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GENERAL AGREEMENT ON TARIFFS AND TRADE

COUNCIL
27 October 1986

MINUTES OF MEETING

Held in the Centre William Rappard
on 27 October 1986

Chairman: Mr. K. Chiba (Japan)[1]

The Chairman, on behalf of the Council, welcomed Burma and Mexico as members of the Council.

[1]Mr. Chiba, Chairman of the CONTRACTING PARTIES, presided in place of the Chairman of the Council, Mr. K. Park (Korea).

1. Accession of Morocco
- Further extension of date for signature of the Protocol (L/6059)

The Chairman recalled that at its meeting in July, the Council had agreed to extend until 15 October 1986 the date for the signature of Morocco's Protocol of Accession. He drew attention to the communication from Morocco in L/6059, and proposed that the Council amend the date in paragraph 5 of Morocco's Protocol of Accession to 31 December 1986.

The Council so agreed.

2. Accession of Bulgaria (L/6023 and Add.1)

The Chairman drew attention to Bulgaria's application to accede to the General Agreement under Article XXXIII, and to its request for establishment of a working party to examine that application in accordance with the usual procedures (L/6023 and Add.1).

The representative of Bulgaria, speaking as an observer, recalled that his Government had, on the eve of the GATT Ministerial Session in Punta del Este, submitted its application for accession to GATT. His country, which had been an observer in GATT since 1967 and which had participated in the Tokyo Round, considered that closer co-operation with contracting parties in the framework of GATT could enhance mutual trade relations to the benefit of all concerned. Bulgaria believed that the results of the Uruguay Round would enlarge the basis for such co-operation. His country was seeking, both in bilateral negotiations and through the multilateral framework, full implementation of the principle of equality and mutual advantage among trade partners, the non-discriminatory application of quantitative restrictions, and improved discipline in the agricultural sector. Bulgaria's interest in acceding to GATT was practical, prompted by both internal and external economic reasons. Trade was vitally important to his country; the value of foreign trade already surpassed the national income by nine per cent, and the economy's openness was expected to increase further. While participation in the international division of labour had played a decisive rôle in accelerating Bulgaria's economic development, its economy was still at an intermediary level of development similar to that of a number of developing countries, both with respect to per capita GNP and to the structure of its exports to developed market-economy countries. He explained that while Bulgaria was a planned economy, its economic mechanism was aimed at achieving planned targets not through administrative directives but by economic regulators. Bulgaria's trade and economic co-operation with developing countries was rapidly increasing and had become the most dynamic sector in its foreign trade relations. His country wanted to expand trade with developed market-economy countries and was willing to engage in broader economic co-operation to that end. Bulgaria was determined to apply all the GATT principles and to further GATT objectives in its trade with contracting

parties, provided it received full reciprocity from them; it expected that its intermediary level of economic development would be taken into consideration when its terms of accession were discussed. His Government was preparing and would present in the spring of 1987 a detailed analysis of its foreign trade régime and related economic mechanisms. His country was ready to consult all interested contracting parties throughout the preparation of the Memorandum and the exchange of questions and answers, in order to provide fully the information relevant to its application for accession. On procedure, Bulgaria expected that contracting parties would support its application for accession and its request for establishment of a working party on this matter.

The representatives of Hungary, Argentina, Uruguay, Nicaragua, Peru, Cuba, India, Brazil, Mexico, Poland, Czechoslovakia, Yugoslavia, Romania and Nigeria welcomed Bulgaria's decision to apply for accession to GATT and supported its request for establishment of a working party to examine this matter.

The representative of Hungary said that Bulgaria's accession should be mutually advantageous both to contracting parties and to Bulgaria, which would benefit from the many advantages multilateral trade discipline offered to small trading nations. His country hoped that contracting parties would base the conditions for Bulgaria's accession on the merits of this individual case. Hungary proposed that in accordance with usual procedure, the Council establish without delay the appropriate working party.

