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GENERAL AGREEMENT ON TARIFFS AND TRADE

COUNCIL
12 February 1986

MINUTES OF MEETING

Held in the Centre William Rappard
on 12 February 1986

Chairman: Mr. K. Park (Korea)

1. Requests for observer status

(a) World Intellectual Property Organization (WIPO) (L/5893)

The Chairman recalled that in November 1985 the Council had agreed to revert to this matter at the present meeting.

The Council agreed to grant the World Intellectual Property Organization observer status for Council meetings and Sessions of the CONTRACTING PARTIES.

(b) Cooperation Council for the Arab States of the Gulf (L/5954)

The Chairman drew attention to the request from the Gulf Cooperation Council (GCC) in L/5954, adding that he understood some delegations needed more time to reflect on this request.

The representative of Kuwait, speaking as a contracting party observer, referred to the description of the GCC in L/5954, and gave a brief outline of its history, membership, aims and functions, including

the purposes of the Unified Economic Agreement among its six member States. The member States were determined to coordinate their commercial policies and relations with other countries and regional economic groupings. In order to achieve these goals, the GCC considered it essential to follow GATT's work as closely as possible, which was why it was asking for observer status.

The representatives of Egypt, Jamaica, India, Chile, Bangladesh, United States, Singapore, Malaysia, Nicaragua, Yugoslavia, Indonesia, Canada, Argentina, Pakistan, Trinidad and Tobago, Brazil, Japan, Peru, Turkey, Gabon, Colombia, Hungary, Uruguay, Poland, Korea, Australia, Czechoslovakia, Austria, New Zealand, and Romania welcomed and supported the request by the Gulf Cooperation Council.

The representative of Jamaica recalled that his delegation had supported the suggestion that the question of granting observer status to institutions and governments should be carefully considered with the aim of setting objective criteria for granting such requests. He also recalled his delegation's concern that if all such requests were granted, it could become increasingly difficult, for reasons of space, to hold Council meetings. Turning to the specific request by the Gulf Cooperation Council, he welcomed the statement by Kuwait and noted that the Unified Economic Agreement was working towards establishment of a free-trade area and customs union and that its provisions closely followed the spirit and principles of trade liberalization as set out in the General Agreement. The GCC's member States comprised a group of countries whose imports and exports were significant in world trade. He noted that four of the six member States were already applying the General Agreement (Kuwait as a contracting party, and Bahrain, the United Arab Emirates and Qatar on a de facto basis), while Saudi Arabia was participating in the Council as an observer, so that there seemed to be no apparent difficulty in meeting this specific request. Reverting to the wider issue, he proposed that the Council establish a working party to examine criteria for granting observer status.

The representative of the European Communities supported Jamaica's proposal to set up a working party which would examine the wider question of observer status.

The representative of India said that the wider question should be further examined, but this should be kept separate from the specific request now being considered. India supported taking a favourable decision on the GCC request at the present meeting.

The representative of the United States recalled that his delegation had for some time supported holding consultations on observer status, which would aim to set standardized rules for observers. The United States therefore supported Jamaica's proposal to establish a working party. His delegation agreed that consideration of the wider question should not be linked to consideration of the GCC request. He

suggested that the Chairman continue consultations concerning this particular request, and that the Council should not consider any further requests for observer status, apart from the GCC request, until the proposed working party had completed consideration of the wider issue.

The representative of Canada said that each request for observer status should be considered on its own merits, in keeping with GATT objectives. His delegation saw no reason to object to the GCC request. The Council should consider drawing up criteria and principles for making decisions on future requests. Any decision on the GCC request should not be regarded as a precedent.

Many representatives said their delegations would want to participate in a working party to examine the question of observer status, if such a body were to be established. They also stressed the need to keep separate the consideration of the specific GCC request for observer status and consideration of the proposal to establish a working party on the wider issue.

The representative of Argentina proposed that if a working party were to be set up, its terms of reference should be clearly defined. For example, would the criteria agreed by such a working party be applied retroactively, or would they only apply to future requests for observer status?

The representative of Japan said that the Council should consider requests for observer status on a case-by-case basis, and that such requests should not be granted automatically. His delegation supported Jamaica's proposal.

The representative of the European Communities said his delegation welcomed and favoured the request by the Gulf Cooperation Council. The Community believed that the presence of the GCC in GATT would politically and economically reinforce the organization's work. Apart from this specific request, there was a general problem of how to strengthen the GATT institution; the Community considered that one way to do this would be to examine the issue of observer status. No general guidelines had yet been agreed, and the Council was continuing to examine each request on its merits. This was no way to strengthen the organization. The Community hoped that the Chairman would continue his consultations immediately on the GCC request; a measured decision taken with care was better than one taken without appropriate reflection. At the same time the Chairman should begin consultations on the wider issue of observer status.

The representative of Hungary said that the proposal to set up a working party to consider the wider issue was a new idea; his delegation needed more time to consider the implications of this proposal, and Hungary reserved its position on this matter.

The representatives of Austria and New Zealand supported Argentina's statement. The representative of Austria said that he hoped that the Chairman's consultations on the GCC request, if they proved to be necessary, could be completed quickly so that a decision could be taken as soon as possible.

