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GENERAL AGREEMENT ON TARIFFS AND TRADE

COUNCIL
3 November 1981

MINUTES OF MEETING

Held in the Centre William Rappard on 3 November 1981

Chairman: Mr. D.S. McPHAIL (Canada)

Subjects discussed:

1. Tax legislation

(a) Income tax practices maintained by France (C/114, L/4423)
(b) Income tax practices maintained by Belgium (C/115 and Corr.1, L/4424)
(c) Income tax practices maintained by the Netherlands (C/116, L/4425)
(d) United States tax legislation (DISC)(L/4422)

The Chairman recalled that at its most recent meeting on 6 October 1981, the Council had agreed to revert to these matters at its next meeting.

The delegations principally concerned presented to the Council the text of a proposed understanding.

The Chairman observed, inter alia, that the concepts in the proposed understanding reflected those which had been discussed in previous meetings.

The representative of Australia said that his authorities' concern was to ensure that adoption of the four Panel reports would not prevent the parties principally concerned from being brought to account if they operated tax practices in a manner which resulted in prejudice to the trade interests of other contracting parties.

The representative of Brazil sought clarification as to the meaning of the proposed understanding and said that his delegation was not in a position to join a concensus.

In response to questions related to the French fiscal system, the representative of France said that such questions could be addressed as well to some eighty-five other countries applying the same territorial principle of taxation.

The representative of Chile shared the concerns expressed by Australia and Brazil.

The representative of Argentina said that since this matter was of great importance, his delegation would need time for reflection.

The representative of the Netherlands urged that this matter be dealt with at the present meeting so that it could be finalized prior to the forthcoming thirty-seventh session of the CONTRACTING PARTIES.

The Chairman noted that the parties principally concerned were in agreement that the Council should adopt the four reports and the proposed understanding, but that other delegations needed time for reflection.

The representative of Jamaica said that if the Council adopted a decision which included an understanding, it would be an interpretation of the General Agreement.

The representative of the European Communities noted that Article XVI:4 had been brought into force by a Declaration which was adhered to by only some contracting parties. In his view, the understanding would only apply directly to those contracting parties.

The Council agreed that the principally concerned delegations should meet informally with those other delegations which sought additional information or clarification on these matters, and that the Council would revert to them at its meeting on 6 November 1981.

2. United States - Imposition of countervailing duty without injury criterion/Industrial fasteners imported from India

- Report of the Panel (L/5192)

The Chairman recalled that in November 1980 the Council had agreed to establish a panel to examine the complaint by India, and had authorized the Chairman of the Council to decide on its composition and on appropriate terms of reference in consultation with the parties concerned. In June 1981 the Council had been informed of the composition and terms of reference of the Panel. The Report of the Panel had been circulated in document L/5192.

Mr. Henrikson (Sweden), speaking on behalf of Ambassador Ewerlöf (Sweden), Chairman of the Panel, introduced the Report and drew attention to the fact that agreement had been reached between India and the United States, and that the Panel recommended that the proceedings under Article XXIII:2 be terminated.

The representative of Australia said that the basis of India's complaint concerned the discriminatory application of a trade regulation by the United States, which had important implications for Australia's trade with that country. He said that the termination of the Panel's investigation left unresolved the question of the conformity of the United States practice with its obligations under the General Agreement, and that his delegation might revert to this issue at a future meeting of the Council.

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

3. Tariff matters

(a) 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. Since its last report to the Council in November 1980, the Committee had met in May and October 1981.

Mrs. M'Bahia Kouadio (Ivory Coast), Vice-Chairman of the Committee, presented a summary of the Committee's activities, in the absence of Mr. Kawamura (Japan), Chairman of the Committee. She said that in accordance with its terms of reference, the Committee had continued to oversee the status of acceptances of the Geneva (1979) Protocol and the Supplementary Protocol (TAR/W/2/Rev.4). At the meeting in May 1981 the Committee had agreed that it was necessary to seek an extension of the time-limit for acceptance of the Protocols. At its meeting in October 1981 the Committee had noted with satisfaction that all the countries which had a schedule of concessions annexed to the Geneva (1979) Protocol had accepted it. However, since two countries had not yet accepted the Supplementary Protocol, it had proved necessary to request a further extension of six months, i.e. until 30 June 1982, with a view to final acceptance of the Supplementary Protocol by those two countries.

With regard to the implementation of the stage-by-stage tariff cuts granted in the Multilateral Trade Negotiations, only one country had not yet supplied particulars of the implementation of the reductions which it had granted.

She recalled that at its meeting in November 1980 the Committee had asked the secretariat to prepare a background paper on tariff reclassification giving more details than the paper previously distributed (TAR/W/19). After an initial exchange of views at the meeting in May 1981, it had been decided to continue the discussion in a small working group of interested countries.

With regard to the establishment of a system of loose-leaf schedules of tariff concessions, the Committee had learned at its last meeting that some dozen countries had transmitted their draft schedules in loose-leaf form (TAR/W/23). The time-limit for the submission of such schedules had been set at 30 September 1980 for the schedules proper and 30 September 1981 for information on initial negotiating rights. No new time-limit had been set, it being understood that governments were endeavouring to prepare their schedules as required for the loose-leaf system as soon as possible. A check of the schedules already submitted had revealed some problems relating to the

interpretation and transparency of previous concessions, which were often expressed in a different nomenclature. In that connexion the secretariat had suggested at the meeting in October 1981 that it prepare a new document that would examine in detail the problems raised in this field.

At its meeting in October 1981 the Committee had held an initial discussion on the Harmonized Commodity Coding and Description System and the implications of its adoption for the schedules of tariff concessions annexed to the General Agreement. It had been agreed that the problem was important and that delegations should submit in writing their suggestions concerning any simplified procedures they would like to see applied.

In the course of the Committee's examination of the problems presented by the study of tariff escalation prepared by the secretariat (TAR/W/18), delegations had expressed their views on possible methods for measuring tariff escalation. While some delegations continued to doubt the feasibility of such studies, several had expressed the hope that the secretariat would begin straight away making calculations concerning product groups or manufacturing chains determined by the method proposed by the secretariat. At the Committee's last meeting most of its members had expressed support for a pilot study to explore the possibility of measuring tariff escalation for one or two specific manufacturing chains as a first stage. One delegation, however, had expressed serious misgivings about the methodology proposed in the secretariat paper and about the value of a study limited to tariffs without regard to quantitative restrictions.

The Committee had also examined the question of the Tariff Study and noted that, for most of the Study files, the secretariat had completed the recording of the duties resulting from the Tokyo Round negotiations and of import statistics for 1978. The countries participating in the Study had expressed the hope that those files would be updated annually. The majority of delegations had also expressed support for the idea of expanding the Tariff Study to include more countries. One delgation, however, had not been in favour of such expansion if the Study were not to take account of quantitative restrictions. In that connexion several delegations had pointed out that the instructions given to the secretariat for preparing the Tariff Study files had not covered non-tariff measures; other delegations had envisaged that an expert group might be convened to examine the question.

The Council took note of the Report.[1]

[1]The text of the Report was subsequently circulated in document TAR/34.