The representative of the European Communities said that the time had passed for the GATT to be a completely open institution; each request for accession should be appraised according to the higher interests of the multilateral system and not just those of the requesting country. The Community would deal with Bulgaria's request in this light. A point of concern was Bulgaria's claim to be a developing country, which the Community did not accept. The Community wanted it to be clear, so as to avoid any misunderstanding or delay, that it had never recognized Bulgaria as a developing country and could not agree to accession negotiations in which Bulgaria was considered as such. However, if Bulgaria were not to be considered a developing country, everything was possible through negotiation.

The representative of the United States said his Government was not convinced that non-market economy countries like Bulgaria had trade régimes compatible with GATT obligations. It was not a question of membership in GATT, but rather the acceptance of obligations and enjoyment of rights on a reciprocal basis under the Articles of the General Agreement. The United States questioned whether Bulgaria was capable of undertaking real GATT obligations and felt this question was fundamental to any decision on the appropriateness of its accession. Contracting parties deserved to see, before Bulgaria's accession,

tangible evidence, based on actual economic and trade reforms, that Bulgaria's interest in GATT was based on a desire to move its trade régime closer to GATT principles and norms. Regarding the request in L/6023, the United States agreed with the Community that Bulgaria was not a developing country; rather, it was a non-market economy country. A great deal more information would be needed before contracting parties could decide to consider Bulgaria's request further. The United States therefore opposed establishment of a working party, pending the receipt of Bulgaria's Memorandum on its foreign trade régime and contracting parties' examination of it.

The representative of Canada said his delegation expected countries wanting to accede to the General Agreement to be prepared to bring their commercial and trade policy régimes into line with the letter and spirit of the General Agreement. Canada expected that the Bulgarian Memorandum would provide detailed information on its régime so that, when the time came, governments would be in a better position to assess the terms and conditions of Bulgaria's possible membership in GATT.

The representative of Japan said that if his delegation were reasonably convinced of the need to set up a working party, it would agree to such action being taken by the Council. However, since it appeared that opinions were divided on this issue, his delegation would need further time to reflect. Should a working party be set up, the questions raised during the present discussion should be very carefully examined.

The representative of Finland, speaking on behalf of the Nordic countries, welcomed Bulgaria's decision to apply for accession to GATT and looked forward to participating with other contracting parties in negotiations on the terms of that accession.

The representative of Australia said his Government had noted Bulgaria's application for accession, but it appeared that the Council would not be able to decide on establishment of a working party at the present meeting. At the point when a working party was established, his delegation would participate in it, on the basis of ensuring the proper balance of rights and obligations between Bulgaria and other contracting parties.

The representative of Austria said that his country supported in principle any extension of the open multilateral trading system to other countries and was therefore prepared to examine Bulgaria's request in the appropriate institutional framework.

The representative of Bulgaria, speaking as an observer, thanked the delegations ready to participate in a working party in which his delegation would provide all the information relevant to Bulgaria's ability to accept GATT rights and obligations. He assured the United

States of his Government's willingness, within the normal procedures, to answer any question which the United States might have. Given GATT's pragmatic approach to accession, he said it should be possible to follow the normal procedure of setting up a working party.

The representative of Hungary reiterated his delegation's position that for Bulgaria, as for any other country, the normal procedure in this matter should be followed.

The representative of Nigeria said that in view of the overwhelming support for Bulgaria's application for accession, a working party should be set up at the present meeting in accordance with normal procedures. Any difficulties which might arise could be examined and resolved in that body.

The representative of Argentina said that to postpone establishment of a working party was neither pragmatic nor in accord with the spirit of GATT.

The representative of India supported the statement by Hungary and considered that the Council should follow its usual course in respect of such matters. However, if a decision could not be taken at the present meeting, the only alternative seemed to be to revert to this matter at the next regular Council meeting.

The representative of Nicaragua supported the statement by Argentina and urged immediate establishment of a working party.

The representative of Cuba supported the statements by India and Argentina. In her delegation's view, a working party should be established and all questions should be raised in it.

The representative of the European Communities agreed with the representative of Australia that the Council would not be able to establish a working party at the present meeting. While it was normal practice to set up a working party to consider an application for accession, there was no rule that this had to be done immediately. To date, all requests for accession had succeeded in the end, but this did not mean that all would do so in future. He reiterated that it was not just a matter of the interests of the party seeking accession, but rather of the interests of the system. The growing imbalances in the system must not be exacerbated.

