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GENERAL AGREEMENT ON TARIFFS AND TRADE

COUNCIL
7 February 1984

MINUTES OF MEETING

Held in the Centre William Rappard on 7 February 1984

Chairman: Mr. F. Jaramillo (Colombia)

1. El Salvador - Request for observer status (L/5588)

The Chairman drew attention to document L/5588, containing a request by El Salvador for observer status. He noted the reference in the document to El Salvador's interest in developing its links with GATT, which might enable it in the future to examine the possibility of becoming a contracting party. He proposed that the Council agree to grant El Salvador observer status for Council meetings.

The Council so agreed.

2. Safeguards

The Chairman recalled that the CONTRACTING PARTIES had agreed at their 1983 Session "that the Council should conclude the work of drawing up a comprehensive understanding as called for by Ministers within such a time frame that it would be placed for adoption by the CONTRACTING PARTIES at their 1984 session" (SR 39/1).

In accordance with this decision, he had recently restarted, with the active support of the Director-General, the process of informal consultations on safeguards in order to find a way to achieve the task given to the Council. The basis of this work would be the mandate given in the 1982 Ministerial Declaration (BISD 29S/12-13). He hoped that the necessary transparency would be ensured in this work, and that all interested delegations would keep in touch with the process of consultation and would contribute to fulfilling the Council's task. He intended to keep the Council members regularly and fully informed of the situation and of progress made in the consultations.

The Council took note of the statement.

3. Structural Adjustment and Trade Policy
- Report by the Working Party (L/5568)

The Chairman recalled that in November 1983 the Council had discussed the report of the Working Party on Structural Adjustment and Trade Policy (L/5568), and had agreed to revert to the report at its next meeting, so as to complete its consideration and decide on such further action as might be called for. Since then, informal consultations had been held between various delegations on this issue. He understood that these consultations had indicated a general recognition of the importance of the problem of structural adjustment for international trade and in relation to GATT principles and objectives. The consultations had also shown that while there was acceptance of the need for further work in this area having regard to the matters dealt with in the Working Party's report, more reflection was needed to determine how this work might be carried forward and the modalities that might be adopted for this purpose. He proposed that the Council allow more time for these consultations to continue, and revert to the issue at one of its next meetings.

The representative of Jamaica recalled that work had started in GATT on structural adjustment in 1965 and had been abandoned in 1972 just when the expert group had concluded its initial phase of data collection and had reached a number of conclusions. Active consideration was then being given to the establishment of an early-warning system, to the formalization of a product-specific notification system, to the study of adjustment assistance measures which could be used to avoid escape clause action, and to the study of sectors or areas where more active adjustment assistance measures aimed at trade liberalization would be desirable. However, no action was taken on these issues until the effort had been restarted in the Consultative Group of Eighteen in 1978, though on a much broader front. A working party had been established and had considered a number of issues submitted by contracting parties on their own national experiences. The report now before the Council summarized the work of the past 2 1/2 years; Jamaica considered that further action was necessary, but it should be on more pragmatic, specific and operational lines, and should include, but not limit itself to the examination of positive adjustment measures where safeguard measures were being taken. He said that there was a strong body of opinion that if structural adjustment proceeded efficiently, there would be far less recourse to safeguard measures; however, since the beginning of the 1970s and the rise of protectionist measures and policies, the international structural adjustment process had not worked as efficiently as it should have done. By way of illustration, once a number of developing countries had begun to show a degree of competitiveness, they had faced new protectionist measures applied to their products by industrialized countries; the pricing system had become distorted due to many factors, including exchange rates and substantial government subsidies; trade-distorting domestic measures had increased as the major trading partners had sought

to maintain the terms of trade in their favour and to prop up industries which were not competitive with new suppliers. There had clearly emerged an increased concentration of market power by large enterprises operating within the boundaries of the major trading partners, seeking to ensure traditional shares in production and trade, for example in industries such as automobiles and electronics. Moreover, several governments had targeted sectors for massive state support, for example in high technology or services; and it was those same governments that preached the need for open trading policies to developing countries. Many of these actions were taken because of trade-distorting domestic measures which forced industries to enter markets via investments in joint ventures. His delegation referred to work in progress in the OECD and queried whether such actions encouraged structural adjustment in line with underlying evolving patterns of comparative advantage.

The representative of Egypt supported the statement by the representative of Jamaica.

The Council took note of the statements and agreed to revert to the issue at one of its next meetings.

4. Aspects of Trade in High-Technology Goods (SR.38/9, C/W/409/Rev.2 and Corr.1)

The Chairman recalled that the Council had most recently considered this item at its meeting on 1-2 November 1983, when it had agreed to revert to this item at its next meeting.

The representative of the United States said that during the Council's earlier discussions of the US proposal (C/W/409/Rev.2 and Corr.1) it had become apparent that a number of delegations could support the study called for in that document. Meanwhile, there had been a number of other developments in this area over the past year in other fora, notably in the Summit work group on technology, growth and employment and in the OECD. The United States had also joined with some other contracting parties in bilateral working groups focussed on trade in high technology goods. He added that some contracting parties were still unjustifiably uncertain of US motives in the high-technology area, and said that the capital-intensive nature of high technology goods production made market access considerations more important than they might be in other sectors, especially for smaller countries whose domestic markets did not have the absorptive capacity of larger countries. Although the United States had so far failed to convince one of its major trading partners that it was in its interest to begin examining trade in this area within GATT, there was no doubt that this group of countries considered high technology to be an important sector, since in the Working Party on Structural Adjustment, its submissions had included references to plans for development of high technology sectors and trade. The United States considered it urgent to examine the trade aspects of high technology in a multilateral framework, rather than awaiting developments that could lead to increased trade frictions. This

was not just a developed country trade issue; high technology industries were becoming an important force in developing countries' economies. Also, a process of natural structural adjustment in the developed countries would only be possible if they moved from traditional industries toward the high technology area on the basis of economic market conditions. The United States continued to believe that GATT was the proper multilateral forum for taking action on issues in the trading system. Once again, his delegation asked that members of the Council give favourable consideration to the US proposal.