The Chairman said that the request from the Gulf Cooperation Council had been put forward before the proposal to establish a working party, and that consideration of the two issues should be kept separate. He noted that some delegations needed time to reflect on the GCC request and to consult with their governments, not with him as Chairman. He proposed that the Council revert to consideration of that request at its next meeting. He noted the support expressed for the request at the present meeting.

The Council agreed to revert to consideration of the GCC request at its next meeting.

The representative of India said his delegation wanted to make clear that it understood the Council had agreed to revert to consideration of the GCC request at its next meeting on the grounds that some delegations had asked for more time for consultation. On the wider issue, he noted that informal consultations on observer status had been carried out earlier by the Council Chairman. India wanted those consultations to continue and understood that other delegations had expressed the same view. He therefore suggested that the proposal to set up a working party on this subject be addressed in the light of those consultations.

The representative of Egypt said that the overwhelming support for the GCC request expressed at the present meeting should have permitted an immediate, favourable decision. However, in GATT's tradition of pragmatic flexibility, his delegation accepted the decision to revert to this request at the next Council meeting. On the wider issue, Egypt considered that the informal consultations on observer status should be completed before considering whether to set up a working party.

The representative of the European Communities agreed that consideration of the GCC request and the wider issue could be kept separate. The Community wanted to repeat that it favoured the GCC request, and expected a favourable decision, which should not however be considered in any case a precedent for dealing with future candidates. There was a pressing need to settle the wider question of observer status so as to strengthen the effectiveness of the GATT institution. He noted that the informal consultations on observer status under the Council Chairman had not continued since May 1985. It was important that the Council continue businesslike consultations to settle this question which threatened to weaken GATT's effectiveness.

The Chairman proposed that he carry out consultations on the wider issue of observer status, including the proposal to set up a working party.

The Council so agreed.

2. Accession of Mexico (L/5919, L/5961)
- Establishment of Working Party

The Chairman drew attention to Mexico's application to accede to the General Agreement (L/5919), recalling that this had been widely welcomed at the CONTRACTING PARTIES' session in November 1985 (SR.41/3, page 13).

The representatives of the United States, Chile, Nicaragua, Uruguay, Canada, the European Communities, Japan, Brazil, New Zealand, Egypt and India reiterated their support for Mexico's application, supported establishment of a working party to examine the request, and said their delegations looked forward to participating in that body.

The Council then established a working party as follows:

Terms of reference: "To examine the application of the Government of Mexico to accede to the General Agreement under Article XXXIII, and to submit to the Council recommendations which may include a draft Protocol of Accession."

Membership: Open to all contracting parties indicating their wish to serve on the Working Party.

Chairman: Mr. Reisch (Austria).

The Council agreed that contracting parties wanting to submit questions in writing to Mexico be invited to submit them to the Secretariat as soon as possible but not later than 12 March, i.e., four weeks after circulation of the Memorandum from Mexico (L/5961) on 12 February. Mexico was requested to submit replies to these questions as soon as it wanted and not later than 30 days after receiving them from the Secretariat. The Working Party would meet to examine this matter as soon as possible thereafter, and would be convened by airgram in the usual manner.

The Chairman expressed the hope that the Working Party would finish its work by June 1986, so that Mexico could avail itself as soon as possible of the status of a contracting party.

The representative of Mexico, speaking as an observer, drew attention to his country's Memorandum (L/5961) and stated his delegation's desire to cooperate with the Working Party, so as to reach a satisfactory solution which would allow Mexico to participate as a contracting party in the new round of multilateral trade negotiations.

The Council took note of the statements.

3. Sub-Committee on Protective Measures
- Report of the Sub-Committee (COM.TD/SCPM/8)

The Chairman recalled that in March 1980, the Committee on Trade and Development had established the Sub-Committee on Protective Measures, in accordance with the CONTRACTING PARTIES' Decision of 28 November 1979 on the Examination of Protective Measures Affecting Imports from Developing Countries (BISD 26S/219). That Decision provided that the Sub-Committee would report on its work to the Committee on Trade and Development and through it to the Council. In November 1985, the Committee on Trade and Development had adopted the Sub-Committee's report on its eighth session (COM.TD/SCPM/8).

The representative of Jamaica noted that the Sub-Committee's terms of reference clearly required it "... to examine any case of future protective action by developed countries against imports from developing countries in the light of relevant provisions of the GATT, particularly Part IV thereof." From time to time, and more recently in the Preparatory Committee, there had been proposals to create new surveillance mechanisms for standstill and for review of protectionist measures. Jamaica had suggested in the Preparatory Committee that care should be taken not to create new mechanisms in areas where such bodies already existed. He drew attention to paragraph 7 of COM.TD/SCPM/8 in which the Chairman of the Sub-Committee had noted that its October 1985 meeting had been unduly short, and had expressed his disappointment at the scarce attendance and limited participation of its members. The Chairman had also suggested that the Committee on Trade and Development examine the Sub-Committee's future rôle. Jamaica considered that the report suggested that the Sub-Committee had been a great failure; this was why his delegation was concerned when it heard proposals, in such bodies as the Preparatory Committee, to create new surveillance mechanisms. Such bodies should not be established merely for the sake of creating new institutions, given the financial implications.