The Chairman said that many representatives had spoken of a working party to examine the request by Bulgaria, and that while some of them had supported immediate establishment of a working party, others had not specifically supported taking such action at the present meeting. Moreover, some representatives had expressed the desire to wait and to have more information, and it had been suggested that the Council might

revert to this item at the next regular Council meeting so that delegations might consult in the meantime. Since there appeared to be no consensus on this matter at the present stage, he suggested that the Council take note of the statements and agree to revert to this item at its next regular meeting.

The Council so agreed.

3. Trade in Textiles
- Report of the Textiles Committee (COM.TEX/49 and 50)

The Director-General, Chairman of the Textiles Committee, introduced the report in COM.TEX/50. He recalled that Article 10:5 of the Multifibre Arrangement[1] requires the Textiles Committee to meet not later than one year before the expiry of the Arrangement in order to consider whether it should be extended, modified or discontinued. At the March 1986 Council, he had reported that the Textiles Committee had, as early as July 1985, started discussing this subject. These discussions had become intensive as from April 1986. After a series of long and difficult negotiations in the second half of July 1986 and as a result of a collective effort of accommodation and compromise, the Committee had adopted, on 31 July 1986, a Protocol extending the Arrangement for a further period of five years from 1 August 1986 until 31 July 1991. The text of the Protocol and the Conclusions of the Committee adopted on 31 July 1986 were contained in COM.TEX/49. A detailed record of the discussions and deliberations at the Committee meetings in July 1986 were contained in COM.TEX/50. The latter document showed that the Committee had also agreed to extend the term of Mr. Raffaelli as Chairman of the Textiles Surveillance Body, and to extend the current membership of the Body until 31 December 1986.

The Council took note of the statement and of the Protocol extending the MFA (COM.TEX/49), and adopted the report of the Textiles Committee (COM.TEX/50).

4. Japan - Quantitative restrictions on certain agricultural products
- Recourse to Article XXIII:2 by the United States (L/6037)

The Chairman drew attention to the communication from the United States in L/6037.

The representative of the United States said that, as indicated at the Council meeting on 15 July, his delegation was requesting establishment of a panel under Article XXIII:2 to examine restrictions maintained by Japan on imports of 12 categories of agricultural products

[1] Arrangement Regarding International Trade in Textiles (BISD 21S/3).

as listed in L/6037. The United States and Japan had held numerous bilateral consultations on this matter, but regrettably had not reached a solution. It was important to GATT's dispute settlement process to recognize the fundamental right of a contracting party to resort to the panel mechanism to resolve serious trade disputes. The United States therefore asked the Council to establish a panel with standard terms of reference, and urged that the panel be composed quickly so that it could begin work expeditiously.

The representative of Japan said that his country and the United States had been seeking a mutually satisfactory solution to this matter. Japan's position was based on the actual supply and demand situation as well as on the production/import relationship, which varied according to the item. The US position had been at best theoretical, not to say mechanical, in requesting immediate and full liberalization of imports of the items in question. His delegation was convinced that a practicable solution could still be found. He said that following the successful launching of the Uruguay Round, the contracting parties' task now was to achieve successful negotiations. Negotiations on strengthened and more effective GATT rules and disciplines for agricultural trade, taking into account its specific characteristics, should be pursued. In this context, Japan's restrictions as well as the US waiver on agricultural products were now both on the table. He said that some of the 12 items cited by the United States were identical to those covered under its own import restriction régime, and added that the US waiver allowed that Government to widen the scope of its restrictions at will. This was one of the important aspects of the upcoming negotiations. Japan, as the largest net importer of agricultural products in the world, would spare no effort for the success of the Uruguay Round, which it was hoped would re-establish rules and discipline in agricultural trade. Under these circumstances, Japan had difficulty in accepting the US request for a panel.

The representative of Canada said his country had long held that the quantitative restrictions maintained by Japan were inconsistent with that country's obligations under the General Agreement. Agricultural products accounted for about 25 per cent of Canada's total exports to Japan. While much of that trade was commodity-related, Canada also had a direct interest in sales of processed food products. His delegation reserved its rights, in keeping with the 1979 Understanding regarding Notification, Consultation, Dispute Settlement and Surveillance (BISD 26S/210), to present its views to a panel on this issue.