The representative of the European Communities said that this matter should be handled without undue haste. There was no question of delaying tactics; indeed, leaders of the private sector in the Community considered that high technology should be discussed at a world-wide level. However, there were a number of important points that needed to be considered, for instance the implications of military research in high technology for use in the civilian area. The Community continued to attach importance to this subject; but it needed to be approached cautiously. His delegation intended to abide by the letter and spirit of the 1982 Ministerial Decision (SR.38/9, page 2) on this subject.

The representative of Jamaica said that GATT should indeed examine the trade aspects of high-technology, without any prejudice as to whether or not contracting parties would take further action in GATT after such an examination. Perhaps this issue should be handed to the Consultative Group of Eighteen, which could discuss it and then make a recommendation. His delegation also wondered whether the sectoral studies in this area being carried out by the Western "Summit" nations and by the OECD could be made available to countries that were not members of the OECD or of the "Summit Seven".

The representative of Argentina said that his delegation had requested further clarification on this subject from countries with a direct stake in the matter; however, no progress had been made in providing such clarification. Argentina could not change its position at this point, but remained willing to listen to worthwhile arguments which interested parties might introduce to justify special treatment of this sector within GATT.

The representative of Canada reiterated his delegation's support for the US proposal. Canada was concerned that although this item had frequently been on the Council's agenda, it had still not been possible for the Council to take a decision. Many questions that had been raised about the proposed study could and should be covered by the study itself.

The representative of Cuba said her delegation considered that it would be premature to launch the study proposed by the United States. Moreover, such a study would imply a financial and technical outlay by the secretariat which might not be justified.

The representative of Australia said that his country had an emerging interest in high-technology, and he reiterated his delegation's view that the Council should decide to move forward on this matter as soon as possible, so that all Council members could become better acquainted with the problems associated with high-technology trade.

The representative of Switzerland said that GATT was running the risk of having its credibility questioned as to its ability to implement decisions taken by Ministers. Switzerland wanted to implement GATT's work program in a parallel and homogeneous manner. As for the substance of this matter, Switzerland also had a direct interest in having the decision implemented. Care should be taken to avoid a situation in which high technology was more and more removed from the implementation of the General Agreement, through all sorts of bilateral, regional or other special arrangements. Contracting parties should also be aware that high technology, especially for industrialized countries, if applied in a liberal manner, could help the process of structural adjustment and sustain the ability of those countries to continue importing goods from developing countries at a satisfactory rate.

The representative of Israel reiterated that his country had a stake in this matter and supported the US proposal. The problem of access to markets for high-technology goods was becoming increasingly specific; and GATT should not ignore this problem.

The representative of New Zealand shared the concern that the credibility of GATT was at stake in its continuing failure to deal with the matters before it. GATT had to be flexible in dealing with new and significant developments in international trade. His delegation reiterated that it was not opposed to the eventual establishment of a working party to consider this subject, but New Zealand's priorities dictated that the focus of attention should be elsewhere at the present time.

The representative of the United States said that he had detected a willingness on the part of some delegations, which had previously shown reluctance on this issue, to discuss substance rather than procedure in the Council. This was a new and positive step. Although his delegation hesitated to tie up the Council's time by embarking on a long discussion on this highly complex area, if that was the only way in which to enter a substantive discussion of the topic in GATT, he would ask his authorities to consider such a discussion. However, it would be useful for the secretariat to prepare a paper on which to base such a discussion.

The representative of the European Communities said that a substantive debate in the Council on this issue would be most timely, but the Community did not see why the matter should be dealt with in a study by the secretariat. Nothing in the provisions of the General Agreement precluded discussion on trade in high-technology goods. A substantive debate on this topic would not need to be unduly protracted.

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

5. Trade in Counterfeit Goods (C/W/418, L/5512)

The Chairman recalled that the Council had most recently considered this matter at its meeting on 1-2 November 1983, when it had agreed to revert to it at its next meeting.

He noted that in 1982 the Ministers had instructed "the Council to examine the question of counterfeit goods with a view to determining the appropriateness of joint action in the GATT framework on the trade aspects of commercial counterfeiting and, if such joint action is found to be appropriate, the modalities for such action, having full regard to the competence of other international organizations. For the purposes of such examination, the CONTRACTING PARTIES request the Director-General to hold consultations with the Director General of W.I.P.O. in order to clarify the legal and institutional aspects involved" (BISD 29S/19). The Chairman noted that the Director-General had reported on his consultations with the Director General of W.I.P.O. The next step would be for the Council "to examine the question of counterfeit goods with a view to determining the appropriateness of joint action in the GATT framework on the trade aspects of commercial counterfeiting". He said that following informal consultations, the secretariat was now in the process of putting together a background paper designed to facilitate the further work, which would be based on information supplied by interested delegations and on information presently available in the secretariats of relevant organizations, including W.I.P.O. The GATT secretariat would remain in contact with interested delegations and secretariats as work proceeded on the paper.

The Council took note of the Chairman's statement and agreed to revert to this issue at a later stage when additional information was available.

6. European Economic Community - Quantitative restrictions on imports of certain products from Hong Kong
- Follow-up on the report of the Panel (L/5511)

The Chairman recalled that the Council had most recently considered this matter at its meeting on 1-2 November 1983, when it had agreed to revert to it at its next meeting.