The representative of Egypt said that even though there had been scarce attendance at the Sub-Committee's meeting in October 1985, it remained an important and useful body for the GATT system. Egypt would continue to support the Sub-Committee's work.

The representative of India said there was a clear need to strengthen existing mechanisms and thereby improve their functioning. This was why India had been among those delegations which had proposed

that the Chairmen of the Committee on Trade and Development and of the Sub-Committee should consult with delegations with a view to improving the Sub-Committee's effectiveness. However, it was also necessary not to confuse proposals in the Preparatory Committee, aimed at improving the effectiveness of monitoring standstill and rollback commitments, with the Sub-Committee's specific terms of reference.

The representative of the European Communities noted that the Sub-Committee's activities had decreased in recent years. Whereas nearly all developed countries had participated in its meetings, only a few developing countries had done so. If the Sub-Committee's task was really so important, then this should be reflected in attendance at the meetings. His delegation continued to stand ready to participate actively, provided that the Sub-Committee's effectiveness could be demonstrated. He agreed with Jamaica on the need to avoid duplicating surveillance mechanisms in GATT, and referred to the twice-yearly special Council meetings to review developments in the trading system. The Community considered that one good mechanism in GATT was enough, if it performed efficiently.

The Council took note of the statements and adopted the Sub-Committee's report.

4. Caribcan
- Request by Canada for a waiver under Article XXV:5 (L/5948)

The Chairman drew attention to Canada's request in L/5948.

The representative of Canada said his country's foreign policy had long recognized that a special relationship existed between Canada and the Commonwealth Caribbean. Canada had consequently responded to a request from the Commonwealth Caribbean countries to institute a package of trade, development assistance and taxation measures to help them meet their development goals. An important part of this package would be the extension of preferential, one-way duty-free trade to these countries. The aim was to implement duty-free trade by mid-1986, covering some 99.8 per cent of current Commonwealth Caribbean exports to Canada. There would be some exclusions, which would remain subject to established rates of duty; in some cases, these goods were subject to preferential access under the Generalized System of Preferences (GSP) or the British Preferential Tariff. Canadian and Commonwealth Caribbean officials had consulted on certain administrative and procedural details so as to simplify customs requirements as far as possible. Canada also intended to provide training seminars to Commonwealth Caribbean officials to ensure that they knew the provisions and procedures involved in Caribcan duty-free trade. Canada was prepared to follow established GATT procedures, including early establishment of a working party to consider its request.

The representatives of Japan, Switzerland, Colombia and the European Communities expressed their delegations' interest in participating in a working party to examine Canada's request.

The representative of Japan said that the duty-free treatment in the Caribcan arrangement might create certain discrepancies between developing countries; furthermore, Caribcan's aims and effects might create some problems. On the other hand, Japan considered that since this was a unilateral measure by Canada which did not require reciprocity from the beneficiaries, and since the arrangement's likely effect on other developing countries did not appear to be great, there should be no large problem in granting a waiver. Japan suggested, however, that the CONTRACTING PARTIES should limit any waiver to a certain period, for example 10 years.

The representative of Switzerland said his delegation appreciated the fact that Canada had notified GATT of its intentions before implementing Caribcan. Among the questions which Switzerland would be interested to see answered in a working party would be further details on the reasons for the Caribcan initiative, as well as clarification on the duration of the measures and whether any form of reciprocity would be expected from the beneficiaries.

The representative of Singapore said his delegation welcomed in principle all efforts by developed countries to extend preferential and duty-free treatment to imports from developing countries. For Singapore, such an attitude was reinforced in this case by the fact that a number of Commonwealth countries were to be beneficiaries of Caribcan. Consequently, his delegation would do its part in responding positively to Canada's request for a waiver. However, on a more general level, Singapore was disturbed by an increasing tendency of developed contracting parties to differentiate among developing countries and to discriminate against some of them. He noted that the GSP had been introduced by UNCTAD to provide developing countries preferential access for their exports to developed countries on a generalized, non-discriminatory and non-reciprocal basis. Developed countries could therefore extend preferential treatment to any group of developing countries under their respective GSP schemes, without seeking special waivers or increasing the tendency to discriminate among developing countries. He shared the view that discriminatory trade arrangements could increase misunderstanding and disputes among different groupings, and cause resentment on the part of outsiders.

The representative of Colombia said that his country, which had about 1,000 km of coast on the Caribbean, welcomed Canada's initiative. However, Colombia was concerned at discrimination among various countries in this Latin-American region and, in more general terms, was concerned that many such agreements existed in GATT either under Article XXIV or under waivers. Such agreements were becoming the rule and m.f.n. the exception. His delegation believed that this development

would have serious consequences on the upcoming new round of multilateral trade negotiations, since Colombia constantly heard from developed countries offering this type of preference that they could not offer any GSP or m.f.n. concessions because this would destroy the special preferences that they had already given.

The representative of the European Communities said that given the close links between the Community and a number of Caribbean countries, his delegation welcomed whatever could be done for this particular area by other nations. He added that the Community's position on this matter was close to that expressed by Japan; the Community believed that a waiver, because of its nature, was a derogation and therefore had to be temporary.