The representative of Australia said his delegation supported the US request for a panel and wanted to participate in any panel proceedings. He said that most of the 12 items listed in L/6037 were included in Japan's 1969 notification (L/3212/Add.7) of import restrictions applied inconsistently with the GATT in the form of global quotas. It was Australia's view that Japan's residual import restrictions were illegal

and should be brought into conformity with the GATT. He said that the restrictions were part of Japan's system of trade in agricultural products which was comprehensively regulated by state trading, import quotas, tariff quotas and other non-tariff barriers. Through these mechanisms, Japanese agriculture had been effectively sealed off from international market forces to the detriment of efficient exporters. Australia was concerned by suggestions that matters such as these could be left to the Uruguay Round; matters involving clear inconsistencies with GATT should be addressed as soon as possible and were not subjects for negotiation.

The representative of Uruguay said his delegation shared the views expressed by Canada and Australia and reserved its position on this matter.

The representative of Argentina said his delegation shared the views expressed by Canada, Australia and Uruguay.

The representative of the United States said his delegation was surprised at Japan's response, which implied the suspension of GATT's dispute settlement procedures during the course of the Uruguay Round. The United States could not agree to this and insisted upon its right to a panel in this case.

The representative of the European Communities said that on the question of access to markets for agricultural products, the Community had always been in favour of putting all measures on the negotiating table. As for the matter presently before the Council, he said that when a contracting party followed normal practice in invoking the GATT dispute settlement mechanism, it was difficult to oppose such a request. The Community was not opposed to establishment of a panel as requested, and reserved its right to make a submission to the panel.

The representative of Brazil expressed his delegation's sympathetic consideration to the US request for a panel.

The representative of Japan said that while his delegation was not convinced that the dispute settlement mechanism was the best way to resolve this matter, it would not engage in a procedural battle. Japan still believed that the most productive route would be continued bilateral consultations, but now felt obliged to accept establishment of a panel and asked the Chairman to draw up its terms of reference. His Government would fully cooperate with the panel but at the same time did not exclude the possibility that a bilateral solution could be reached in due course, and hoped that the panel would take this possibility into account. It was also hoped that due attention would be paid to factual aspects of the case during the examination of its legal aspects, because the 12 items played a vital rôle in Japan's agriculture and regional economies, and because import restrictions on each item had a

social and political, as well as an economic, background. Japan would follow the panel's progress and would take into account the progress to be made in the Uruguay Round negotiations on relevant matters.

The representative of New Zealand said that his authorities had taken careful note of the US request for a panel and welcomed Japan's agreement to it. He said that the measures involved applied to some items in which New Zealand had a trade interest and which had been subject to bilateral representations by his Government to Japan. He reserved New Zealand's right to make submissions on this issue in due course.

The representative of the United States noted with satisfaction Japan's agreement to establish a panel. His delegation would consult with the Chairman on the panel's terms of reference, which should be the standard terms, but could not accept that such consultations should delay the panel's work. He noted that the panel process by itself did not prevent a bilateral settlement.

The representative of Australia welcomed Japan's agreement to establishment of a panel; this represented a constructive approach to an issue Australia regarded as very important for the Uruguay Round.

The Chairman suggested standard terms of reference as follows:

"To examine, in the light of the relevant GATT provisions, the matter referred to the CONTRACTING PARTIES by the United States in document L/6037 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 representative of Japan said that his delegation wanted to study the terms of reference suggested by the Chairman and to consult with his authorities, and would shortly state its position.

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

The Council so agreed.

5. Bilateral agreement between the United States and Japan regarding trade in semi-conductors
   - Recourse to Article XXII:1 by the European Economic Community (L/6057, L/6076)

The Chairman drew attention to the communication on this matter from the European Economic Community (L/6057).