The representative of the United Kingdom, speaking on behalf of Hong Kong, recalled the recommendation by the CONTRACTING PARTIES that France should terminate the quantitative restrictions in question (L/5511, paragraph 34); however, that recommendation had still not been effectively acted upon. Far from removing the restraints, France had announced, on 19 January 1984, the extension of the quota restrictions for 1984. Hong Kong was aware that an investigation was currently being conducted within the European Community on imports of watches, but considered that the process and the outcome of such an investigation on the one hand, and the elimination of the quota restraints in compliance

with the CONTRACTING PARTIES' recommendation on the other, were two distinct and separate issues. The existence of the former could not be used to justify or excuse failure to comply with the latter. The French action in November 1983 to liberalize trade in three product categories had been a token gesture which affected only 1.5 per cent of the total trade in all items affected by the recommendation, while the recommendation had called unconditionally and unequivocally for the removal of the restrictions. As regards quartz watches alone, Hong Kong's exports to France had declined rapidly from 6 million pieces in the 12 month period immediately before the introduction of the restrictions in October 1981 to 2.2 million pieces in the 12 months to September 1983. Turning to the other products subject to restrictions, (e.g., toys, unbrellas, radios) he pointed out that in none of them was Hong Kong a significant supplier to the French market. The restrictions had acted effectively but unjustifiably to hold down Hong Kong's share of the import market. Hong Kong was concerned that, despite a decision by the Council in the clearest terms, no satisfactory relief had yet been obtained and that the trade situation had continued to deteriorate. Hong Kong reserved its right to revert to this matter.

The representative of the European Communities said that he wanted to explain how the Community had implemented the CONTRACTING PARTIES' recommendation. He also emphasized that this had been a recommendation that had to leave a certain latitude to the party concerned for implementation in accordance with its own internal procedures and requirements. He recalled that the measures concerned went back to 1944, and it was not possible to move overnight. As a first step and token of goodwill, France had lifted restrictions on five headings concerning textiles and on one concerning microscopes. Since 1 January 1984, the Community had made its import régime more flexible on a certain number of tariff lines, including umbrellas, radios and toys. He confirmed that the Community would conform with the CONTRACTING PARTIES' recommendation. Meanwhile, it was investigating imports of quartz watches; and Article XIX safeguard measures were one possible outcome.

The representative of Pakistan said that Hong Kong's concerns were genuine, and that the Council should be concerned that certain recommendations by the CONTRACTING PARTIES had not been implemented with the speed expected. His delegation hoped that the Community would try to implement the recommendation as quickly as possible.

The representative of Jamaica said that if such recommendations were to be seen as non-binding, the Council could save a lot of time by not setting up panels. This matter concerned nullification and impairment of benefits; and the findings of panels and the Council's own decisions should be taken seriously by the Council.

The representative of India agreed that a certain flexibility must be given to contracting parties in discharging their obligations stemming from recommendations made to them by the CONTRACTING PARTIES; but

compliance should be completed within a reasonable period. His delegation hoped that very soon the Council would be informed of compliance with the recommendation.

The representatives of Egypt and Nicaragua expressed support for the statement made by the representative of India.

The representative of the United Kingdom, speaking on behalf of Hong Kong, emphasized that the Panel's finding had resulted in a clear and unconditional recommendation. The fact that some of the quotas went back 40 years had been fully taken into account by the Panel; and the most important of the quotas, concerning quartz watches, had only existed since 1981. The total increase in quotas by the Community was only between 3 and 4 per cent on all the affected items; and, in any case, increasing the quotas did not address the fact that the CONTRACTING PARTIES had recommended that they should be terminated. The fact that some satisfactory relief had not been provided within a reasonable period of time after such a clear recommendation by the CONTRACTING PARTIES was in itself a matter of concern for the GATT dispute settlement mechanism.

The representative of Brazil supported the case put by Hong Kong. The Council had a clear duty to support GATT's dispute settlement procedures. His delegation suggested that the two parties discuss setting a timetable for implementing the recommendation.

The Council took note of the statements and of the suggestion made.

7. United States - Article XIX action on imports of certain specialty steels
   - Notification of compensatory measures by the European Economic Community (L/5524/Adds. 15 and 17)

The Chairman said that this item was on the agenda at the request of the United States. He drew attention to documents L/5524/Adds. 15 and 17 pertaining to this matter.

The representative of the United States said his authorities believed that the retaliation proposed by the Community in document L/5524/Add.15 was excessive by the standards of Article XIX:3(a). Major points of US concern related to significant statistical discrepancies in US and Community trade data, to the proposed Community quota levels as denominated in ECUs, to the sensitivity of the products subject to tariff retaliation, to the Community's estimates of trade loss caused by US quotas, and to the Community's assumptions of trade levels in the absence of relief. His delegation believed that the Community's trade loss calculations for the specialty steel quotas were exaggerated; it disagreed with the Community's estimates of first year trade in the absence of relief, with their selection of a representative base period, and with their estimate of trade with relief in place. The Community's quota retaliation was denominated in ECUs rather than in terms of

quantities, which had resulted in an increased dollar impact of the quotas proposed by the Community, even using the Community's own trade estimates. His delegation understood that the Community was considering adjustment of the retaliation package to address this point. He added that there were significant discrepancies between US export data and the Community's import data on products subject to proposed retaliation on both quota and tariff items. This was particularly so with regard to chemical products. For example, in the case of styrene, the impact of the proposed quotas would be significantly more severe, and, in regard to tariffs, the level of duties collected would be considerably higher than that proposed by the Community. In addition, the increased Community tariffs on the two chemical items would have a much more severe impact on US trade performance than the US tariffs applied to specialty steel from the Community. He agreed that the Community had the right to retaliate under Article XIX:3(a), unless the Council disapproved such action. His delegation was not asking the Council to do this at the present meeting. However, more time should be allowed for the two parties to reconcile the major discrepancies and problems in the Community's calculations before the Community retaliated. The United States was therefore requesting the Council to extend the time limit under Article XIX:3(a) for an additional thirty days until the middle of March.