The representative of Jamaica said his delegation fully supported Canada's request and did not agree that giving preferences to some was tantamount to discriminating against others. He drew attention to the main points of L/5948, including the fact that duty-free treatment for the Commonwealth Caribbean countries would be non-reciprocal, and that the legal basis for this differential and more favourable treatment was the "framework" agreement (BISD 26S/203). Jamaica hoped that Canada's request could be dealt with quickly so that Caribcan could take effect by mid-1986. Referring to suggestions that the duration of any waiver granted to Canada should be limited, he noted that some waivers granted to some developed contracting parties went back such a long time that they were referred to as "grandfathers".

The representative of Trinidad and Tobago supported Canada's request and Jamaica's statement. She emphasized the longstanding historical relationship between Canada and the Commonwealth Caribbean, and the fact that Caribcan related to a number of small, island developing countries, most of them geographically disadvantaged, dependent on foreign trade, and much affected by changes in the international economy. She noted that 12 of the countries depended on small-scale agriculture, tourism and cottage industries, while the other three largely depended on one product.

The representative of Malaysia, while welcoming efforts by any developed country to grant preferential treatment to developing countries, hoped that such action would not discriminate among developing nations. He suggested that all developed contracting parties might follow the example of unilateral measures taken recently by Canada and Japan to liberalize access for imports from developing countries.

The Council then established a working party as follows:

Terms of reference: "To examine, in the light of the provisions of the General Agreement and relevant Decisions of the CONTRACTING PARTIES, the request by Canada in L/5948 for a waiver under Article XXV:5, and to report to the Council."

Membership: Open to all contracting parties indicating their wish to serve on the Working Party.

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

The Chairman then proposed that contracting parties wanting to submit questions in writing to Canada be invited to submit them to the Secretariat not later than 26 March. Canada would be requested to submit replies to these questions within 30 days of receiving a consolidated list of them from the Secretariat. The Working Party would meet to examine this matter as soon as possible thereafter, and would be convened by airgram in the usual manner.

The Council so agreed and took note of the statements.

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

(a) Enlargement of the European Economic Community (L/5936 and Add.1)
- Establishment of Working Party

The Chairman drew attention to document L/5936 and Add.1.

The representatives of the United States, Jamaica, Colombia, Japan, Australia, Nicaragua, Canada, Hungary, Argentina, Trinidad and Tobago, Poland, Chile, New Zealand, Yugoslavia and Czechoslovakia supported establishment of a working party to examine the Community's enlargement. Many of them welcomed the enlargement. They expressed their delegations' interest in participating in such a working party, and looked forward to receiving fuller information concerning the enlargement, including its potential effects on their countries' trade. A number of representatives expressed their authorities' regret and concern that implementation of the enlargement would take effect before any examination had taken place in GATT.

The representative of the United States said that his country welcomed enlargement of the European Communities to include Spain and Portugal, believing that, in a broad sense, this was a positive step for those countries and for Europe. It was highly regrettable, however, that while there had been difficulties in previous enlargements of the Community, the present enlargement had been incompletely notified and there had been insufficient time for a GATT examination and bilateral negotiations under Article XXIV before the Community began its scheduled implementation of trade measures. The United States nevertheless looked forward to participating in a working party's examination of the enlargement, and to receiving further information that would enable that body to carry out its responsibilities. The United States also looked forward to negotiations under Article XXIV:6. In the meantime, however,

the United States noted that, by the terms of the Accession Treaty, certain actions likely to have a major adverse impact on US rights and interests were scheduled to take effect as early as 1 March 1986. While the United States was pursuing these issues bilaterally with the Community, it did not believe that it was constrained to await the outcome of Article XXIV:6 negotiations to protect US rights if they were impaired prior to the GATT examination and such negotiations.

The representative of Jamaica noted that until 1 January 1986, Portugal and Spain had been members of the informal group of developing contracting parties. Jamaica believed that their graduation to the status of developed contracting parties upon joining the Community did not discriminate against developing countries which had not so graduated. His country had contractual arrangements with the 10-member Community, whose enlargement to 12 implied that those arrangements might be impaired. Jamaica would have liked to have had enough time for examination to make sure that those contractual arrangements had not been diminished. His delegation looked forward to such an examination in a working party so that there could be greater transparency in the implications of the enlargement.

The representative of Colombia noted that his country had ancient ties with Spain, including important trade relations. Colombia was particularly concerned at the potential effects of the enlargement on the Community's preferential agreements with third countries, especially certain Mediterranean nations. The increased advantages being given to Portugal and Spain caused concern, specifically in the case of cut flowers, for which Colombia would be the only country to which the Community would apply the m.f.n. tariff. For cut flowers, m.f.n. would mean the least-favoured tariff, since nearly all other flowers shipped to the Community would have one advantage or another, even greater than those provided by the GSP. He referred to the concern expressed by his delegation during the discussion on Canada's request for a waiver to implement Caribcan (see item 4), that this type of discrimination was spreading and was against the interest of Latin-American countries such as his own. Colombia believed that this issue had to be examined carefully and would go far beyond discussion in a working party on this particular matter; it would probably permeate the discussions in the upcoming new round of multilateral trade negotiations.