The representative of the European Communities said that even though the bilateral agreement between the United States and Japan on trade in semi-conductors had been widely reported by the Press, hardly any information about the agreement had been made available by the two parties themselves. Many countries, including the member States of the Community, were obliged to import these components from Japan and the United States -- the two major producers of semi-conductors -- and the agreement would seem to have an effect on the price levels of these items. It would be a different matter if the effects of the agreement were limited to the two countries concerned, but since the agreement apparently also covered exports, the Community had decided to bring the matter before the Council. His authorities found it strange to be faced with a bilateral, sectoral agreement when all contracting parties were arguing in favour of strengthening the multilateral trading system and when they had just launched a new round of negotiations to open markets further and to eliminate discrimination. The Community proposed following normal GATT procedures on this matter, starting with consultations in the immediate future under Article XXII:1, which the Community had already asked of Japan and the United States (L/6057). The Community reserved its rights as regards follow-up of this procedure.

The representative of the United States said his delegation had informed the Community of US willingness to enter consultations on the agreement, under the established procedures for Article XXII:1, at a mutually agreed time and place. The agreement had culminated an effort by the United States over several years to enhance the ability of foreign semi-conductor firms to compete fairly in Japan's market, as well as to prevent Japanese manufacturers of these products from dumping them abroad. The United States believed that the agreement addressed these problems in such a way as to reinforce GATT objectives. No part of the agreement was meant to be disruptive of trade. His delegation believed that other countries, such as the member States of the Community, would benefit rather than suffer from the agreement, which the United States was notifying in document L/6076 under paragraph 3 of the 1979 Understanding regarding Notification, Consultation, Dispute Settlement and Surveillance (BISD 26S/210).

The representative of Japan said his delegation was prepared to enter into the consultations requested by the Community. The agreement consisted of two elements. The first related to improving access to Japan's market not only for US exporters but for all foreign producers of semi-conductors. Such non-discriminatory treatment was explicitly stipulated in the arrangement. The second element related to prevention of dumping. A semi-conductor was a unique product in which technological innovation was very rapid and scale merit in cost reduction was extremely high. Bearing in mind these characteristics, as well as the current trade situation in these products, his Government had decided to monitor costs and export prices of semi-conductor products exported from Japan so as to prevent dumping. Consequently, the arrangement would not undermine the interests of third countries.

The representatives of Sweden on behalf of the Nordic countries, Korea, Brazil, Switzerland, Singapore and Argentina noted that their countries had a trade interest in this sector, and shared the Community's concerns over the agreement, particularly concerning the lack of transparency and its possible effect on third-country markets as well as on access for non-US producers to Japan's market. Representatives stressed the importance of respecting the commitments on standstill and rollback in the 1986 Ministerial Declaration. Japan and the United States were urged to be fully transparent about the agreement, and representatives looked forward to receiving full information as soon as possible. They reserved their delegations' rights on this matter including that of reverting to the subject at a future date if necessary, and of participating in the Article XXII consultations requested by the Community.

The representative of Canada supported the Community's request for consultations with Japan and the United States on this matter under Article XXII:1, and wanted to join those consultations. As an importer and producer of semi-conductors, Canada was concerned that certain provisions in the agreement might negatively affect its trade interests. During those consultations, Canada would seek clarification from Japan and the United States on the possible detrimental effects on Canadian access to Japan's market due to the provisions for Japan to monitor prices of its exports.

The representative of Australia said his delegation shared the Community's concerns over the agreement, particularly on those aspects dealing with access to Japan's market and the provisions affecting third-country markets. The agreement appeared to establish a government-sanctioned cartel to control access to two major markets for semi-conductors. If successful, this mechanism could easily be used for crossed subsidization and a suppressed comparative advantage in markets for finished products which incorporated semi-conductors, and for differential pricing to discriminate between producers so as to favour the products of related or vertically integrated producers. Australia believed that it could easily be denied state-of-the-art technology as an extension of the effect of the cartel. Moreover, the agreement would promote development of monopolistic markets in the United States and Japan for downstream products in which it would be very difficult for small country producers, relying on specialized innovation, to sell. Australia was concerned at the lack of transparency in the agreement, and at its potential for damage to the ordinary development of open markets and international trade in products using semi-conductors. His delegation requested both countries to table all documents relating to the arrangement. Australia wanted to join the consultations requested by the Community and reserved its rights to raise this matter under other relevant GATT instruments.