The representative of the European Communities recalled that in this case both sides had followed GATT procedures in an exemplary way. He failed to see why the United States should ask for an extension of the 30-day time limit, which would constitute a precedent. The Community was entitled to exercise retaliatory measures as of 13 February; however, out of goodwill it had extended the deadline to 1 March. The Community could not grant the US request for a further extension. As the US representative had clearly stated that he did not contest the Community's right to act, the Community wondered whether the US concern centered solely on the extent of the measures that the Community envisaged. He asked the secretariat whether it was correct that the United States would be able to re-open the issue in the Council if it felt that the Community's retaliation package was excessive.

The representative of the United States said that on the day before the present meeting, his delegation had been informed that the Community had suggested to its member States a 20 per cent increase in the quotas in retaliatory items in order to adjust the differences caused by using a particular ECU/dollar exchange rate. In his view, this was a tacit recognition that the use of the ECU had resulted in a larger retaliation than intended by the Community. However, Community sources had also made clear that even if the member States agreed to this suggestion, the Community could not alter the action it proposed to take on 1 March, but would submit an adjustment to the Community's Council of Ministers for approval later. He admitted that this was a very forthcoming response by the Community. In view of the Community's implicit acknowledgement that its retaliatory action might be larger than it intended, it would be appropriate that the action be delayed a short period so that the necessary corrections could be made before the Community actually retaliated, thus avoiding yet another escalating trade dispute.

The representative of Brazil asked whether the Council would be competent to take the decision requested of it by the representative of the United States.

The Director-General said that if the Community agreed to the US request for an extension of the date of entry into force of the retaliatory measures, this could be done. If the Community did not agree, its retaliatory measures could be put into force on 1 March unless the Council were to disapprove of them; but, in the absence of disapproval, the Council could not postpone the entry into force of the measures, because this was the Community's sovereign right.

The representative of Jamaica wondered whether the Council had the jurisdiction to make a recommendation relating to the deferral of the measures at this stage.

The representative of India said that the provisions of Article XIX:3(a) were clear. If the Community wanted to suspend substantially equivalent concessions or other obligations, it could do so after the expiry of thirty days on the condition that the CONTRACTING PARTIES did not disapprove. The Council was not now being asked to disapprove the Community's action. The United States could ask the Community to defer the retaliation; but given the language of Article XIX:3(a), India could not see the Council having any rôle to make a recommendation as to such a deferral, which would have to come unilaterally from the Community in the event that it wished to react favourably to the US request.

The representative of Egypt emphasized that retaliation was an exceptional case and that contracting parties had to be careful about such measures. It was his view that since the CONTRACTING PARTIES could disapprove of the suspension of substantially equivalent concessions under Article XIX:3(a), which would constitute a whole decision, then in a multilateral effort towards conciliation and in the spirit of the General Agreement itself, they should also be able to take a part of that decision and request that such suspension be delayed.

The representative of the European Communities said that the United States and the Community were fully aware of the gravity of the measures taken by both parties. The Community's decision to implement measures was irrevocable unless the Council disapproved of the measures within the appropriate time. The measures would be implemented on 1 March; but their extent could be adjusted and consultations were continuing, because both sides were showing goodwill and trying to find a satisfactory arrangement. In this connection, it was regrettable that the US representative had described the Community's possible goodwill move as an implicit acknowledgement that the measures were excessive. Unfortunately, declarations of that kind were not conducive to a satisfactory solution. If, after 1 March, the United States considered that the Community's measures were excessive, then the CONTRACTING

PARTIES would have the right, as stressed by a working party in 1955, "to require adjustments in the action taken if they consider that the action goes beyond what is necessary to restore the balance of benefits" (BISD 3S/182).

The representative of the United States said that his delegation was aware of its right to ask the Council to disapprove the retaliation as provided in Article XIX. Also, the United States could use GATT's dispute settlement procedures. However, his delegation was trying to achieve apractical solution short of either of those alternatives. The Community had a right to retaliate, but also an obligation to ensure that it did not suspend more than substantially equivalent concessions. His authorities were not yet ready to ask the Council for disapproval since they were still trying to resolve the matter bilaterally. The United States was simply asking for time to resolve this matter bilaterally before the next scheduled Council meeting in mid-March. If the Community were to delay implementation of its measures for a two-week period, the United States would not have to seek the Council's disapproval after the measures took effect. However, if the Community were not to delay implementation of the measures, the United States would have to request a special Council meeting before 1 March.

The representative of Switzerland suggested that the Council take note of the statements as well as of the fact that the two parties were continuing to consult on this matter.

The Council took note of the statements and that the consultations on this matter were to continue.

8. Agreement between the European Economic Community and Yugoslavia - Biennial report (L/5604)

The Chairman drew attention to document L/5604 containing information given by the parties to the Agreement between the European Economic Community and Yugoslavia.

The Council took note of the report.