(b) Protocol Supplementary to the Geneva (1979) Protocol to the GATT - Extension of time-limit for acceptance of the Protocol (C/W/369)

The Chairman recalled that in June 1981 the Council had adopted a decision extending to 31 December 1981 the time-limit for acceptance of the Protocol Supplementary to the Geneva (1979) Protocol.

He said that it had now become clear that some contracting parties having schedules annexed to the Protocol would be unable to accept it before the expiry of the extended time-limit, and that therefore provision should be made for a further extension. In this connexion, he drew attention to the text of a draft decision contained in document C/W/369.

The Council approved the text of the draft decision (C/W/369) and recommended its adoption by the CONTRACTING PARTIES at their thirty-seventh session.

4. Indonesia - Establishment of a new Schedule XXI (C/W/372, L/5214)

The Chairman drew attention to document L/5214 containing a request from the Government of Indonesia 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/372.

The representative of Indonesia recalled that at their thirty-sixth session, the CONTRACTING PARTIES had extended the time-limit for the establishment of a new Schedule XXI - Indonesia - until 31 December 1981. He said that in the meantime the Government of Indonesia had entered into negotiations with its trading partners and had concluded an agreement with the United States on the new Schedule and that negotiations with other trading partners were still under way. As it did not appear that negotiations or consultations could be completed by 31 December 1981 his delegation requested a further extension of the Decision of 22 November 1976 (BISD 23S/9) until 31 December 1982.

The Council approved the text of the draft decision (C/W/372) and recommended its adoption by the CONTRACTING PARTIES by a vote at their thirty-seventh session.

5. Pakistan - Renegotiation of Schedule (C/W/371, L/5212)

The Chairman drew attention to document L/5212 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/371.

The representative of Pakistan recalled that his Government had found it necessary to revise Pakistan's customs tariff in view of the difficult financial position facing the country, the need to keep the budgetary deficit as low as possible, to contain inflationary pressures in the economy and to

mobilize additional domestic resources to meet essential development requirements. He underlined that the tariff revision was being undertaken for fiscal reasons and was not intended as a protective device or a trade measure. As it had not been possible to complete the negotiations and consultations for the modification or withdrawal of concessions in Schedule XV with Pakistan's trading partners by the end of 1981, his Government was obliged to request a further extension of the time-limit of the waiver until 31 December 1982.

The Council approved the text of the draft decision (C/W/371) and recommended its adoption by the CONTRACTING PARTIES by a vote at their thirty-seventh session.

6. Uruguay - Import surcharges (C/W/370, L/5215)

The Chairman drew attention to document L/5215 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/370.

The representative of Uruguay recalled that Uruguay was engaged in a process of reducing, simplifying and harmonizing its import tariff, despite the comparatively limited scope of the Uruguayan economy, which was heavily dependent on the overall world economic situation. His delegation hoped to be able to present to the CONTRACTING PARTIES, in the course of the next few months, a proposed new Schedule XXXI. Uruguay, therefore, requested an extension of the waiver for only six months, i.e. until 30 June 1982.

The Council approved the text of a draft decision extending the waiver until 30 June 1982 (C/W/370) and recommended its adoption by the CONTRACTING PARTIES by a vote at their thirty-seventh session.

7. Spain - Measures concerning domestic sale of soyabean oil - Report of the Panel (L/5142 and Corr.1, L/5161, L/5188)

The Chairman recalled that in July 1981 the Council had received the report of the Panel which had been established to examine the complaint by the United States regarding Spanish measures concerning domestic sale of soyabean oil (L/5142 and Corr.1). A communication on the matter (L/5161) had been received from the United States in July 1981 and a communication from Spain (L/5188) had been circulated subsequently. The Council had considered this item most recently at its meeting on 6 October 1981 and agreed to revert to it at the present meeting.

The representative of the United States said that his delegation appreciated the efforts of the Panel, but could not share the views expressed in the Panel Report on interpretation of important GATT provisions. The United States, while disappointed with the result in this case, was not asking the Council to undertake a new examination of the particular Spanish measures that were at issue, nor was it asking the Council to make findings or recommendations to Spain in this proceeding.

He stressed that there was, however, another aspect to any panel report that was perhaps more important than the resolution of a particular dispute: panel reports, explicitly and of necessity, interpreted Articles of the General Agreement. He said that when the Council adopted a report, those interpretations became GATT law. His delegation could not agree to the adoption of this Report because it interpreted important GATT provisions in a manner that would allow protectionist actions contrary to the language, intent and history of the provisions in question. He said that his remarks on these provisions would summarize the more extensive comments of the United States contained in document L/5161.

He said that the points which his delegation had emphasized in that document all concerned Article III of the General Agreement, which limits the ability of a contracting party to use internal taxes and regulations to protect domestic production, and recognizes that discriminatory internal regulations or taxes could also be significant protectionist devices and distort the trade of other contracting parties.

In the view of his authorities, the Panel misinterpreted Article III:1 by finding that internal regulations which protect domestic production must have restrictive effects on directly competitive or substitutable products in order to be found contrary to Article III:1. His delegation considered such an interpretation to be contrary to the language and practice of Article III. He stressed that the rule embodied in the Understanding Regarding Notification, Consultation, Dispute Settlement and Surveillance (BISD 26S/210), was that a breach of GATT rules was presumed to have an adverse effect on other contracting parties. He stated that once it is found that there is a breach of GATT rules, independently of the question of whether there were injurious effects, only then, but not before, could the question of adverse effects be considered. He expressed the view that a party maintaining a measure in breach of the rules had the burden of demonstrating that the measure did not have adverse effects on the trade interests of other contracting parties.

He pointed out that if the Panel's interpretation were followed, a contracting party could never make a complaint until specific evidence was available to show that the measure had caused damage.

He noted that the Panel Report stated that adverse effects had to be measured by direct effects on import volume in the country maintaining the measure. It was his belief that at such time as injury was properly considered in the dispute settlement process, the adverse effects of a measure could manifest themselves as well by other trade-distorting consequences, including possible suppression of growth of trade.

He said that the second point raised by the United States involved the interpretation of the second sentence of Article III:5, which prohibits internal quantitative restrictions contrary to the principles of paragraph 1. His authorities were also concerned that the Panel's interpretation of Article III:5 would allow a contracting party to protect its own production of a raw material or a semi-processed good against a competing imported product by restricting domestic sale of the imported product after the import had been through domestic processing sufficient to confer national origin, even in cases where such domestic processing was essential to the commercial value of the import, and where no other product was added in processing. He added that even if it were conceded that the processed product subject to the quota should be considered a national product by customs standards, it was only realistic to recognize that the imported raw material in such situations was also being subjected to a quantitative restriction on its use in the home market. Where there was no substantial domestic production of that raw material, then such a restriction to afford protection to domestic production of one or more competing raw materials should be considered to fall within the prescription of Article III:5. He said that fats and oils were but one example of the sort of competing products that could be damaged by discriminatory internal quotas imposed after necessary processing. If the Panel's interpretation were followed, domestic production of a raw material could be protected by limiting a necessary use of a directly competitive or substitutable imported product for processing for consumption in the domestic market.

