CONTRACTING PARTIES. He proposed that the Council might revert to this matter at its first meeting after the session of the CONTRACTING PARTIES, in the light of any decision the CONTRACTING PARTIES might have taken at their session.

The Council so agreed.

13. Consultative Group of Eighteen (L/5387)

The Chairman recalled that the Consultative Group of Eighteen was required under its terms of reference to submit once a year a comprehensive account of its activities to the Council. The report on the Consultative Group's activities in 1982 had been circulated in document L/5387.

The Director-General, Chairman of the Consultative Group, presented the report, which had been prepared on his own responsibility. He said that the report was somewhat shorter than usual for two reasons. First, the number of subjects dealt with by the Consultative Group during 1982 had been limited to the world economic situation and its implications for trade policy, the possible contribution of the Consultative Group to

the preparations for the Ministerial meeting, and the treatment of agriculture in the GATT. At the October 1982 meeting it had been decided to treat the last two subjects together, since it was clear that agriculture would be a major item on the agenda for the Ministers and that its treatment would be a matter of importance for many delegations. Secondly, the Consultative Group had decided at the outset that full records of its discussions on the forthcoming CONTRACTING PARTIES' session should be made available to the members of the Preparatory Committee. Notes of the discussion of this item in the February and May meetings had accordingly been distributed, as well as the complete records of the July and October meetings. The annual report summarized very briefly the earlier documents, while providing somewhat more detail on the discussion of agriculture in the February and May meetings, as well as a reasonably full account of the October meeting.

The Council took note of the report.

14. Training activities (L/5366)

The Director-General introduced the 1982 report on the secretariat activities in the field of training (L/5366). Recalling a number of points he had raised in the 1981 Report, he said in respect of lodging for the GATT trainees that as a result of initiatives taken by the secretariat, the situation appeared to be under control. As to the suggestion by former trainees that some form of liaison activity be established in order to keep in touch with trainees once they had completed the programme, he hoped that the arrangements described in document L/5366 would be satisfactory.

He also recalled having raised the previous year the problem caused mainly in the English-speaking courses by the considerable increase in the number of applicants, which surpassed the number of places available. The problem continued to exist as evidenced, for example, by over ninety applications having been received for the twenty places available for the next English-speaking course scheduled to begin in February 1983. He was aware that this problem as well as the holding of a Spanish-speaking course on a regular basis were being studied by delegations in connexion with certain proposals being made in the context of the preparations for the Ministerial Meeting.

He expressed his appreciation to all contracting parties that had supported the trade policy courses, in particular, those which had received trainees, such as Canada in 1981 and 1982, and Spain and the European Communities, who would receive the trainees taking part in the course currently underway. He also thanked the Swiss authorities for their traditional hospitality to GATT trainees and for having financed a five-week Spanish-speaking course, as well as delegations and representatives of other international organizations that had contributed to the courses. He particularly thanked the UNDP for its liaison with governments and candidates.

The representative of Turkey expressed his delegation's support for the training programme and for its successful continuation.

The representative of the European Communities asked whether special efforts were being made in connexion with trainees from the least-developed countries.

The Director-General said that due account was being taken of the needs of these countries, both in the section of participants and in the inclusion of subjects of interest to them in the courses.

The representative of Uruguay expressed thanks for the work done in this field in GATT and to the Government of Switzerland for having financed the first Spanish-speaking course which, hopefully, would be followed by others.

The representative of Colombia, in expressing his appreciation for the courses, raised the question of having a regular Spanish-speaking course. He felt that the decision to be put to the Ministers for a regular Spanish-speaking course was important.

The representative of the Ivory Coast expressed her delegation's appreciation for the work done in the field of training, and the hope that emphasis would be put on the needs of the least-developed countries.

The representative of Spain expressed his delegation's appreciation to the Government of Switzerland for having financed a trade policy course in Spanish. He hoped that such a course would become a regular feature of the GATT training programme.

The representative of Brazil expressed support for Spanish-speaking trade policy courses, which, in his view, should also be open to officials from non-Spanish-speaking countries.

The Director-General pointed out that one of the great virtues of the trade policy courses was the bringing together of officials from all points of the world with different language backgrounds.

The representative of Cuba expressed her Government's appreciation for the trade policy courses, which were regularly being attended by Cuban officials. She hoped that there would be a regular course in Spanish.

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

15. Administrative and financial questions

- Report of the Committee on Budget, Finance and Administration (L/5380)

Mr. Williams (United Kingdom), Chairman of the Committee on Budget, Finance and Administration, introduced the Report of the Committee (L/5380).