9. Committee on Balance-of-Payments Restrictions

(a) Consultation with Brazil (BOP/R/135)

Mr. Feij (Netherlands), Chairman of the Committee on Balance-of-Payments Restrictions, said that in its December 1983 consultation with Brazil the Committee had noted that Brazil's balance-of-payments and reserves situation had deteriorated sharply since the last consultations, due to a number of factors. These included the impact of the world economic recession on external demand, difficulties of external financing and debt servicing, and problems including budgetary adjustment in the Brazilian economy. While recognizing the seriousness of Brazil's balance-of-payments problems and the need to maintain import restrictions

in the current situation, the Committee had noted that the Brazilian import system remained complex and lacked transparency. It had welcomed a statement by Brazil that a number of import measures were under review with a view to their modification, simplification or phasing out. He added that during the consultations, Brazil had drawn attention to paragraph 12 of the 1979 Declaration on Trade Measures Taken for Balance-of-Payments Purposes (BISD 26S/205) and had referred to the extent to which import measures adopted by its trading partners had impinged upon its balance-of-payments. The Committee, noting Brazil's statement, had recognized the importance of giving particular attention to the possibilities for alleviating and correcting balance-of-payments problems through measures that contracting parties might take to facilitate an expansion of the export earnings of consulting contracting parties. The Committee had agreed that members should consider this issue in the broader GATT context in the light of further consultations. It had been agreed that Committee members would reflect further on the specific Brazilian proposals concerning ways to improve its export prospects.

The representative of Brazil said that in advancing proposals for the consideration of the Committee, his delegation had referred to paragraph 12 of the 1979 Declaration as well as to the recognition by the Consultative Group of Eighteen that balance-of-payments adjustment should be based on export expansion rather than import contraction. Brazil considered that the Committee provided the appropriate framework for contracting parties to demonstrate a true spirit of cooperation towards countries experiencing balance-of-payments difficulties. Brazil was not proposing any new rules or mechanisms, nor was it asking the Committee to seek any new commitments from any contracting party beyond those implied in the 1979 Declaration. Brazil was trying to bring about, through appropriate consultations under existing provisions, a climate of cooperation, in which contracting parties currently maintaining measures restricting his country's trade, might see fit to suspend some of those measures unilaterally, in order to promote an expansion of Brazil's exports during its balance-of-payments adjustment period. Such suspension of restrictive measures would be effected within GATT rules, on a non-discriminatory basis, and Brazil hoped that the same spirit of cooperation would prevail in future in the case of other countries finding themselves in such balance-of-payments consultations.

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

(b) Consultation with Ghana (BOP/R/136)

Mr. Feij noted that the Committee's consultation with Ghana in December 1983 had been the first full consultation with that country since 1971. The Committee had recognized the difficulties facing the Ghanaian economy and had welcomed Ghana's efforts to overcome them with the aid of multilateral financial institutions. It had noted that Ghana's import régime had been simplified and that it operated without

discrimination regarding sources of supply, except for bilateral clearing systems maintained with a few countries. The Committee had encouraged Ghana to pursue its efforts to adjust to the current difficulties, and had hoped that Ghana would soon fulfill its intention to relax trade restrictive measures as soon as its balance-of-payments situation improved.

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

(c) Consultations with Peru, Tunisia and Turkey (BOP/R/137)

Mr. Feij said that consultations with Peru, Tunisia and Turkey under the simplified procedures of Article XVIII:12(b) had been held in December 1983. The Committee had decided to recommend to the Council that these three countries be deemed to have fulfilled their obligations under the above Article for 1983.

The Council took note of the statement and adopted the report. The Council agreed that Peru, Tunisia and Turkey be deemed to have consulted with the CONTRACTING PARTIES and to have fulfilled their obligations under Article XVIII:12(b) for 1983.

(d) Arrangements for consultations in 1984 (BOP/R/138, C/W/432)

Mr. Feij drew attention to the arrangements for consultations in 1984 as listed in document C/W/432.

The Council took note of the information in document C/W/432.

(e) The trading environment and balance-of-payments consultations (BOP/R/138)

Mr. Feij said that following the October 1983 meeting of the Consultative Group of Eighteen, the Chairman of the Group had invited him to undertake discussions as to how the trading environment confronting consulting countries could be given greater weight in the Committee's deliberations (L/5572, paragraph 11). Following this invitation, he had held informal consultations during November 1983 and January 1984, in which this subject had been discussed, with particular reference to paragraph 12 of the 1979 Declaration and to paragraph 2 of the procedures established in 1970 for full consultations (BISD 18S/48). The proposals made by Brazil, referred to in sub-item (a) above, had been taken into account as one main element in the background material for the consultations. While these discussions had given rise to a wide and useful exchange of views on the rôle of the Committee in this regard, further consultations would be necessary before any firm conclusions could be drawn, and he intended to continue the consultation process in the coming weeks.

The Council took note of the statement and of document BOP/R/138.

10. Canada - Foreign Investment Review Act (FIRA)
- Report of the Panel (L/5504)

The Chairman recalled that in March 1982 the Council had established a panel to examine the complaint by the United States. The Panel had submitted its report in document L/5504, which was before the Council at its meetings in October and again in November 1983, when the Council had agreed to revert to this item at its next meeting.

The representative of Canada said that his Government was prepared to accept adoption of the report by the Council. In doing so, Canada would take appropriate steps to meet its obligations under the General Agreement. The Canadian Government would henceforth encourage foreign investors to avoid wording in any purchase undertakings submitted to the Foreign Investment Review Agency which might imply discrimination. Existing purchase undertakings entered into under the Foreign Investment Review Act would be reviewed in the light of the Panel's report.

Canada noted that the report did not question the validity of the Act itself, which required that acquisition of control of a Canadian business, or the establishment of a new business by persons other than Canadians, be reviewed and allowed to proceed only if it was determined that there was significant benefit to Canada. The Government would continue to expect foreign firms doing business in Canada to contribute to the Canadian economy through their purchase and other business practices by ensuring that Canadian suppliers were given a full and fair opportunity to compete.