The representative of Japan expressed concern about measures in violation of the General Agreement still maintained by Portugal and Spain, i.e., discriminatory restrictions on some imports from Japan. His Government reiterated its request to Portugal and Spain to eliminate those measures immediately. He drew attention to L/5950, dated 21 January 1986, in which Portugal had notified a bilateral agreement with Japan, under which some products were considered to be sensitive for import into Portugal and were therefore liable to quantitative restrictions. Japan wanted to make clear that it considered this document to be without basis, since the agreement in question had been

terminated in 1972. At present there was no bilateral trade agreement between Japan and Portugal, and the only legal framework governing their trade was the General Agreement. Japan reserved all its GATT rights vis-à-vis Portugal.

The representative of Australia said that on the question of the anticipated breach of bindings raised by the United States, Australia supported the principle that negotiations under Article XXVIII should be concluded before modified tariffs were implemented. This principle had not been observed when Greece had acceded to the Community. The consequent confusion of both substance and rights and obligations had ensured that, so far as Australia was concerned, negotiations on Greece's accession were not yet concluded. So as to avoid a similar outcome in the case of the most recent enlargement, Australia urged the Community to observe the separation of rights and obligations regarding the modification of bindings under Article XXIV and XXVIII. It might assist resolution of these issues if the Community were able to delay implementation of measures due to take effect on 1 March 1986 until the CONTRACTING PARTIES had completed their examination of the enlargement.

The representative of Nicaragua said that a working party should take into account the historic and economic links between Latin America, and Spain and Portugal.

The representative of Hungary said his country had been assured five times by both Spain and Portugal that they did not maintain any discriminatory quantitative restrictions on imports from Hungary. His delegation hoped that this situation would not change following their accession to the Community; however, some annexes to the accession treaties were not encouraging on this point.

The representative of Argentina said his country was interested in problems that might arise in trade flows as a result of the enlargement, and considered that these should be examined and settled under the appropriate provisions of the General Agreement, especially Articles XXIV and XXVIII.

The representative of Poland trusted that his country's friendly relations with Portugal and Spain would continue following their accession to the Community. However, since nothing strengthened friendship more than limited vigilance, Poland looked forward to a constructive outcome of the examination by a working party, which he hoped would alleviate contracting parties' potential and real concerns on this matter.

The representative of the European Communities said that this matter should not be exaggerated but should be judged at a normal level. He added that his delegation would participate actively in a working party to examine the effects and implications of the Community's enlargement. The Community was surprised at the remarks concerning

transparency. It had made every effort to distribute complete documentation on this matter; if any information was lacking, the Community would provide it.

The Council then established a Working Party as follows:

Terms of reference: "To examine, in the light of the relevant provisions of the General Agreement, the provisions of the documents concerning the accession of Portugal and Spain to the European Communities (L/5936 and Addenda), taking into account other relevant GATT documents, and to report to the Council."

Membership: Open to all contracting parties indicating their wish to serve on the Working Party.

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

The Chairman proposed that contracting parties wanting to submit questions in writing to the parties to the agreements should be invited to send such questions to the Secretariat no later than 26 March, and that the parties to the agreements should supply answers to these questions within six weeks of receiving a consolidated list of them from the Secretariat.

The Council so agreed and took note of the statements.

(b) Biennial reports

(i) Agreement between the EFTA countries and Spain (L/5886)

The Chairman drew attention to document L/5886, containing information given by the parties to the agreement referred to in that biennial report.

The Council took note of the report.

(ii) Agreement between the European Economic Community and Israel (L/5910)

The Chairman drew attention to document L/5910, containing information given by the parties to the agreement referred to in that biennial report.

The Council took note of the report.

(iii) Central American Common Market (L/5938)

The Chairman drew attention to document L/5938, containing information given by the parties to the agreement referred to in that biennial report.

The Council took note of the report.

(iv) European Free Trade Association and Finland - EFTA Association (L/5946, L/5960)

The Chairman drew attention to document L/5946, containing information given by the parties to the agreements referred to in that biennial report, and noted that the EFTA Secretary-General had notified GATT of Finland's accession to EFTA on 1 January 1986 (L/5960).

The Council took note of the report (L/5946) and of the information in L/5960.

6. European Economic Community - Production aids granted on canned peaches, canned pears, canned fruit cocktail and dried grapes - Panel report (C/W/476, L/5778)

The Chairman recalled that the Council had discussed the Panel's report (L/5778) at its seven most recent meetings and had agreed in November 1985 to revert to this matter at the present meeting. He had been informed by the two parties that they considered they had settled this dispute in a mutually satisfactory way. This settlement was based on three elements: (1) the reductions of the production aid on canned pears, already decided autonomously by the EEC in the last three years and the limitation by quota of the quantity of product benefiting from the aid; (2) the undertaking to ensure that EEC production aid for canned peaches, for the marketing year beginning July 1986, was 25 per cent lower than that applying for 1985/86; and (3) the assurance that, in subsequent marketing years, this aid would be fixed in such a way as not to subsidize the processing operation for peaches in syrup either canned as such or as part of fruit mixtures.