He said that the interpretative note to Article III:5, provided that where all products subject to the internal quota were produced domestically in substantial quantities, then the measure would not be considered contrary to the second sentence of Article III:5. He said that the intent of this interpretative note was to recognize that an internal quota, whose burden fell significantly on domestic production of another product, was not essentially an attempt to shift the burden of protection to other contracting parties.

He said that the primary effect of internal quotas of the type under consideration was to protect domestic producers of raw materials by restricting a necessary use for domestic consumption of a competing foreign

raw material. The domestic processor of the imported product, in fact, would bear little or no burden from such measures since he was free to export. Instead, the major burden of protection of the domestic product would fall on foreign producers of the competitive raw materials.

He noted that, even though an internal measure could have protective effects for domestic production, it could fall within any one of a number of GATT exceptions, such as those for health, safety, or conservation of scarce resources. He believed, however, that the Council should not adopt an interpretation of Article III that would open the door to new internal measures, the major purpose of which was the protection of domestic production, the major burden falling on the interests of other contracting parties.

With respect to the Panel's conclusion in respect of Article III:4, that the term "like products" meant "more or less the same product", he recalled that past decisions on this question had been made on a case-by-case basis after examining a number of relevant factors. He stressed that there had been no simple definition of "like products". His delegation believed that the practice of case-by-case analysis according to relevant factors had been wise, and that the CONTRACTING PARTIES should not adopt an interpretation that would allow the question of what are "like products" to be resolved so simply as appeared in this Report.

Speaking in general terms, he said that the rôle of a panel in the GATT process was to promote conciliation of a dispute, and when conciliation was not possible, to make findings or recommendations to assist the CONTRACTING PARTIES. He said that as a strictly juridical matter, the report of a panel was advisory and had no legal status until acted on by the CONTRACTING PARTIES. If adopted, the report would become the findings and interpretations of the CONTRACTING PARTIES.

He added that the Council had normally adopted reports without qualification, though it was not unusual for individual delegations to make individual comments or interpretations.

In conclusion, he stated that the United States believed that the Council should not adopt this Report. The United States was no longer asking the Council to make any findings or recommendations against Spain in this proceeding; nor was it asking the Council to re-examine the measures at issue. He pointed out that this was not a case where a party was seeking to block adoption of a report against its own practices. In the view of his authorities, adoption of the Report could contribute nothing more to the settlement of that particular dispute, but would only establish damaging precedents for the interpretation of GATT provisions. The United States believed that the Council should take note of the Panel Report and of the comments made, including the written comments previously submitted.

The representative of Spain recalled that the Report of the Panel had been submitted to the Council in July 1981. He expressed appreciation to the Chairman and the members of the Panel for presenting, in the view of his delegation, a well-balanced document with conclusions that had been arrived at unanimously.

His delegation requested the adoption of the Report by the Council for the following reasons: (1) The Report was the final result of a procedure which had complied fully with the Understanding. (2) The adoption of this Report constituted proof of the guarantees granted to all contracting parties by the dispute settlement procedure, and of the protection it provided to the legitimate interests of contracting parties. (3) In the light of the possible convening of the CONTRACTING PARTIES at ministerial level in 1982 with the purpose of promoting and strengthening the multilateral system of world trade, not to take action on this Report would, in his view, undermine the existing system.

He then referred to document L/5161, containing comments by the United States on the Panel Report, and document L/5188, containing observations by his delegation. In his view, these documents added nothing new which had not been considered by the Panel. The Council should accordingly take note of these documents. He realized that this was a novel case among the various complaints launched under Article XXIII:2, as it raised points which went beyond the scope of the Report. He said that Spain had always expressed its attachment to the GATT rules and procedures, even if the conclusions were not shared by the Spanish authorities. In his view, this debate should serve as a guideline towards a suitable solution based on GATT's traditional pragmatism. His delegation requested the Council to follow the traditional dispute settlement practice in adopting the Report while taking note of documents L/5161 and L/5188, containing comments by the United States and Spain, respectively.

The representative of Egypt said that his delegation normally favoured the adoption of panel reports by the Council, but found it difficult to follow this course in the present instance. The legal interpretation put forward by the Panel on fundamental GATT provisions required a thorough examination, since it could lead to far-reaching effects on GATT rules and principles. He, therefore, suggested that the Council take note of the Report and of the views expressed.

The representative of Australia said that it would be a matter of some concern to Australia if the Council adopted the Report, and by so doing give its blessing to a Spanish measure which, in his delegation's view, was clearly a non-tariff barrier to trade, and hence a matter of legitimate concern to contracting parties generally. He said that it was the intention of Article III:1 to control the use of domestic measures which afforded protection to domestic production. Accordingly, Australia could not accept the conclusion of the Panel that a measure must have adverse effects in order to be contrary to Article III:1.

He then referred to a conclusion contained in paragraph 4.12 of the Report that the measure in question did not involve any nullification and impairment of United States interests as a result of the situation described in Article XXIII:1(a). He said that the United States had a right to unrestricted access for soyabeans to the Spanish market. However, Spain had placed restrictions on the internal consumption of the main derivative product from soyabeans (soyabean oil), in order to protect a domestic competitive product (olive oil). Thus, the Spanish action in restricting the internal consumption of soyabean oil in these circumstances was in effect identical with action to restrict free entry of soyabeans, other than the 5 per cent duty, into Spain. For these and other reasons, Australia could support the noting of the Report.

The representative of New Zealand said that he did not take it lightly upon himself to question the checks and balances, including dispute settlement systems, established in the GATT. This question was finely balanced, especially for smaller contracting parties. As a primary product exporter, New Zealand would have difficulties if some of the reasoning advanced in the Report were to be regarded as an unqualified precedent for similar disputes in the future. While reserving New Zealand's right to return to a number of points in the Report, he said that New Zealand's basic contention was that trade could increase despite the taking of measures incompatible with the GATT by one contracting party. The intent of Article III of the General Agreement was to ensure that domestic measures affecting sales of a product did not have an adverse effect on the trade of another country.

Furthermore, a breach of Article III was not dependent upon the demonstration of injury. His delegation was of the view that the case envisaged under Article III was parallel to that affecting tariff concessions under Article II. In other words, if a tariff binding were broken, that was a breach of Article II regardless of the trade value involved. Precisely in the same way under Article III, the question of injury related only to the amount of compensation due. It followed from this that a detrimental effect on United States trade could be quite compatible with the fact that actual sales of United States soyabeans to Spain had increased. It seemed clear to him that if the quantity of soyabean oil that could be sold in Spain was restricted, this reduced the available market in Spain overall.

His delegation had also noted the argument that the case raised an issue of national sovereignty. This was, in his view, a serious and reasonable contention, which could not be dismissed lightly. His delegation was of the opinion, however, that the GATT was entitled to take a view on domestic measures that had a clear impact on another contracting party's trade.

He said that, in the light of the above, and taking account of the complexity of the question, New Zealand could agree to the noting of this Report, together with the statements of all delegations who had contributed to the discussion, but could not support its adoption.

The representative of Chile said that while it was not up to the Council to pronounce itself on the substance of the matter, the Council had the duty to determine whether the Report contained a correct interpretation of the General Agreement. The Panel had found that the measure applied by Spain granted protection to a competitive product, concluding, however, that this did not mean that the measure was contrary to the provisions of Article III:1. He said that there was no injury criterion in Article III:1 and that there had been no precedents to this effect. Adoption of the Report would therefore add to the General Agreement provisions and concepts which were not there at present. This would set a precedent which would limit the invocation of Article III in the future and could lead to the proliferation of protective measures which normally would be considered contrary to the rules of the General Agreement.