He said that, with regard to the 1982 situation, the outturn figures indicated savings by the end of the year to some 400,000 Swiss francs, which would be partially offset by a shortfall of miscellaneous income of some 87,000 Swiss francs. He said that the 1982 budgetary situation itself did not give rise to anxiety, but the situation with regard to the collection of outstanding contributions was the source of a very considerable degree of concern. In this regard, he drew

attention to the table appearing on pages 20 and 21 of the report which showed that the level of unpaid contributions at 30 September 1982 was 50 per cent higher than at the same date in earlier years. He underlined the Committee's view that the present situation was very serious. There was a real danger that the secretariat would soon find itself unable to meet its current commitments. For that reason, the Committee recommended that the Council make a special plea to all governments to pay their pending contributions immediately and to pay each year's contribution as early as possible in the year in which it fell due, in order to avoid the need to take special measures to assure the secretariat's solvency.

With regard to the Committee's examination of the 1983 budget estimates, he noted that the estimates provided for zero growth in real terms. The increase of 5.4 per cent (excluding the International Trade Centre) covered not only unavoidable inflationary increases but also the increase in statutory costs laid down by decisions applying to the United Nations system as a whole. The Committee had nevertheless decided to recommend a reduction in the budget estimate for permanent equipment of 41,000 Swiss francs. The Committee, therefore, recommended the adoption of a revised expenditure budget totalling 48,559,000 Swiss francs. In addition, the Committee had examined and approved proposals by the Director-General for consolidation of temporary assistance posts and for regradings. The discussions were recorded in paragraphs 30 to 34 of the report.

Regarding the International Trade Centre (ITC), revised budgets had been presented for 1982 and 1983 to take account of the effect of an appreciable increase in the value of the U.S. dollar in relation to the Swiss Franc and of certain additional unforeseen increases laid down by the U.N. Accounting system. This had the effect of increasing the Swiss franc contribution from GATT's 1982 budget by some 376,000 Swiss francs and increasing the amount foreseen in the 1983 GATT budget by 624,800 Swiss francs. Considerable discussion had taken place in the Committee with regard to this situation, which the Committee had felt to be anomalous, as although the ITC's budget was expressed in U.S. dollars, some 85 per cent of its expenditures were made in Swiss francs. He recalled that the Committee had already expressed its concern with regard to the ITC's budgets last year. The GATT secretariat had made proposals to the U.N. secretariat with a view to modifying the situation raised by these technical problems, but no solution had yet been found. The Committee, therefore, requested the Director-General to renew discussions with the secretariats of the ITC and of the United Nations in order to resolve the technical difficulties encountered and in order to protect the ITC from the effects of exchange rate fluctuations and increased inflation rates. Pending the outcome of these discussions, the Committee felt that, in order to avoid supplementary assessments, GATT contributions to the ITC should be made on the basis of the exchange and inflation rate assumptions that were prevailing at the time that the original budget submissions were approved by the Committee. In its report, the Committee recommended the approval of the revised ITC estimates for 1982 as they reflected, in large part, actual expenditures, but recommended that the provision in the 1983 GATT budget be approved without modification.

The Director-General underlined that the secretariat's situation with regard to available cash was seriously affected by the very high level of unpaid contributions, and that on several recent occasions, the secretariat had been on the point of being unable to pay its staff their salaries without recourse to overdraft facilities at the bank. On each such occasion the secretariat had been saved in extremis by the receipt of a sufficient amount of contributions. He assured the Council that every effort had been and continued to be made by the secretariat to persuade governments to meet promptly their financial obligations to the GATT, as bore witness the fact that contributions were being received just in time to avoid special measures being taken.

He said that since the establishment of the statement of outstanding contributions at 30 September 1982, a number of payments totalling 5,518,954 Swiss francs had been received from Brazil, the Central African Republic, Greece, Kenya and the United States. This amount was enough to meet the secretariat's absolutely imperative, undeferrable expenditures for just under one-and-a half months. This meant that the financing of the December 1982 payroll was not assured and that there would not be sufficient funds, unless further payments of contributions were forthcoming in the meantime, to cover the other payments that had to be made before the end of the year. The shortfall, after having fully exhausted the Working Capital Fund, was likely to be at least in the region of 800,000 to 1 million Swiss francs. In such circumstances, it would be necessary for him to negotiate an overdraft of that amount and the concomitant charges would have to be borne by the budget. He would keep the Committee informed of any such development. He concluded by saying that if the secretariat was to continue to operate at maximum efficiency on budgets that he established on the basis of maximum austerity, it was essential that each and every contracting party with unpaid contributions pay them immediately and that all governments pay their contribution for next year very early in 1983.

The representative of Colombia said that in the event of recourse to a bank overdraft to pay the normal running expenditure, the consequent interest charges should not be met by the general budget but should be borne only by those contracting parties that had arrears, on a pro rata basis, so as not to punish the others which had paid their contributions in time.

The representative of Portugal announced that the Portuguese contribution for 1982 would be paid within three days.