The representative of Hong Kong said that Hong Kong had an interest in trade in semi-conductors; he shared the concerns about the agreement expressed by the Community and others, particularly Australia. Hong Kong was especially concerned about the requirement that Japan monitor costs and export prices of products exported to third countries. Such provisions could be the basis for measures that were not necessarily in conformity with the GATT and with the Anti-Dumping Code.[1] Hong Kong urged both parties to be fully transparent in revealing the full extent of the agreement's provisions. His authorities were examining the implications of the agreement for Hong Kong's imports of semi-conductors and for its exports of products containing semi-conductors. He reserved Hong Kong's right to revert to this matter as necessary.

The Council took note of the statements.

6. CARIBCAN

Mr. Nottage (New Zealand), Chairman of the Working Party on CARIBCAN, informed the Council under "Other Business" that the Working Party had met three times during October 1986 to examine Canada's request for a waiver pursuant to Article XXV:5. The Working Party had made substantial progress in fulfilling its mandate, and it was hoped that a report might be circulated to contracting parties before the regular Council meeting on 5-6 November. It was expected that the text of a draft waiver would be annexed to the Working Party's report.

The Council took note of this information.

7. Dispute settlement procedures - Roster of non-governmental panelists (L/5752, L/5906)

The Chairman, speaking under "Other Business", recalled that in November 1984 the CONTRACTING PARTIES had decided to establish, on a trial basis and for a period of one year, a roster of non-governmental panelists so as to facilitate the composition of panels in those cases in which the parties to a dispute were unable to agree on panelists (L/5752). In November 1985, the Council had agreed upon a list of non-governmental panelists (L/5906), and the initial trial period of one year would therefore lapse in November 1986.

He proposed that representatives reflect on this matter so that the Council could consider at its regular meeting on 5-6 November whether to continue the roster procedure.

The Council took note of the statement.

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[1] Agreement on Implementation of Article VI of the General Agreement (BISD 26S/171)

8. United States - Superfund Reauthorization and Amendments Act

The representative of Canada, speaking under "Other Business", referred to the recent US Superfund Reauthorization and Amendments Act of 1986 which launched a five year program to clean up hazardous waste. While Canada fully supported the aim of this law to improve the quality of the environment, his Government had major concerns over the means chosen to finance the program. In particular, the United States had introduced a discriminatory tax on oil imports by imposing a tax of 8.2 cents per barrel on domestically produced petroleum, while imposing a tax of 11.7 cents per barrel on imported crude oil and petroleum products. Canada considered that this discriminatory treatment was a clear breach of GATT provisions, particularly of Article III concerning national treatment. Only recently, contracting parties had met in Punta del Este to launch the Uruguay Round of multilateral trade negotiations aimed at halting the drift towards protectionism and at liberalizing trade. The imposition of a discriminatory tax on oil imports and of customs user fees[1] was highly regrettable and could be seen only as a backward step. Canada called on the United States to amend its legislation to make it consistent with US obligations under GATT, and had asked for consultations on this matter with the United States under Article XXIII:1.

The representative of Mexico said that his Government was deeply concerned at the US measure. He noted that the surveillance mechanism called for in the 1986 Ministerial Declaration to ensure compliance with the commitments on standstill and rollback had not yet been established. Mexico believed that complaints lodged by participants in the multilateral trade negotiations, when measures adopted by any of them were considered to violate the provisions of the General Agreement, should be examined in that mechanism. His delegation considered that the US legislation violated the provisions of Article III and the principle of non-discrimination; it was also incompatible with the letter and spirit of the commitments on standstill and rollback undertaken by Ministers in Punta del Este. Mexico believed that the success of the Uruguay Round would greatly depend on the way in which participants implemented the commitments they had undertaken. The Ministers had agreed to apply those commitments "commencing immediately and continuing until the formal completion of the negotiations...". For Mexico, the commitments had taken effect from the date on which the Declaration was adopted, i.e., 20 September 1986. Mexico also believed that the US legislation violated undertakings to grant more favourable treatment to developing countries. He asked if the US delegation could supply the Secretariat with copies of the US legislation, and if the Secretariat could provide any relevant information that it might have on this matter, in accordance with the final sentence of Section C in the Ministerial Declaration. Mexico reserved the right, if necessary, to raise this issue again in the Council.