Noting that the Panel had ruled also that Article III:5 was not applicable, his delegation could not approve the whole of the interpretation of the Panel since this would open the possibility for contracting parties not to apply the the principle of non-discrimination under Article III.

Drawing attention to the Panel's conclusion as to what constituted "like products", he believed that the Panel should not have given such a broad interpretation in this matter. In conclusion, he said that his delegation could not accept the adoption of the Report by the Council, and that instead, the Council should take note of the Report and of the statements.

The representative of the European Communities enquired as to the practice in GATT when a panel report was submitted to the Council.

The Chairman said that, generally speaking, panel reports had been adopted, although there had been five exceptions to this practice, the Council having adopted one report in principle and having taken note of four other reports. Generally speaking, it was for the Council to decide in each case how to proceed.

The representative of the European Communities, confining himself to the procedural aspects of this matter, enquired as to the purpose of a Panel presenting a report if the Council only took note of it, and whether departing from the standard GATT practice would not weaken the dispute settlement system. He said that the Council should reflect on the possible implications of such a course of action.

The representative of Canada said that certain conclusions contained in the Panel's Report did not accord with long-standing interpretations of the GATT. If these conclusions were adopted by the Council, they could have the effect of establishing undesirable precedents. He recalled that panels had traditionally followed a two-step approach. First there was a determination of whether a measure was consistent with the relevant provisions of the General Agreement. When a measure had been found to be inconsistent, this led to a finding of prima facie nullification and impairment of GATT benefits accruing, which normally resulted in a recommendation that the offending measure be removed. When such a conclusion was reached, the second step consisted of determining the resulting trade damage, if any.

He said that in this case the Panel had not followed this two-step procedure, which was a significant departure from well-established GATT practice. Moreover, panels had not previously attempted to define in a normative way the phrase "like products". His authorities believed that past GATT practice was the most sensible approach, and would be concerned if, in future, "like products" were defined to mean "more or less the same product". His delegation, therefore, was of the opinion that the Council should take note of the Report, including the statements made to the Council, but that the Council should not adopt it.

The representative of Brazil said that Brazil, which was also an important exporter of soya, could not support the adoption of this Report. He pointed out that a panel had the function of assisting the Council in taking a decision. Before the Council could do this, it should have a clear understanding of the matter in dispute and should have a clear finding from the panel to assist it in making a recommendation or ruling. In his view, it was not obligatory that the Council adopt or accept whatever a panel had recommended. The Council had to take its own decision on this. He said that his delegation found it very difficult to base any recommendations on the conclusions presented in this Report. Many of the findings and conclusions were not well defined, and were so imprecise that it was, in his view, impossible to adopt the Report. In so stating, he said that he was mindful that the shortcomings of the Report reflected to a certain extent those of the General Agreement itself.

The representative of Sweden, speaking for the Nordic countries, said that those countries attributed great importance to the rôle of GATT as an arbiter in international trade conflicts and to the multilateral discipline established through the articles and instruments of GATT. The responsibility for interpreting these articles and instruments was held by the CONTRACTING PARTIES and by the Council. The Nordic countries were concerned as to the possible ramifications that the general application of some of the Panel's findings could have. This concern related first and foremost to the Panel's

interpretation of Article III:1. It would be contrary to the General Agreement and to established GATT practice to adopt an interpretation that restrictive effects on imports must be demonstrated to establish that a measure was contrary to Article III:1. Such interpretation would, in the view of the Nordic countries, endanger the GATT discipline.

Furthermore, he said that a point of concern was the Panel's general interpretation of "like products". Whether a product was considered to be "like" or not should be established in casu. The general interpretation that "like products" was tantamount to "more or less the same product" was too narrow and rendered the concept meaningless.

In conclusion, he said that the Nordic countries considered it dangerous to accept the findings referred to and that the Council should take note of the Report together with the comments made in the discussion.

The representative of Argentina said that the reports of panels had traditionally been adopted by the Council. He expressed the view that the Panel's Report went beyond its specific terms of reference. For his delegation, this raised problems with the adoption of such a report and its findings, in particular those on the criterion of injury, especially as it related to the provisions of Article III, and on the general description of "like products". He furthermore could not agree with the Panel's finding in respect of the functioning of the Spanish CAT in relation to Article XVII of the General Agreement, nor could he go along with the conclusion made on the existing legislation concept. In his view, in this particular instance legislation was not binding, but was optional in case of need. Finally, he could not agree in respect of a point dealing with meal, and the possibility that the United States could continue its action, which in his opinion, was not part of the terms of reference of the Panel.

He concluded that for these reasons and for the credibility and good functioning of GATT organs, the Council should take note of the Report and of the observations made.

The representative of the United Kingdom, speaking on behalf of Hong Kong, said that Hong Kong had been a keen supporter of the dispute settlement procedures. However, in this case, Hong Kong disagreed with some of the conclusions of the Panel, particularly on the need that adverse effects need to be proved under Article III:1. Hong Kong also noted that the country which had made the complaint was asking that the Report not be adopted by the Council, and was not asking the Council to make recommendations to Spain. Under these circumstances, he saw no need for adopting the Report.

The representative of Malaysia expressed his country's interest in this matter as an exporter of edible oils. His authorities were of the view that great caution should be exercised in handling this Panel Report, since any decision made would have implications for the future and for long-term prospects of vegetable oils as well as the GATT. The Council should, therefore, only take note of the Report.

The representative of Colombia shared the views expressed by previous speakers. Her authorities were also concerned as to the precedent this could set for the future. While expressing understanding for the position of Spain in this matter, she joined other delegations in urging the Council to take note of the Report.

The representative of India said that his delegation would join the consensus in the Council on this Report. He pointed out that India recognized the sovereignty of every State over its national resources and its full competence regarding its production and processing policies. However, he noted that in paragraph 4.2 of the Report the view had been taken that the measures should have adverse effects on imported products in order to be declared contrary to Article III:1 of GATT. He observed that this view was not acceptable, as the Understanding laid down clearly that in cases where there was an infringement of the obligations assumed under the General Agreement, the action was considered prima facie to constitute a case of nullification and impairment.

The representative of Japan said that his Government had studied the Panel Report from the viewpoint of the interpretation and application of the GATT provisions which constituted the basic principles for the operation of the GATT system, and had concluded that Japan interpreted Article III differently from the Panel Report, at least, on two points. It seemed that the Panel had construed Article III:1 as requiring proof that injury had been already caused or was threatened. In his Government's view, Article III:1 had no explicit wording which would justify this interpretation. The GATT rules were always explicit where elements of "causing or threatening injury" were required; and unless any such reference was explicitly made, the so-called "injury test" was not required in the application of GATT provisions.

He said with regard to Article III:4 that the interpretation of the term "like products" in the Panel Report as meaning "more or less the same product" was too strict an interpretation for the requirements of the MFN rule, which was one of the basic GATT principles. His delegation considered that this interpretation in the Panel Report was not correct.