The representative of the United States said his delegation was pleased that this long-standing US trade problem, on which the Council had spent considerable time, had been resolved in a mutually satisfactory way. There could be no question that the resolution of this problem had been facilitated by the Panel's excellent work. Since the merits of the Panel report had been discussed in numerous Council meetings, his delegation would not repeat them. While the United States would have preferred to have the report adopted, it would agree to take it off the Council's agenda. The United States looked forward to fairer terms of competition for all exporters to the Community's canned fruit market.

The representative of the European Communities said that the Community confirmed that this dispute had been settled under the exact terms which the Chairman had read out, thus allowing the removal of this item from the Council's agenda. He said that in this particular case, it could be pointed out that intensive efforts on a bilateral basis had led to a solution which, by its very nature, was applicable on a multilateral basis. Furthermore, at the present time of increased sensitivity in the field of dispute settlement, the satisfactory resolution of this case merited its being added to the list of positive results achieved under the dispute settlement system.

The representative of Chile said his delegation supported the formulation of the Panel report. This support, which did not impinge on the agreement between the Community and the United States, had the merit of establishing clearly that the formulation of the report was of general and permanent applicability to similar cases which might arise in future.

The Chairman proposed that the Council note that the two parties had settled their dispute in a mutually satisfactory way, thank the Chairman and the members of the Panel for their work, which had facilitated a resolution of the problem, and take note of the action taken by the parties to the dispute and of the statements made.

The Council so agreed.

7. Canada - Measures affecting the sale of gold coins - Panel report (L/5863)

The Chairman recalled that at its meetings in October and November 1985, the Council had discussed the Panel's report (L/5863). In November, the Council had agreed to revert to this matter at the present meeting.

The representative of Canada said that at the November 1985 Council meeting, his delegation had made clear its view that the primary purpose of the dispute settlement procedures was to resolve specific disputes. Canada had accepted the Panel's findings that the measure in question did not accord with the provisions of Article III:2, first sentence, and that the measure should be appropriately modified. Canada had also accepted the recommendation in paragraph 72(a) of the report that, in accordance with Article XXIV:12, Canada should continue to take such reasonable measures as were available to it to secure the observance of Article III:2 by the province of Ontario. He said that on 7 January 1986, Royal Assent had been received to the enabling legislation by Ontario repealing the relevant section of that province's Retail Sales Tax Act with the effect of removing the differential treatment in Ontario between Maple Leaf gold coins and other gold investment coins. Moreover, although the matter had not been the subject of this Panel's

examination, South Africa had referred in the Panel proceedings and in Council discussions to a measure taken by the province of Quebec with respect to the sale of gold investment coins. On 18 December 1985, the Quebec Government had modified the application of its retail sales tax so that it applied to all such coins, including the Maple Leaf gold coin. These actions indicated Canada's commitment to its obligations under Article XXIV:12, and followed upon persistent, reasonable efforts by his Government to secure the removal of these measures consistent with the Panel's findings. Canada considered that dispute settlement had worked well in this case in achieving the primary objective of withdrawing the specific measure in question. However, notwithstanding these positive developments, Canada was still not in a position to decide on adoption of the Panel report.

He recalled the concerns raised by his delegation at the November Council meeting. First, the Panel had taken the view that the Ontario measure violated the principle of most-favoured-nation treatment. Second, the Panel's conclusions in paragraphs 72(b) and 72(c) did not appear to provide a reasonable period of time, following adoption of the report, to secure withdrawal of the measure prior to having to provide compensation for the competitive opportunities lost. This raised the question of whether a greater burden of compensation was placed on federal states, when the measure had been taken at another level of government, than was placed on the federal state with respect to its own measures, or on more centralized states. Third, there was the question whether in paragraphs 59 to 65, the Panel had gone beyond interpreting Canada's current GATT obligations and had elaborated a new balance of rights and obligations. The Panel had recognized that Article XXIV:12 had to have practical content, but the reasoning in these paragraphs raised a number of questions which needed to be reviewed carefully. Should the report be adopted, Canada wondered what the practical difference would be between a measure taken by another level of government in a decentralized federal system, and a measure taken by a federal government itself or by a contracting party with a more decentralized constitutional system. Canada also wondered how this would bear on the establishment of prima facie nullification or impairment with respect to GATT provisions other than Article XXIV:12 and on the objective of securing removal of a measure inconsistent with, or not observing, other GATT provisions. Canada invited other contracting parties to reflect further on these questions.