Canada also noted that the Panel had agreed that undertakings offered by foreign investors on employment, investment, research and development, participation of Canadian shareholders and managers, and productivity improvements "clearly fall outside the scope of the General Agreement" and therefore were not affected by the report. Moreover, any undertakings which an investor might choose to make to export a specified amount or proportion of production, which had been an issue before the Panel, had not been found to be inconsistent with the General Agreement. The Government fully supported these conclusions.

He said his Government had also noted that the Panel's findings did not preclude the acceptance of purchase undertakings so long as these did not imply that imported goods were treated less favourably than domestic products. The Panel had stated that it sympathized with the desire of the Canadian authorities to ensure that Canadian goods and suppliers be given "a fair chance to compete with imported products", but considered that "the purchase requirements under examination do not stop short of this objective but tend to tip the balance in favour of Canadian products" and to this degree were considered inconsistent with Canada's obligations under Article III:4 of the General Agreement. He said that the intention of the Act had always been to ensure a full and fair opportunity for Canadians to compete, not to discriminate against foreign suppliers.

His delegation recommended that the Council adopt the report. Canada would take the necessary steps to make the relevant operations of the Act consistent with its GATT obligations.

The representative of the United States said that the report was clear, concise, and well-reasoned, reflecting a thorough consideration of the facts and legal arguments presented by both parties. The Panel's work was exemplary of how the GATT dispute settlement process should function. His delegation urged adoption of the report by the Council, and appreciated that the Canadian delegation also recommended adoption. The United States commended Canada's decision to take the necessary steps to make FIRA operations consistent with its GATT obligations. It believed such steps would result in a significant improvement in the environment for foreign investors in Canada. It also believed that the Panel's conclusions added a useful application of relevant GATT provisions to the body of GATT law which all contracting parties had to follow.

The representative of India recalled that the Chairman of the Council, at its meeting in November 1982, had suggested that it be presumed that the Panel would be limited in its activities and findings to within the four corners of GATT. India reiterated its view that the Panel's report could not be taken to provide an opening for the introduction of new themes, such as investments, in the GATT. His delegation also emphasized that this dispute concerned two developed contracting parties. Adoption of the report could not in any way contribute to the evolution of case law applying to less developed contracting parties. The Panel's report had acknowledged in its paragraph 5.2 that in disputes involving less developed contracting parties, full account should be taken of the special provisions in the General Agreement and dispensations relating to these countries, such as Article XVIII:C. Thus it was clear that the provisions and arguments invoked against Canada in this case could not be legitimately invoked against less developed contracting parties, considering that they enjoyed the right to protect national industries in terms of special dispensations available to them under the General Agreement.

The representatives of Chile, Pakistan, the Philippines, Colombia, Nicaragua and Peru expressed support for the statement by the representative of India.

The representative of Argentina said that his delegation's position on this subject had been well reflected in paragraphs 4.1, 4.2 and 5.2 of the report. Argentina understood that the Panel's conclusions applied solely to the specific case under reference and within the limitations indicated.

The representative of Brazil expressed appreciation to the members of the Panel for having taken into consideration the concerns expressed by Brazil on the occasion of adoption of the Panel's terms of reference

in November 1982. His delegation fully supported the position of Argentina as expressed in paragraphs 4.1 and 4.2 of the report, as well as paragraph 5.2. Brazil joined those countries for whom the acceptance of the Panel's findings did not imply a recognition that they constituted a precedent for disputes involving developing countries.

The Council took note of the statements and adopted the Panel report (L/5504).

11. United States Agricultural Adjustment Act
- Twenty-sixth annual report by the United States (L/5595)

The Chairman recalled that under the Decison of 5 March 1955 (BISD 3S/32), the CONTRACTING PARTIES were required to make an annual review of any action taken by the United States under the Decision, on the basis of a report to be furnished by the United States. The twenty-sixth annual report had been circulated in document L/5595.

The representative of the United States said his authorities believed that the report discharged US obligations under the waiver. He brought certain developments during the period covered by the report to the Council's attention, concerning passage of dairy legislation which significantly affected the US dairy program and which the United States believed would bring production into better balance with demand. This legislation would be discussed in detail in the next report to be submitted by the United States later in 1984.

The representative of Australia said that the latest report showed that in dairy products the United States had failed to balance supply and demand in recent years, and that even if recently enacted measures for the reduction in the support price for manufactured milk had the effect of reducing production, the problem of import restraints remained. Australia recognized that the United States was not the only country which had been unable to control surplus dairy production. However, the waiver had been granted nearly 30 years ago as a temporary measure. His delegation could make similar comments on US non-market oriented practices concerning sugar and other products and measures covered by the waiver, but these would be better examined by a working party. Therefore, Australia proposed that a working party be established to examine these matters in the context of the twenty-sixth annual report.

The representative of Chile supported the proposal to establish a working party as this was the appropriate way to see whether the waiver was still necessary and justifiable. He said that the twenty-sixth annual report was not complete, and recalled that on previous occasions, Chile had stressed that the annual reports should contain a detailed analysis of the reasons why it had not been possible for the United States to apply alternative measures compatible with the General Agreement.

The representative of New Zealand said that the report raised many questions about present US policy concerning the waiver. The fact that these questions were in a large degree the same each year did not diminish their importance or the need to answer them. Turning to the products of most concern to New Zealand, his delegation wondered why US milk production had continued to increase despite the report's assertion that measures taken to discourage over-production in milk have been stronger than at any time in the history of the dairy support program. New Zealand continued to be concerned by the development of surplus dairy stocks by subsidized producers, including those in the United States, and by the consequent pressure on the commercial market from aid programs as adjuncts to the price support program. It was evident that the United States viewed international aid as a legitimate means of surplus disposal. New Zealand could agree with this only so far as the aid programs were non-disruptive of commercial trade. His delegation hoped that the present US dairy legislation was the first step towards reaching full conformity with GATT rules; as an indication of its commitment, the United States should seriously consider establishing a "sunset" clause on the waiver. His delegation supported the proposal to establish a working party.