He expressed concern that if the Panel Report were adopted, it would set an undesirable precedent for the interpretation of Article III, which could lead to a weakening of the fundamental structure of the GATT system. Therefore, if the United States and Spain did not intend to continue the discussion on their dispute, his Government would not raise any objections to

the proposal that the Council should take note of the Panel Report. In conclusion, he hoped that in the future, panel reports would be prepared with greater prudence, so that this exceptional way of handling panel reports would not be repeated.

The representative of Yugoslavia said that this was not the first time that panel reports needed to be properly assessed. In this case, the Panel had performed well on a very complex problem. His delegation was interested in finding a pragmatic solution to the problems raised by previous speakers, and considered that the best solution under the circumstances would be to take note of the Report.

The representative of Pakistan said that it was in the interest of all contracting parties to improve dispute settlement along the lines envisaged in the Understanding. His delegation believed that the GATT Council had the responsibility to see to it that panels correctly interpreted the GATT rules and principles. His authorities could not accept the conclusions arrived at by the Panel in respect of certain points, and had particularly strong reservations in respect of the interpretation of Article III:1 as stated in paragraph 4.2 of the Report. He said that the language of Article III:1 did not say, or even remotely imply, that internal taxes and other measures would be contrary to Article III:1 only when they had adverse effects on imported products. Such an interpretation would set a precedent that would encourage countries to resort to protective measures. His delegation found it difficult to support the adoption of the Panel Report in its entirety.

The representative of Korea expressed his delegation's concern at the interpretation of certain paragraphs of Article III. He said that his delegation found it appropriate for the Council to take note of the Panel Report together with the comments made by all representatives.

The representative of Austria said that his delegation, after careful examination of the Panel's Report and the comments submitted by the United States (L/5161) and Spain (L/5188), felt that the Panel had argued the relevant questions and had made an impartial presentation of the situation in accordance with the relevant provisions of the General Agreement. He expressed regret that no agreement had thus far been reached between the United States and Spain, and hoped that an acceptable solution could be found between the parties concerned.

The representative of Israel drew the attention of the Council to paragraph 16 of the Understanding, which stressed that the function of panels was to assist the CONTRACTING PARTIES in discharging their responsibilities. His delegation noted that the United States, which originally initiated these procedures, no longer asked the CONTRACTING PARTIES to make recommendations to Spain. The matter had, in his view, therefore become moot; and he believed that no further action was required by the Council other than taking

note of the Report of the Panel. He added that his delegation had reservations as to some of the Panel's conclusions, particularly in view of its decision "to examine whether the Spanish measures had had any adverse effects on the imports of soyabeans". He said that Israel, as a small trading nation with important export interests, deemed it essential that the CONTRACTING PARTIES uphold the principle that if a measure was inconsistent with a specific GATT provision, there was a presumption that it would have an adverse impact on other contracting parties, and that it was up to the party maintaining the measure to rebut that presumption. He said that if the Council should nevertheless decide to approve the Report of the Panel, his delegation would ask the Council to note that Israel disagreed with certain interpretations contained in the Report.

The representative of Czechoslovakia said that the issues involved in this case were complex and could have a broad impact. His delegation was of the view that the examination under the provisions of Article III:1 to protect domestic production should not only concentrate on certain substitutable products, but should also cover other products known to be processed from soyabeans, such as cake and meal.

Furthermore, he said that his delegation found it difficult to agree to a concept according to which a domestic product could not be subjected to regulation if some of the material used for its production was imported. Such an interpretation was, in his view, not consistent with the language and intent of Article III. His delegation was of the opinion that the Report of the Panel as a whole and its conclusions, in spite of its deficiencies, represented a valuable effort to promote a reasonable resolution of the dispute. The Report should, therefore, be treated by the Council in the light of the standing practice.

The representative of Uruguay considered that this was an important case and that the Council should take note of the Report.

The representative of Poland said that his delegation attached particular importance to the dispute settlement system and was in favour of all measures that would strengthen this system. One of the main tasks of a panel was to assist the parties to a dispute to arrive at an agreement, a solution that was strongly supported by his delegation. His delegation was of the opinion that the Panel in this case had worked with full objectivity. The fact that some of the Panel's conclusions were not shared by a number of contracting parties could be a reflection of ambiguities existing in the General Agreement itself. He said that his delegation would not object to not adopting the Report, and would go along with taking note of the Report by the Council together with the comments presented by the parties to the dispute in documents L/5161 and L/5188.

The representative of Romania expressed his delegation's support for the GATT dispute settlement procedures. His delegation was of the opinion that interpretations of GATT Articles should be avoided if they could lead to the adoption of protectionist measures which would serve as a precedent for future action, particularly in dispute settlement. After having examined the documents related to this case and having listened to the various arguments, his delegation shared the views expressed that this case was of a highly complex nature. He agreed that some of the deficiencies in the Panel's Report were a reflection of the insufficiency of the General Agreement itself. He said that his delegation had noted with pleasure that the United States would not ask the Council to make recommendations to Spain. This meant to his delegation that the matter was settled. His delegation was ready to follow the course suggested by previous speakers to take note of the Report.

The representative of the Dominican Republic expressed disagreement with the conclusions of the Panel. He said that his delegation could not share the definition of "like products", and would support any proposal that would help both parties to arrive at a settlement of this matter.

The Chairman said in conclusion that a large number of delegations had participated in the debate; this, inter alia, showed that this case was, in a certain respect, unique. There had essentially been two focal points. The first of these dealt with paragraph 16 of the Understanding, concerning the function of panels to assist the Council, and with paragraph 21 of the Understanding, stating that the CONTRACTING PARTIES should take appropriate action within a reasonable period of time.

The various points raised in this procedural area would be summarized as fully as possible in the Minutes, as contracting parties would want to reflect on this in the future.

He said that the second focal point in the debate was the substance of the Panel's conclusions as they related to the General Agreement. In this case, too, the discussion would be reflected in the Minutes as fully as possible for purposes of future reference on the arguments advanced.

He noted that no consensus had emerged to adopt the Report, and that the United States was not seeking any further action on the part of the Council in respect of this matter.

The Council took note of the Panel Report in documents L/5142 and Corr.1. The Council also took note of the statements by representatives and of the points raised in documents L/5161 and L/5188.

The representative of Australia noted that there had not been a debate in the Council to overturn panel proceedings. As he understood it, much of the debate had been related to the interpretation of the General Agreement made by the Panel; and the Council was only exercising its right to discuss this interpretation.

8. Switzerland - Review under paragraph 4 of the Protocol of Accession (L/4881, L/5073, L/5208)

The Chairman recalled that, under paragraph 4 of its Protocol of Accession, Switzerland had reserved its position with regard to the application of the provisions of Article XI of the General Agreement to permit the application of certain import restrictions pursuant to existing national legislation. The Protocol called for an annual report by Switzerland on the measures maintained consistently with this reservation, and it required the CONTRACTING PARTIES to conduct a thorough review of the application of the provisions of paragraph 4 every three years. The most recent review had been conducted in November 1978.