The representative of South Africa expressed gratitude for the Canadian Government's successful efforts to secure removal not only of the Ontario measure, but also of a similar measure applied by Quebec. The dispute settlement process had been successful, and a positive contribution had been made to GATT's ability to deal with complicated trade disputes. Apart from securing Ontario's observance of Article III:2, the Panel had also recommended that the CONTRACTING PARTIES request Canada to compensate South Africa for the competitive opportunities lost as a result of the Ontario measure, until Canada's

efforts in accordance with Article XXIV:12 had secured withdrawal of the measure. Both measures had now been removed, but the trade damage remained. He recalled that it had taken nearly three years to resolve this dispute, due not so much to the fact that it was a complicated case with no precedents, but because there had been no common interpretation of the scope and meaning of the rights and obligations deriving from Article XXIV:12 in relation to acts by provincial or local governments. While adoption of the Panel report would not in itself restore trade losses, a finding by the CONTRACTING PARTIES, through adoption of the report, was of the utmost importance in order to (a) obtain, at least, an initial understanding of the provisions of Article XXIV:12; (b) avoid similar disruptive acts by provincial governments, and (c) contribute to the expeditious solution of similar disputes in future. South Africa had already pointed out precedents where the Council had agreed to adopt a panel report after the dispute had been settled; two examples were Canada's dispute with the United States on tuna and tuna products (BISD 29S/103), and the US dispute with the EEC on protein for animal feed (BISD 25S/49). Neither of those disputes had recurred, thus proving that the decisions were right. The Council now had before it an identical request, because the possibility of the recurrence of a similar situation remained real. As to Canada's reasons for its inability to adopt the report, South Africa did not share Canada's view that the reference to m.f.n. treatment in paragraph 70 of the report was wrong. That reference was not a legal finding and did not appear in the Panel's recommendations (paragraph 72). In South Africa's view, the reference should be read in its proper context, i.e, the external effect of the Ontario measure on Canada's trade relations. Because the Krugerrand was more similar to the Maple Leaf than was any other gold coin sold on the Canadian market, the Krugerrand was the only gold coin which competed directly in all its denominations with the Maple Leaf. While not the declared intention of Ontario, the effect of its measure was discrimination, since only one major supplier was affected; for this reason, the spirit of Article I became relevant.

On the question of compensation (paragraph 72(b)), South Africa did not agree with Canada that this recommendation contained any indication as to when compensation became due; it only stated when it should terminate. The absence in the recommendation of the customary phrase "within a reasonable period of time" could theoretically leave open the possibility of South Africa's not obtaining compensation at all. For example, should a measure of this nature remain in force, the offending party could delay indefinitely the initiation of consultations on compensation. South Africa did not, however, take this view, but interpreted the recommendation as fully consonant with established GATT practice. With regard to Canada's concern over the interpretation of the scope and meaning of Article XXIV:12, he emphasized that the Panel's considerations and findings were detailed and clear, and where the Panel had any doubt, Canada had been given the benefit. Furthermore, the Panel had recognized fully the constitutional situation in Canada and the limitations this placed on the Federal Government's ability to

intervene directly. South Africa did not believe that the report created new obligations for Canada nor that it created new rights for South Africa. The Panel did recognize South Africa's right to a restoration of the balance of rights and obligations between Canada and South Africa for the duration of the offending measure. This was not an innovation by the Panel, nor did it create new rights or obligations for any contracting party. In South Africa's view, these paragraphs confirmed that Article XXIV:12 had practical content and that a federal state such as Canada was in a position to exchange valid concessions, not only with all the rights and privileges attached thereto, but also with the obligations, which, though not necessarily identical to, were comparable with those of unitary states. They amounted to a reaffirmation that the net worth of concessions granted by a federal state had to be honoured by it, and that a unilateral act which upset the overall balance of those rights and obligations could not go unchecked. He said that this was an important conclusion when contracting parties were about to engage in a process of exchange of further concessions. South Africa had shown great restraint throughout these proceedings, and now hoped that the Council would adopt the report, preferably at the present meeting, but if not, in the very near future. He said that it should now be clear that the issue went beyond the immediate dispute with Canada over the question of a discriminatory tax on imported gold coins; that dispute had been resolved, but the report, if adopted, would make a valuable contribution to the dispute settlement process and thereby to the strengthening of the General Agreement.

The representative of Brazil said that as a federal state, Brazil had followed the discussion on this Panel report with interest, and had paid particular attention to the interpretation of Article XXIV:12 and the Panel's approach to measures deemed to be inconsistent with GATT taken at the local level of government. However, the report's conclusions and recommendations led his delegation to believe that their adoption could represent too large a step in a still-controversial area. Brazil was concerned that the report's adoption would create a precedent which might negatively affect the balance of rights and obligations between federal contracting parties and other GATT members. He said that like other delegations, Brazil would prefer to have this broad issue addressed in the context of a discussion on the overall effectiveness of GATT for all contracting parties. Brazil commended the actions taken by the Canadian authorities to persuade the provinces of Ontario and Quebec to observe the principle of national treatment as provided in Article III, and welcomed this initiative as a positive contribution to the effective implementation of GATT dispute settlement procedures.

The Chairman proposed that the Council take note of the statements, commend the action taken by Canada in accordance with the Panel's relevant recommendations, and note the right of the parties to revert to this question as circumstances might require.

The representative of Canada stated his delegation's understanding that the Panel report had not been adopted.

The Council agreed to the Chairman's proposal.

8. Committee on Balance-of-Payments Restrictions

Mr. Girard (Switzerland), Chairman of the Committee on Balance-of Payments Restrictions, noted that the Committee had met in December 1985 for full consultations with Israel and Colombia (BOP/R/155 and 156) and simplified consultations with Egypt, Brazil, Ghana and Tunisia (BOP/R/157).