The representative of Canada supported the proposal to establish a working party. The waiver allowed the United States to have recourse to trade restrictions not compatible with the General Agreement, but required the United States to provide reasons why such restrictions continued to be applied. The current US report had treated this issue in a rather summary fashion; and Canada expected that the next Working Party would address this matter in detail.

The representative of Argentina supported the proposal to set up a working party, and reiterated his delegation's doubts as to provisional measures which had been applied for nearly 30 years. Argentina urged the United States to remove the measures and to apply the rules of the General Agreement in this sector.

The representative of the European Communities shared the concerns expressed by representatives, but questioned whether another working party would change anything. He feared that it might simply demonstrate publicly GATT's impotence in the face of such dilution of legitimacy as was constituted by the US waiver. Perhaps it would be better to refer the whole matter for examination by the Committee on Trade in Agriculture, where there might be a chance to have the waiver terminated. His delegation did not see how a repetition for the 26th time of the same discussion in yet another working party could be useful.

The representative of Pakistan said that his country was affected by the build-up of US cotton surpluses and their disposal abroad. Pakistan shared the frustration expressed towards setting up another working party, and therefore suggested that it should have terms of reference which focussed on finding an alternative to a situation which had lasted so many years.

The representative of Brazil supported setting up a working party, which could perhaps suggest some way in which the United States would renounce the measures covered by the waiver, perhaps by proposing a "sunset" clause, or that the measures be totally or partially phased out.

The representative of Nicaragua supported the proposal to set up a working party. Her delegation considered that a country as important as the United States should not enjoy privileges which were not automatically extended to other countries.

The representative of Australia reiterated his delegation's request for establishing a working party. He emphasized that under the Decision of 5 March 1955, the CONTRACTING PARTIES were required to make an annual review of any action taken by the United States under that Decision. His delegation was gratified that the representative of the European Communities considered the Committee on Trade in Agriculture an effective negotiating forum for removing agricultural trade barriers, but Australia could not agree with the proposal to transfer responsibility for examining the US waiver entirely to that Committee.

The representative of New Zealand expressed support for the position taken by the representative of Australia.

The representative of the European Communities said that if the waiver were ever to be removed, a favourable environment would be necessary, where the United States could also find advantage. For this reason, he believed that the only proper setting for this type of discussion would be the Committee on Trade in Agriculture. However, if the Council decided by consensus to set up a working party, the Community would not oppose such a decision, on the understanding that the waiver would also be discussed in the Committee on Trade in Agriculture.

The Council took note of the statements and agreed to establish a working party, with the following terms of reference and composition:

Terms of reference: "To examine the Twenty-Sixth Annual Report (L/5595) submitted by the Government of the United States under the Decision of 5 March 1955, and to report to the Council."

Membership: Membership would be open to all contracting parties indicating their wish to serve on the Working Party.

Chairman: The Chairman of the Council was authorized to designate the Chairman of the Working Party in consultation with the delegations principally concerned.

12. Administrative and financial questions
- Assessment of additional contributions on Belize to the 1983 and 1984 Budgets and advance to the Working Capital Fund (L/5594)

The Chairman drew attention to document L/5594 proposing that following the accession of Belize to the GATT on 21 September 1981 (L/5557), contributions to the 1983 and 1984 Budgets as well as an advance to the Working Capital Fund be assessed on Belize.

The Council adopted the assessment proposed.

13. Problems of Trade in Certain Natural Resource Products

The representative of Canada, speaking under "Other Business", said that the background documents being prepared by the secretariat on problems of trade in certain natural resource products were a useful first step in the process of preparing the examinations decided by Ministers in 1982 (BISD 29S/20). The Council now had to decide how best to organize the process of examining the trade problems with a view to recommending possible solutions. His delegation would propose at the next Council meeting that a working party be established to examine the tariff, non-tariff and other problems relating to trade in non-ferrous metals and minerals, including in their semi-processed and processed forms. The work would be extended to other metal and mineral products as further background documents were produced by the Secretariat. Such a working party should start its work quickly after the next Council meeting and make a progress report to the 1984 CONTRACTING PARTIES' session.

The representatives of Chile, Peru, Thailand, Colombia and Australia supported the statement by the representative of Canada.

The representative of the European Communities said his delegation considered that no decision was possible on the sole basis of background documents on two non-ferrous metals. It would be appropriate to wait until other documents, including those concerning forestry and fish and fisheries products, were completed, before taking a decision as to whether a working party should be established. The three products had been tied together in the 1982 Ministerial Declaration, and they could not be separated. At the moment it was far from clear what a working party would do. The Community believed that for this reason it would probably not be possible to take a decision on setting up a working party at the next Council meeting.

The representative of Chile said that his delegation could not accept the Community's view that the three areas of non-ferrous metals and minerals, forestry products, and fish and fisheries products were tied together. He recalled that the proposals on these subjects had been made in the Preparatory Committee by different delegations on different occasions, and under different headings. He believed that when the Ministerial Declaration had been adopted, it had been clearly understood that there was no tie between the three sectors.

The representative of Canada said that the Ministers had clearly called for examinations of three separate subject matters. There was no reason why a working party on non-ferrous metals and minerals could not begin work with respect to lead and zinc, and continue with other studies as the background documents became available. The same would be true for forestry products and for fish and fisheries products.

The representative of New Zealand supported the position taken by the representative of Canada.