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[1] See item 9.

The representatives of Nigeria, Norway, Argentina, Brazil, European Communities, Trinidad and Tobago, Nicaragua, India, Ecuador and Venezuela as observers, Colombia, Cuba and Malaysia shared the concerns expressed by Canada and Mexico concerning the US legislation, which they described as discriminatory and in breach of Article III and of the commitments on standstill and rollback in the 1986 Ministerial Declaration. The United States was urged to notify the legislation and to bring the measure into strict conformity with US obligations under the General Agreement. They reserved their GATT rights on this matter, including the right to pursue it in Article XXIII:1 consultations with the United States.

The representatives of Brazil and India expressed their delegations' hope that the mechanism for carrying out the multilateral surveillance on standstill and rollback, as called for in the 1986 Ministerial Declaration, would start to function as soon as possible and that it would immediately examine such measures as the US legislation under discussion. Any contested measures could also be examined in other parts of the GATT framework. Strict observance of the commitments on standstill and rollback were crucial to the successful start of the Uruguay Round.

The representative of the United States noted that the Superfund Reauthorization and Amendments Act of 1986, which provided for clearing up toxic waste dump sites and which was an important environmental program in his country, had only recently been passed. His delegation would make the legislation available to interested parties when it was received from Washington. He added, however, that a tax differential of 3.5 cents per barrel was commercially insignificant, amounting to 0.2 per cent of the current market price for oil. The tax on imported chemical derivatives was a type of border-tax adjustment. The tax burden was no greater on imports than on domestic products. His authorities were examining the implications of these provisions in the context of US obligations under the General Agreement and would consult with any interested suppliers on this issue.

The Council took note of the statements.

9. United States - Omnibus Budget Reconciliation Act

The representative of Canada, speaking under "Other Business", noted that the US Administration, as part of the Omnibus Budget Reconciliation Act of 1986, had imposed a so-called customs user fee, calculated on an ad valorem basis, on imports. His authorities strongly objected to this measure, considering that the United States, under disguise of the fee, had imposed an import surcharge. Canada deplored the measure particularly as it came on top of the earlier imposition of other customs user fees for processing the arrival of products such as trucks, aeroplanes and boats in the United States. The measures were retrograde

steps at a time when participants in the Uruguay Round were seeking to liberalize trade and to improve the trading environment; such action could force trading partners of the United States to take similar action. Article VIII:1(a) clearly stated that any fees imposed should be limited to the approximate cost of services rendered. Canada believed that the imposition of fees on an ad valorem basis did not correspond to the cost of providing the service of processing the import of a product. The US imposition of this fee was not consistent with the provisions of that Article. Canada therefore called upon the United States to withdraw or suitably amend the customs user fee schedule, and had requested consultations on this matter with the United States under Article XXIII:1.

The representative of the United States said that the Omnibus Budget Reconciliation Act of 1986 set a modest charge on most imports into the United States to cover cargo processing costs of the US Customs Service. The United States considered that this fee for cargo processing met the requirements of Article VIII, since the amount raised was approximately equivalent to the cost of the service rendered. It was clear from the Act's provisions that the fee was not intended as a tax on imports for fiscal purposes, since the amount raised was so small and the proceeds were specifically destined for a special account that would be used only to pay for the cost of cargo processing by the Customs Service. It could not be argued that a fee of 0.22 per cent ad valorem was protective, given that currency values changed more than that in an average day. For the sake of simplicity in administration, and to avoid a fee that would be protective in its effect, Congress had opted for an ad valorem fee. For low-value imports, a flat fee would probably have had a protective effect. His delegation would provide any interested contracting party with additional information on this matter, and was ready to consult with interested contracting parties upon request.

The representatives of the European Communities, Hong Kong, Japan, Australia, and Indonesia on behalf of the ASEAN contracting parties shared Canada's concerns over the new US customs user fee. Serious doubts were expressed on whether the measure was consistent with Article VIII:1(a) and concerning the calculation of the fee on an ad valorem basis. Representatives emphasized the importance of respecting the commitments on standstill and rollback in the 1986 Ministerial Declaration, and called on the United States to withdraw or amend the fee to bring it into line with US obligations under the General Agreement. They also reserved their delegations' GATT rights, including that of reverting to the matter in future and of participating if necessary in Article XXIII:1 consultations with the United States.