The representative of Switzerland recalled that his authorities had submitted annually a report on the measures applied in the agricultural sector under paragraph 4 of the Protocol. The reports covering the past three years had been circulated in documents L/4881, L/5073 and L/5208. In resorting to import restrictions under its present agricultural legislation, Switzerland had committed itself to respect a well-established discipline and to abide as closely as possible to the relevant Articles of the General Agreement. From 1978 to 1980, there had been no change in either the systems of restrictions or the products subject to quantitative restrictions. Imports of these products had remained at a high level; and Switzerland could continue to claim a place among the world's leaders with regard to per capita imports of agricultural products. The objectives of Swiss agricultural policy remained unchanged: namely, to ensure that a minimum nucleus of agriculture was maintained in the country, in particular for strategic reasons of security of supply, while at the same time offering foreign products the broadest possible access to its market.

The representative of Chile referred to the requirement of conducting a thorough review of the application of the provisions of paragraph 4 of the Protocol every three years, and believed that it would not be timely to proceed with such a general review at the present meeting of the Council. He suggested the establishment of a working party which should report to the Council in the first half of 1982.

The representative of Australia recalled that the preamble to the Protocol committed Switzerland to the Resolution adopted at the GATT ministerial meeting on 21 May 1963 relating to the provision of acceptable conditions of access for agricultural products (BISD 12S/47). He noted that working parties had been set up in the case of some earlier reviews on the Protocol and said that Australia could agree to the establishment of a working party to conduct the present review.

The representative of Switzerland said that his authorities were prepared to provide additional information for countries wishing to increase their agricultural trade with his country.

The Council agreed to revert to this item at its next meeting.

9. Balance-of-Payments Restrictions

At its meeting in July 1981 the Council had considered the question of the Italian deposit requirement for purchases of foreign currency, and had agreed that the matter would be taken up by the Committee on Balance-of-Payments Restrictions as soon as possible. In October 1980, the Committee had carried out a consultation with Italy on this matter. The Committee had also had consultations with Peru and Turkey under the simplified procedures.

Mr. Feij (Netherlands), Chairman of the Committee, introduced the reports.

(a) Consultation with Italy - Deposit requirement for purchases of foreign currency (BOP/R/119)

Mr. Feij drew attention to the conclusions of the Report which referred, inter alia, to the serious political and economic uncertainty prevailing in Italy at the time the measure had been taken and also to the desirability of alternative actions. The Committee had noted that the deposit scheme, though monetary in form, had some effect on trade and that, in so far as these trade effects were concerned, the scheme could be considered in the spirit of the Declaration on Trade Measures Taken for Balance-of-Payments Purposes (BISD 26S/205), in which the CONTRACTING PARTIES recognized that developed countracting parties should avoid restrictive trade measures for balance-of-payments purposes to the maximum extent possible. The Committee had urged the Italian authorities to remove the measure as soon as possible and had agreed to keep the progressive elimination of the deposit requirement under review. In this context, he noted that the first reduction of the deposit rate from 30 per cent to 25 per cent had come into effect on 1 October 1981, as an initial step in the phasing-out programme due to terminate at the end of February 1982.

The Council adopted the Report.

(b) Consultations with Peru and Turkey (BOP/R/120)

Mr. Feij said that the Committee had reported on the simplified consultations in document BOP/R/120. With respect to both Peru and Turkey the Committee had concluded that full consultations were not desirable and had decided to recommend to the Council that these contracting parties be deemed to have consulted with the CONTRACTING PARTIES and to have fulfilled their obligations under Article XVIII:12(b) for 1981.

The Council adopted the Report and agreed that Peru and Turkey be deemed to have consulted with the CONTRACTING PARTIES and to have fulfilled their obligations under Article XVIII:12(b) for 1981.

10. Turkey - Stamp duty (L/5211)

The Chairman recalled that at its meeting in October 1981 the Council had considered a request by Turkey for an extension of the stamp duty waiver, scheduled to expire on 31 December 1981, and had agreed to refer this matter to the Committee on Balance-of-Payments Restrictions. The Report of the Committee had been circulated in document L/5211.

Mr. Feij (Netherlands), Chairman of the Balance-of-Payments Committee, introduced the Report and said that the Committee had examined the request at its meeting in October 1981. Noting that the rate of stamp duty had been reduced from 25 to 1 per cent on 25 January 1980 and that a fiscal reform was under-way which would soon enable the Turkish authorities to eliminate the stamp duty completely, the Committee had agreed to recommend that the CONTRACTING PARTIES grant an extension of the waiver on the terms and conditions set out in the Annex to document L/5211.

The Council approved the text of the draft decision and recommended its adoption by the CONTRACTING PARTIES by a vote at their thirty-seventh session.

11. United States - Imports of certain automotive spring assemblies (L/5195, L/5195/Add.1)

The Chairman recalled that in October 1981 the Council had agreed to revert to this item at the present meeting.

The representative of Canada recalled that, at the last meeting of the Council, his delegation had referred to a United States International Trade Commission exclusion order of 10 August 1981 with respect to imports of certain automotive spring assemblies from Canada. He recalled having indicated that should the President decide not to use his discretionary authority to disapprove the exclusion order, his delegation would seek a decision to establish a panel pursuant to Article XXIII:2 of the General Agreement. In the meantime, the President had decided not to disapprove the exclusion order, as the Canadian delegation had informed the CONTRACTING PARTIES in document L/5195/Add.1.

He said that United States law provided one way to deal with alleged patent infringement from domestic sources, and another way, i.e. Section 337, to deal with alleged patent infringement from foreign sources. In the view of his Government, this denial of national treatment was inconsistent with United States obligations under GATT, and impaired benefits accruing to Canada under the General Agreement. His delegation, therefore, requested

that the Council establish a panel pursuant to Article XXIII:2 to examine the matter. In view of the very serious consequences for the Canadian firm affected, he requested further that the panel be called upon to deliver its finding on an urgent basis.

The representative of the United States said that his Government had no objection to a panel being established, but felt that the process of consultations under Article XXIII:1 should first be pursued. His authorities were prepared to enter into such consultations promptly, and believed that the United States actions in this matter would be found to have been in full conformity with its GATT obligations.

The representative of Canada said that his Government had fully complied with the requirements of Article XXIII:1 to seek bilaterally a satisfactory adjustment of the matter. While his delegation could agree to further bilateral consultations at the earliest possible time, Canada wished to ensure that no valuable time was lost in resolving the dispute either through consultations or by means of a panel.

The Council agreed that if such consultations did not quickly lead to a mutually satisfactory solution, a panel would be established, with the composition and terms of reference to be determined in consultation with the two parties concerned.

12. EFTA-FINEFTA Agreements - Biennial Reports (L/5204)

The Chairman drew attention to document L/5204 which contained the biennial reports by the parties to the European Free Trade Association and the Finland-EFTA Association.

The Council took note of the reports.

13. Textiles Committee
- Report on the Annual Review by the Textiles Committee (COM.TEX/20)

The Director-General recalled that at the meeting of the Council in November 1980, he had presented the report of the Textiles Committee meeting on the major review of the Arrangement Regarding International Trade in Textiles, conducted in October 1980 under Article 10.4 of the Arrangement.