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

14. European Economic Community - Imports of newsprint from Canada - Request by Canada for consultations under Article XXIII:1

The representative of Canada, speaking under "Other Business", drew attention to Canada's request for consultations with the European Economic Community under Article XXIII:1 (L/5589), in response to the Community's decision to establish a duty-free quota of 500,000 tonnes for newsprint (L/5599). The consultations had not yet taken place, but informal bilateral discussions were continuing with a view to resolving the issue. In the absence of a settlement in the near future, Canada would return to the issue in the Council on an urgent basis.

The Council took note of the statement.

15. Protectionism

The representative of the European Communities, speaking under "Other Business", said he was interpreting general concern in urging the United States to lead the struggle against protectionism so as to ensure maintenance of economic recovery. There had been a worrying tendency evident in the United States over recent months, in parallel with the recovery, for the initiation of all sorts of actions aimed at restricting imports, based on the wide arsenal of commercial defence instruments available in the United States. The tendency was increasing both in volume and coverage and its cumulative effect was devastating; it hit a vast range of products. By way of illustration, he mentioned the Community's wine exports which were coming under attack both in the US Congress, through the proposed Wine Equity Bill, and through anti-dumping and countervailing duty complaints. This was strange, considering that US wine exports to the Community were increasing sharply in the context of the huge US agricultural export surplus with the Community. The Community's measures, against which US wine growers had complained, had exactly the same aims as those followed by the United States in its own agricultural intervention policies, namely improvement of wine quality and avoidance of falls in market prices. The Community, for its part, was pleased that US wine exports to the EEC had now increased to more than two million gallons per year. He then quoted a series of statements

by the US Deputy Secretary of the Treasury to the effect that it was within the industrialized countries' power to avoid protectionism, but that the record had been mixed; the United States, he quoted the US official as saying, had been only partially successful in resisting protectionism; in Japan, the trend was in the right direction, but progress had been agonizingly slow, considering Japan's highly protectionist starting point. Protection only succeeded in shifting the burden of adjustment to consumers and to non-protected industries; the response to increased foreign competition should not be to raise protective walls around the United States. There were reasons to be optimistic about the future of the international economic system if countries followed policies designed to foster their long-term economic interests and if they avoided short-term political expedients. If the world could not count on the US "locomotive" to pull it into a recovery, the least that could be expected was for the United States not to give way to short term expediency in 1984. The United States should be in the vanguard of the combat against protectionism.

The representative of the United States said that he did not wish to comment on the merits of the petitions mentioned, which were subject to statutory and transparent procedures which would take several months to complete. His delegation shared, however, the broader concerns expressed by the representative of the European Communities.

The representative of Jamaica said that it did not appear from the preceding statements that either the Community or the United States proposed to honour commitments on a standstill and rollback of protective measures. In connexion with the US statements referred to by the representative of the European Communities, Jamaica did not see how subsidies by developing countries faced with debt servicing could ever be compared to protectionist measures taken by the industrialized countries. He called upon the major trading partners to see the relationship between protectionism, structural adjustment, recovery and debt servicing, and to try to find a program of action in this respect.

The Council took note of the statements.

16. Trade in Textiles

The representative of Pakistan, speaking under "Other Business" on behalf of developing countries exporters of textiles and clothing, noted that in December 1983 the United States had announced that thenceforth it would follow additional criteria to address the concerns of its textile and apparel industries. These criteria were contrary to those contained in the Arrangement Regarding International Trade in Textiles (BISD 21S/3). Specifically, they were contrary to the fundamental provision concerning market disruption as set out in Annex A of the Arrangement. The US announcement had caused widespread uncertainty and insecurity in international trade in textiles, and had marked a shift towards a thoroughly protectionist policy which contravened commitments

given during the 1982 Ministerial meeting. At the meeting of the Textiles Committee in January 1984, the United States had given an assurance that the additional criteria were part of internal procedure and that any request for consultations would be made under the provisions of the Arrangement. An unprecedented number of calls for consultations, covering both developed and developing members and non-members of the Arrangement, had been made by the United States, relating, inter alia, to some Not Elsewhere Specified (NES) categories and to categories where US domestic production had increased. These calls were undermining the Article 4 agreements which had so far served as the pillar of the Arrangement, and were thus eroding the system which had regulated international trade in textiles.

The representative of the United States said that his delegation understood the concern expressed by the developing exporting countries, although it did not share the opinion that the US internal measures undermined the system. The United States had tried to address that concern by making clear in the Textiles Committee that any request for consultations would be made in accordance with the provisions of the Arrangement and of relevant bilateral agreements. The criteria adopted by the United States for its internal review process had been developed to deal with a very real problem. US textile and apparel imports had increased in 1983 by some 50 per cent over 1980. Domestic production had also increased in 1983, but at nowhere near the rate of the increase in imports. His delegation reiterated that the United States would follow the provisions of the Arrangement and its bilateral agreements with respect to any actions taken.

The representatives of Brazil, Peru, India, Egypt and the United Kingdom on behalf of Hong Kong supported the statement made by the representative of Pakistan.

The representative of India said that the introduction of concepts such as presumption of market disruption and the use of trigger points for consultation calls were against the letter and spirit of the Arrangement.

The representative of Egypt suggested that the Council keep this matter under review.

The representative of the United Kingdom on behalf of Hong Kong said he shared the views and concern expressed by the representative of Pakistan on behalf of the developing countries, particularly with regard to US compliance, since the Textiles Committee meeting in January 1984, with the market disruption criteria in the MFA. This underlined the importance of the review to be conducted by the Textiles Surveillance Body and, to facilitate that review, he urged that all consultation calls be notified to the TSB as soon as possible.

The Council took note of the statements.