The representative of Greece stated the belief of his Government that in the present period of crisis and austerity, where governments had to reduce their expenditure and some of them had to freeze wages and prices, the GATT budget as well as the contribution to the ITC could be of a less inflationist nature. His delegation supported the reservations put forward by a member of the Committee on the consolidation of the temporary assistance posts into permanent posts and on the proposed upgradings. His delegation shared the view of that member of the Committee that the incorporation of temporary officials into the permanent secretariat staff without open competition was detrimental to the interests of countries which were under-represented

in the secretariat staff. His Government would also appreciate a greater transparency in administrative matters, in particular, as regards consultants' expenses, which could be done by appending to the report a detailed table. He informed the Council that the Greek arrears were due to a difference in exchange rates that had taken place at the time of the transfer of his Government's contribution. All necessary measures had been taken to ensure the settlement of this amount in the very near future.

The representative of Australia expressed concern at the situation which had evolved as the result of non-payment of contributions. It was his Government's understanding that, in the event the secretariat had to have recourse to special measures such as bank overdrafts, the matter would be raised with the Committee prior to taking such action.

The Council took note of the statements and approved the recommendations of the Budget Committee contained in paragraphs 15, 22, 26, 49, 60 and 61, and agreed to submit the draft resolution contained in paragraph 49 to the CONTRACTING PARTIES for consideration and approval at their thirty-eighth session.

In view of the present critically high level of outstanding contributions and its effects on the cash flow position and the financial management of the secretariat, the Council made a special plea to governments to meet their financial obligations fully and promptly by paying their pending contributions immediately and to pay each year's contribution as early as possible in the year in which it fell due.

The Council approved the report (L/5380) and recommended its adoption by the CONTRACTING PARTIES at their thirty-eighth session, including the recommendations contained therein and the Resolution on the Expenditure of the CONTRACTING PARTIES in 1983 and the ways and means to meet that expenditure.

16. Canada - Foreign Investment Review Act (FIRA)

- Composition and terms of reference of the Panel

The Chairman recalled that in March 1982 the Council had established a panel to examine the complaint by the United States and had authorized the Chairman of the Council, in consultation with the two parties concerned and with other interested contracting parties, to decide on appropriate terms of reference and, in consultation with the two parties concerned, to designate the Chairman and the members of the Panel.

The Chairman said that consultations had been held, and informed the Council of the composition and terms of reference of the Panel:

Composition

Chairman:	Amb. T.J. O'Brien (New Zealand)
Members:	Mr. J. Feij (Netherlands) Mr. M. Ikeda (Japan)

Terms of reference:

"To examine, in the light of the relevant GATT provisions, the matter referred to the CONTRACTING PARTIES by the United States concerning the administration of the Foreign Investment Review Act of Canada with respect to the purchase of goods in Canada and/or export of goods from Canada by certain firms subject to that Act; and to make such findings as will assist the CONTRACTING PARTIES in making the recommendations or rulings provided for in paragraph 2 of Article XXIII."

The representative of Brazil recalled that his delegation had previously expressed doubts about the representation made by the United States, as this matter dealt with Canadian laws and practices related to investments. The Brazilian delegation had eventually accepted the establishment of a panel, but had reserved its position on the matter and had asked to be consulted on the terms of reference. His delegation was not in a position to accept the terms of reference which had been announced, because they were too wide and referred to a sovereign country's investment legislation. He expressed the view that the General Agreement did not prevent a contracting party from prohibiting foreign investment, even if this resulted in trade distortion. Moreoever, the reference to the purchase of goods in Canada, without any reference to Article III, also appeared to be inappropriate. Under these circumstances, Brazil would wish to make a formal reservation as to the terms of reference for the Panel.

The representative of Argentina said that while the terms of reference had been agreed between two contracting parties in relation to their dispute, it was doubtful whether this was a dispute for which the GATT had competence. Under these circumstances, Argentina would reserve its rights in this connexion. Moreover, irrespective of the terms of reference for this Panel, its establishment in relation to the particular dispute between the two parties concerned could not be interpreted as a precedent for any other contracting party which did not share their interpretation on this matter.

The representative of the United States described the steps which had been taken to ensure that the Chairman's consultation on the terms of reference would include other interested delegations. He expressed surprise at the difficulties which now appeared, while recognizing the right of a delegation to make a reservation on the terms of reference if it so desired. With regard to the comments made on the substance of the matter, he said that the United States was not attacking Canadian investment laws directly but was complaining about two specific trade-related issues which were included in the terms of reference. As for the question of GATT competence, it could be assumed that the Panel itself would consider this issue in its deliberations.