As a continuation of the major review, the Committee had requested the secretariat to prepare a paper bringing out more clearly, on the basis of available statistics, the facts regarding demand, production and trade in textiles, with a view to assisting the Committee to make an assessment of the extent to which the objectives of the Arrangement had been achieved. This study had been issued by the secretariat in COM.TEX/W/84 and Add.1, and had been considered by the Committee at its meeting held in December 1980. The Report of that meeting, was contained in COM.TEX/20.

He added, for information of the Council, that, at the December 1980 meeting, the Committee had also begun its consideration of the future of the Arrangement, as required by Article 10:5. Discussions in this area had continued throughout 1981 at meetings of the Committee held in May, July and September. The next meeting of the Committee was to begin on 18 November 1981 and continue for as long as necessary to deal with the Agenda.

The Council adopted the Report.

14. Consultative Group of Eighteen (L/5210)

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 1981 had been circulated in document L/5210.

The Director-General, Chairman of the Consultative Group, presented the Report, which had been prepared, as usual, on his own responsibility. He drew particular attention to the discussions in the Consultative Group on trade in agriculture, and to the Consultative Group's proposal that, at their forthcoming thirty-seventh session, the CONTRACTING PARTIES should consider convening their 1982 session at ministerial level.

He recalled that at their thirty-sixth session the CONTRACTING PARTIES had requested the Consultative Group to provide adequate additional time in its meetings for discussion of questions relating to agriculture. At each subsequent meeting of the Group a substantial part of the time available had been devoted to agricultural questions on the basis of a number of papers prepared by the secretariat. In his view, the discussions had got off to a good start, which promised well for the future.

He said that the important proposal that the session in 1982 be convened at ministerial level had emerged after many hours of discussion at the June and October meetings. A short account of the considerations of the Consultative Group could be found under items 1 and 10 of the Report. Annexed to the Report were also three papers prepared by the secretariat on the procedural arrangements which might be envisaged for a ministerial meeting, on the way in which earlier ministerial meetings in GATT had been prepared, and on background issues - the trends in the world economy and in the GATT system - which underlay the proposal.

He said that the Consultative Group had been conscious that ministerial meetings in the GATT had been rare occurences, the most recent one having taken place in Tokyo in 1973, with a very special character because its sole function had been to open the Multilateral Trade Negotiations. He said that it emerged clearly from this Report, and particularly from the proposal that the meeting should take the form of a session of the CONTRACTING PARTIES at

ministerial level, that the Consultative Group envisaged that such a meeting would be devoted to the specific concerns of the GATT. These included the health of the trading system and the observance of the rules which sustain it, the need to set priorities for the future work of GATT and to deal with outstanding problems, and the implementation of the results of the Tokyo Round. The Consultative Group had emphasized that for the meeting to be effective and useful, it had to be prepared with great thoroughness, and that the work of preparation should begin as soon as possible after a decision to convene the meeting had been taken.

The representative of New Zealand welcomed the Consultative Group's having given specific attention to the problem of agricultural trade. In the view of his Government it was important that the Consultative Group remain a forum for constructive exchange in the area of agricultural trade. Its value was that it was set apart from the context of the more immediate and specific problems or disputes that characterized much of the Council's involvement with agricultural trade matters. He said that the work to date confirmed that agriculture had in practice been discriminated against. Against the background of the proposed 1982 GATT ministerial meeting, and in a situation where more than one of the major economies were considering important changes in agricultural production and trade policies, it was essential that on-going work of the Consultative Group in the agricultural domain suffer no loss of momentum.

The representative of Canada urged that the Council, in adopting the Report of the Consultative Group and transmitting it to the CONTRACTING PARTIES, endorse the principle of holding a ministerial meeting in 1982.

The representative of Romania expressed his appreciation for the initiative on holding a GATT meeting at ministerial level. His Government also shared the views expressed by the Director-General that the discussion on trade in agricultural products in the Consultative Group had got off to a good start.

The Council took note of the Report and agreed to forward it to the CONTRACTING PARTIES, drawing particular attention to the recommendation that the thirty-eighth session be held at ministerial level.

15. Training activities (L/5182)

The Director-General, in presenting a Report (L/5182) on the activities of GATT in the field of training, stated that the commercial policy courses organized at Geneva since 1955 were one of the GATT activities to which the CONTRACTING PARTIES attached particular importance, and the growing number of applications for each course confirmed the ever-increasing interest of governments in this programme. He thanked the contracting parties for their support and collaboration and expressed sincere appreciation to UNDP which

had financed the fellowships until December 1978 and was still co-operating in the scheme by transmitting candidatures from various countries and maintaining liaison with governments and candidates.

He thanked the Governments of Iceland and the United Kingdom which had invited the participants to visit their countries in the context of the study tours included in the training programme, and expressed his gratitude to the Canadian Government for its hospitality and generous financial contribution to the expenses of a study tour to that country. In addition, each year the Swiss authorities organized a week of studies and visits in Switzerland for all participants in the training courses.

Commenting on certain difficulties that had become more pronounced over the years in connexion with the training programme, the Director-General mentioned the material impossibility of increasing the maximum number of twenty participants for each course, despite the growing number of applications. He invited the contracting parties to make known their views as to how a larger number of candidates might be enabled to follow the courses. He also drew attention to the shortage of short-term rented accommodation in Geneva. If the latter situation were to deteriorate further in 1982-83, GATT would find itself obliged to seek a solution either by increasing the per diem allowance or finding some other housing arrangement. He also sought the contracting parties' opinions on this point.

He stated that in response to requests that Spanish-speaking delegations had been making for some time, the GATT secretariat was to organize a special Spanish-language training course lasting five weeks in January-February 1982, made possible by a financial contribution from Switzerland. In conclusion, he also thanked members of delegations and representatives of other international organizations who had given generously of their time in order to have discussions with the GATT trainees on their activities or their relations with developing countries.

A large number of representatives from developing countries expressed their appreciation for the courses, which they considered to be of great benefit for their countries as well as for the better understanding of trade policy matters and the GATT throughout the world, and spoke in favour of an expansion of these commercial policy courses. The representatives of Colombia, Argentina, Peru and Uruguay also invited the Director-General and the contracting parties to look into the possibility of including in the training activities of GATT a regular course in the Spanish language. The representative of Argentina confirmed the interest of his Government in organizing, during the first half of 1982, a seminar on trade policy matters for which his Government hoped to be in a position to rely on the GATT secretariat's support.

The representative of Thailand said that the participation of Thai government officials in the GATT commercial policy courses and the GATT seminar held in Bangkok had made it possible to follow GATT activities with a better understanding and to consider seriously the question of accession to the GATT. He proposed that newly acceding contracting parties be treated as special cases in the processing of candidates for the training courses. This proposal was supported by the representative of the Philippines.

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

16. Committee on Budget, Finance and Administration - Report of the Committee (L/5196)

Mr. Williams (United Kingdom), Chairman of the Committee on Budget, Finance and Administration, introduced the Report of the Committee on its meeting in October 1981 (L/5196).

He said that from the out-turn figures examined by the Committee it was clear that over-expenditure, arising from factors beyond the secretariat's control, could be expected by the end of the year and that recourse would be necessary to the Working Capital Fund to the extent of approximately Sw F 400,000. This situation was aggravated by the fact that the level of outstanding contributions continued to be very high. For this reason, on behalf of the Committee, he asked that all contracting parties still owing contributions pay them immediately, and said that this question would have to be examined again in the very near future.