The representative of the European Communities said his delegation did not contest the right of the United States to impose such a fee on imports, provided the fee corresponded to services rendered by the Customs Service. According to figures which the Community had received,

it seemed that the fee would raise US$800 million. Looking at the US budget, it appeared that such an amount would cover all US customs service expenses, including the salaries of officials and the purchase of buildings and aeroplanes.

The representatives of Brazil and India reiterated the views expressed by their delegations under Item 8, saying that these US measures, and any other measures which did not respect the commitments on standstill and rollback in the 1986 Ministerial Declaration, should fall under the competence of the multilateral surveillance mechanism provided for in that Declaration. They called for that mechanism to be established as soon as possible. Such measures could also be examined in the context of the General Agreement itself.

The representative of Sweden, on behalf of the Nordic countries, supported Canada's views on this matter and asked if the US delegation could provide information on how the fee had been computed, since it appeared to have no direct relation to the cost of services rendered.

The representative of Australia said his authorities had calculated that Australia's export costs to the United States would be US$6 million higher as a result of the new fee. His delegation could not understand how the fee could be consistent with the provisions of Article VIII:1(a), given that the fees for customs processing of an expensive automobile, for example, would be far higher than for the almost identical work of customs processing of a cheaper one. Australia also wanted the US measure examined in terms of Article II:2(c), which provided for "fees or other charges commensurate with the cost of services rendered" in the context of bound items. Referring to a phrase which the US representative had used in discussing Item 8 (see page 14), he said that the extra costs which would be added by the fee were far from "commercially insignificant". Perhaps consultations would also have to be held on this measure under the terms of Article XXVIII. Australia reserved its GATT rights to participate in any further consultations on this matter.

The representative of Switzerland said that the total amount of revenue generated by the US fee seemed, to say the least, surprising. Switzerland expressed a reservation in principle concerning the method used to calculate the fee, and was concerned about certain information according to which the fee would not be applied erga omnes. His delegation reserved its rights on this matter and asked the United States to give complete information about the fee as soon as possible.

The representative of the United States said that the US Office of Management and Budget had estimated cargo processing costs at about US$620 million for the 12 months in fiscal year 1987. This figure was very close to the US$623 million estimated to be raised by the new fee in the period until 30 September 1987.

The representative of Canada said that the principles in this issue were important, and so was the amount of money involved. His authorities had thought that the revenue which would be generated by the new fee would be closer to US$1,000 million; however, such figures could be discussed further. For Canada, the extra costs could amount to around US$200 million a year, which his country certainly considered as commercially significant.

The Council took note of the statements.

10. Agreements between Argentina and Brazil

The representative of the United States, speaking under "Other Business", said it had come to the attention of his authorities that Argentina and Brazil had recently taken decisions to move towards closer integration of their trade and economic policies. The United States trusted that Argentina and Brazil would notify to GATT as soon as possible any agreements affecting trade, and that they would afford an opportunity to contracting parties to consult on any matters affecting third country trade.

The representative of Argentina said that the agreements had been made within the context of the Latin American Integration Association (ALADI), which promoted the integration of trade and all types of economic cooperation in that region, fully conforming with Article XXIV and Part IV of the General Agreement, and with the "enabling clause" (BISD 26S/203). ALADI regularly informed GATT of all new developments so that all contracting parties could be fully informed of various steps taken within the Latin American integration process.

The representative of Brazil said his delegation fully agreed with Argentina's statement.

The Council took note of the statements.

11. Training activities

The representative of Switzerland, speaking under "Other Business", recalled that at the Council meeting on 12 March 1986 his country had announced its intention of financing a seminar on negotiating techniques as part of the GATT trade policy training courses. This had been done experimentally for the Spanish-speaking course and, on the basis of the results achieved, his authorities had decided to finance similar seminars for the 62nd and 63rd courses in English and French.

The Council took note of the statement.