The representative of the Philippines recalled that in the context of the work in the Preparatory Committee, the ASEAN countries had taken the position that a number of items, including investments, should be best left for other international organizations. The non-objection of the ASEAN countries to the establishment of this Panel should, therefore, not be interpreted to mean that they had deviated from their former position.

The representative of Colombia expressed a reservation on behalf of Colombia, Peru and other Andean Group countries which had adopted legislation of this nature. He expressed concern that the terms of reference as announced could raise problems for the future functioning of GATT, and suggested further reflection on this matter.

The representative of Canada assured the representatives that Canada had been most careful not to agree to terms of reference that would have Canadian investment policy and law placed under GATT scrutiny. It was the considered view of his Government that the terms of reference ensured that the examination would touch only on trade matters which were within the purview of GATT, and that there would be no opportunity or reason for the Panel to examine Canadian investment policies. His delegation had noted the reservations which had been expressed, but urged that the Panel begin to work at an early date on the basis of the terms of reference as announced.

The representative of Spain stated that his delegation would wish to enter its reservation to the proposed terms of reference for reasons of principle and of a general nature.

The representative of Yugoslavia said that his country also had problems with the terms of reference, and reserved the right to make further comments on the matter.

The Chairman pointed out that the contracting parties whose representatives had made earlier statements on this subject had, to the best of his knowledge, been informally consulted. The statements made at the present meeting indicated the serious implications of this matter and that the concerns of representatives went beyond those of the two main parties in this dispute. He suggested that the terms of reference remain as they stood, that the reservation and statements made by representatives be placed on record, and that it be presumed that the Panel would be limited in its activities and findings to within the four corners of GATT.

The representative of Brazil registered the formal reservation of his Government, while accepting the suggestions of the Chairman.

The Council so decided and took note of the statements.

The representative of the United States, referring to the foregoing discussion, recalled that at an earlier meeting his Government had indicated its intention to submit, after the Ministerial meeting, proposals to review procedures for the settlement of disputes and for the conduct of business in the Council. In this context, he said that contracting parties wishing to be directly consulted and involved in the drafting of terms of reference should indicate their wish at the time a panel was established.

The Council took note of the statement.

17. France - Imports of video tape recorders

The representative of Japan, speaking under "Other Business", said that in its Official Gazette of 20 October 1982 the French Government had announced that customs clearance of video tape-recorders would be made only at the customs office in Poitiers. As a major supplier of video tape-recorders, Japan had a serious concern over the announced measure, which would have a considerably restrictive effect. He said that it had also been reported that, on the same day, the French Cabinet had decided that the documentation necessary for the customs clearance of imported goods had to be in the French language. Japan had already taken steps to request the French Government to withdraw promptly those trade measures, and reserved its rights under the General Agreement with respect to them.

The Council took note of the statement.

18. Uruguay - Supplementary rebate on exports and supplementary surcharge on imports

The representative of Uruguay, speaking under "Other Business", referred to the earlier notification by his delegation (L/5355) on measures taken by his authorities in the light of economic difficulties. The measures consisted of a supplementary export rebate and a supplementary import surcharge. He recalled that this matter had been raised at the meeting of the Council on 1 October 1982. He stated that these measures did not violate Uruguay's GATT obligations and were imposed in the spirit of Part IV, in particular of Article XXXVI. His delegation had taken account of the concern expressed by some delegations, and believed that in this case the provisions of Article XVIII:C were also applicable.

The Council took note of the statement.

19. United States - Imports of sugar

The representative of Brazil, speaking under "Other Business", said that on 16 August 1982 Brazil had requested consultations with the United States under Article XXII on restrictive measures that the United States had applied to sugar imports since the end of 1981 (L/5360). He informed the Council that the consultations, held on 14 September 1982, had regrettably confirmed that the restrictive measures in question were and continued to be prejudicial to Brazil's interests as a major sugar exporter. Accordingly, his Government reserved its rights under the General Agreement.

The Council took note of the statement.

20. Consultation on trade with Romania

- Designation of the Chairman of the Working Party

The Chairman recalled that in October 1982 the Council had agreed to establish a working party to conduct the fourth consultation with the Government of Romania under its Protocol of Accession, and had authorized the Chairman of the Council to designate the Chairman of the Working Party in consultation with the delegations principally concerned.

He informed the Council that following such consultation Mr. Villar (Spain) had been designated Chairman of the Working Party.

The Council took note of this information.

21. Report of the Council (C/W/395)

The Secretariat had distributed in document C/W/395 a draft of the Council's report to the CONTRACTING PARTIES on the matters considered by the Council since the thirty-seventh session and any action taken in this respect.

Some representatives proposed amendments to the draft.

The Chairman requested the Secretariat to insert the amendments proposed as well as suitable additional notes regarding action taken at this meeting.

The Council agreed that the report with these additions should be distributed and presented to the CONTRACTING PARTIES by the Chairman of the Council.