With regard to the Committee's examination of the 1982 budget estimates, he stressed that the Director-General's efforts to present a zero-growth budget had been appreciated. Nevertheless, most members had instructions to seek reductions consistent with the existing economic conditions and with the stringent approach that governments were taking with regard to their own spending; and many members could not accept the budget at the level proposed. He stated that the overall level of the budget had finally been set at Sw F 45,501,000, representing an increase of 8.69 per cent over 1981, which had to be seen in the context of current inflationary trends. He recommended that the Council approve the revised GATT budget estimates for 1982 at this level and their financing in accordance with paragraph 42 of the Committee's Report.

He said that the Committee had also discussed the question of draft regulations and rules for GATT, as noted in paragraphs 43 and 44 of the report.

He also said that the Committee had asked the GATT secretariat to have discussions with the Secretariats of the International Trade Centre and of the United Nations concerning certain technical problems relating to the exchange rates and inflation factors adopted for accounting purposes and applied to ITC budgets.

In reply to questions raised by the representative of Jamaica concerning an over-expenditure of some Sw F 406,000, Mr. Williams gave assurances that the Committee had been satisfied that this had been the result of statutory increases in salaries and other costs over which the secretariat had no control.

The Council approved the recommendations of the Budget Committee contained in paragraphs 10, 15, 18, 47, 55 and 60 and agreed to submit the draft resolution contained in paragraph 49 to the CONTRACTING PARTIES for consideration and approval.

The Council approved the Report (L/5196) and recommended its adoption by the CONTRACTING PARTIES at their thirty-seventh session, including the recommendations contained therein and the Resolution on the Expenditure of the CONTRACTING PARTIES in 1982 and the ways and means to meet that expenditure.

17. United States - Agricultural Adjustment Act

The representative of New Zealand, speaking under "Other Business", referred to the waiver on agricultural trade policy which had been granted to the United States in March 1955. He recalled that the last time this issue had been considered in any detail by the Council had been in March 1981 when the Council had examined the twenty-third annual report presented by the United States. The Council then had requested the United States to supplement the information in the report. He noted that seven months had passed and that the Council still awaited the additional information.

He said that his Government raised this matter because the time was soon approaching when the next regular annual report would be due from the United States, and because his authorities had followed with closest interest the repeated recent statements from the highest levels in the United States' administration concerning the commitment to a liberal trade system and a free play of market forces, and the administration's stated intentions to intensify United States efforts to promote agricultural export policy endeavours. He said that against this background, the continued retention of a waiver that permitted controls on imports in such sectors as dairy trade, was a conspicuous anomaly and denied the free play of comparative advantage. He said that during the run-up to the important events of 1982 it would be crucial to have a much clearer idea than at present of the United States' intentions concerning the dismantlement of its long-standing agricultural waiver.

The representative of the United States said that his Government was conscious of its undertaking to provide the additional information, but was awaiting the passage of new agricultural legislation in the United States with the intention to include references to it.

The Council took note of the statements.

18. Application of the Enabling Clause

The representative of Brazil, speaking under "Other Business", said that at the forty-fourth session of the Committee on Trade and Development in July 1981, his delegation had informed the Committee that it had requested consultations with certain developed countries under the relevent provisions of the Enabling Clause[1] with regard to the arbitrary and discriminatory treatment of certain specific Brazilian products in their schemes under the Generalized System of Preferences.

He said that in October 1981 Brazil had held consultations with the United States authorities in Geneva under paragraph 4(b) of the Enabling Clause on a number of products that had been excluded from the United States scheme. According to the explanation given by the United States authorities, some of the products had been excluded on the grounds that Brazil had "graduated" for those products. In the view of his authorities, such exclusion was discriminatory and arbitrary, and therefore inconsistent with paragraph 2(a), including its footnote 3, of the Enabling Clause, which referred to the "generalized, non-reciprocal and non-discriminatory preferences beneficial to the developing countries", as described in the Decision of the CONTRACTING PARTIES of 25 June 1971 (BISD 18S/24).

He said that in October 1981 Brazil had also held consultations with the European Communities under paragraph 4(b) of the Enabling Clause on certain products under the EEC GSP scheme. In the view of Brazil, the treatment that those products received under the EEC scheme, when originating in Brazil, was discriminatory and arbitrary, and was therefore inconsistent with paragraph 2(a) of the Enabling Clause. He said that Brazil, therefore, reserved its right under the Enabling Clause, on these matters.

The representative of the United States recalled his Government's view that the GSP, as accorded by the United States, was a unilateral, non-reciprocal and non-contractual programme and that, as such, specific actions taken thereunder were not subject to review by the CONTRACTING PARTIES, the Council or any other GATT body.

The representative of the European Communities said that Brazil enjoyed the full benefit of, and was not excluded from, the GSP scheme of the EEC. However, there were a number of limitations due to the high competitiveness of Brazil for some products. He said that the GSP was a unilateral, non-reciprocal and non-contractual system. His delegation could not share the Brazilian interpretation of the Enabling Clause.

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[1]Decision on Differential and More Favourable Treatment, Reciprocity and Fuller Participation of Developing Countries, BISD 26S/203.

The representative of Brazil said that his delegation intended to revert to this matter at the forthcoming meeting of the Committee on Trade and Development as there might be a need for reviewing the operation and provisions of the Enabling Clause. He expressed the view that notwithstanding the autonomous character of GSP schemes, the application of preferences had to conform to the Decision of the CONTRACTING PARTIES.

The Council took note of the statements.

19. Accession of Tunisia (L/5221)

The representative of Tunisia, speaking under "Other Business", recalled that the validity of the Declaration on the Provisional Accession of Tunisia and the Decision extending the invitation to Tunisia to participate in the work of the CONTRACTING PARTIES had been extended several times over a period during which time Tunisia had established its new tariff régime. Parallel to this long-standing effort, Tunisia had acceded to the Agreement on Technical Barriers to Trade as well as to the Protocol Relating to Trade Negotiations among Developing Countries.

He said that his Government had recently requested that procedures be engaged for the full accession of Tunisia to the General Agreement under conditions to be defined with the CONTRACTING PARTIES, in conformity with Article XXXIII of the General Agreement. Pending the necessary arrangements to be made for Tunisia's tariff negotiations, his Government requested a further extension of the Decision of 12 November 1959, which was due to expire on 31 December 1981.

The Chairman drew attention to the communication from Tunisia in document L/5221, which related to this matter.

The Council took note of the statement by the representative of Tunisia. The Council also agreed to forward Tunisia's request to the CONTRACTING PARTIES for consideration at their thirty-seventh session, and requested the secretariat to prepare a draft of a Procès-Verbal Extending the Declaration on the Provisional Accession of Tunisia, as well as a draft Decision extending the invitation to Tunisia to participate in the work of the CONTRACTING PARTIES.

20. Report of the Council (C/W/368)

The secretariat had distributed in document C/W/368 a draft of the Council's Report to the CONTRACTING PARTIES on the matters considered by the Council since the thirty-sixth 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 and at the special meeting to be held on 6 November 1981.

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