The Committee had taken note of the improvement in Israel's balance of payments in 1984 and 1985, including renewed efforts by the Israeli authorities to restore internal and external financial balance and to reduce inflation, and had recognized the importance of the economic program adopted in mid-1985 for achieving these objectives. It had also noted the import measures adopted by Israel since the previous consultation, and had welcomed the elimination of the general 15 per cent import deposit and the replacement of import prohibitions on luxury goods by a degressive special import deposit scheme; however, it had observed with some concern that the process of reduction in the rate of this deposit had been interrupted. The Committee had noted that this measure, as well as the two per cent import levy in force since 1982, would be reviewed in the light of developments in Israel's payments position and its domestic economy. The Committee, noting that a number of import measures were still applied concurrently, had encouraged Israel to pursue its efforts to eliminate remaining import measures taken for balance-of-payments reasons. The Committee had agreed that, subject to the continuation of present trends, the next consultation with Israel should be held in the spring of 1987 (BOP/R/158, paragraph 5).

Regarding Colombia, the Committee, while noting the concurrent application of a number of import restrictions which might be a source of uncertainty for traders, had welcomed Colombia's clarifications which alleviated some concerns about the complexity of its system. The Committee had appreciated Colombia's efforts to restore internal and external equilibrium through fiscal, monetary and exchange-rate policies, and to expand and diversify its exports. It had recognized that the success of these policies would depend partly on the evolution of world commodity markets and of the economic and commercial situation in Colombia's trading partners. The Committee had welcomed Colombia's announcement that the process of import liberalization initiated in 1985 would be continued and strengthened. He drew attention to the communication received from Colombia subsequent to the consultation (L/5939), regarding access of its exports to certain markets, pursuant to paragraph 12 of the Declaration on Trade Measures Taken for Balance-of-Payments Purposes (BISD 26S/205).

The Committee had decided to recommend to the Council that Egypt be deemed to have fulfilled its obligations under Article XVIII:12(b) for 1985. It was the Committee's understanding that the next regular consultation with Egypt would be a full consultation.

In the case of Brazil, Ghana and Tunisia, the Committee had concluded that full consultations were not required and had decided to recommend that these three countries be deemed to have fulfilled their obligations under Article XVIII:12(b) for 1985.

The Committee had discussed a number of other questions which were taken up in document BOP/R/158, specifically the measures adopted by Greece which were notified subsequently in document L/5945, and the program of consultations for 1986, submitted in document C/W/491/Rev.1.

He drew attention to a communication from Portugal (L/5958) indicating that it was no longer invoking the balance-of-payments provisions of the General Agreement.

The Council took note of the statement.

(a) Consultation with Israel (BOP/R/155)

The Council adopted the report.

(b) Consultation with Colombia (BOP/R/156, L/5939)

The representative of Colombia said that document L/5939 contained a list of products on which the elimination of barriers would help to improve Colombia's payments position. Colombia was pursuing the process of trade liberalization and in the next few days would inform the contracting parties of additional liberalization measures.

(c) Consultations with Egypt, Brazil, Ghana and Tunisia (BOP/R/157)

The Council adopted the report and agreed that Egypt, Brazil, Ghana and Tunisia be deemed to have consulted with the CONTRACTING PARTIES and to have fulfilled their obligations under Article XVIII:12(b) for 1985.

(d) Meeting in December 1985 (BOP/R/158)

The Council took note of the document.

(e) Program of consultations in 1986 (C/W/491/Rev.1)

The Council took note of the document.

The Chairman then drew attention to the communication from Portugal in L/5958 which indicated that as from 1 January 1986, Portugal was no longer invoking the balance-of-payments provisions of the General Agreement.

The Council took note of this information.

9. India - Auxiliary duty of customs
- Extension of waiver (L/5959)

By the Decision of 15 November 1973, the CONTRACTING PARTIES had waived application of the provisions of Article II of the General Agreement to the extent necessary to enable the Government of India to apply its auxiliary duty of customs on certain items included in its Schedule XII. The waiver, which had been extended a number of times, was due to expire on 31 March 1986.

The Chairman drew attention to India's communication in L/5959 and said that the representative of India had asked the Council to revert to this item at its next meeting.

The Council so agreed.

10. Consultative Group of Eighteen
- Composition for 1986

The Chairman recalled that at their Forty-first Session, the CONTRACTING PARTIES had agreed that the Council should take up this matter at the present meeting.

The Director-General recalled that he had been conducting consultations on the possibility of certain changes in the Group's composition in order to make possible a somewhat wider participation in its work. He was now able to propose to the Council that the Consultative Group should be enlarged by the addition of four new full seats, raising the number to 22. The number of alternate seats would remain at nine. On this basis, he proposed that the Group's membership for 1986 should be as follows: Argentina, Australia, Brazil, Canada, Colombia, Côte d'Ivoire, European Economic Communities, Egypt, Hungary, India, Indonesia, Jamaica, Japan, Korea, Nigeria, Norway, Pakistan, Philippines, Switzerland, Turkey, United States, Zaïre. He further proposed that the list of alternate members should be as follows: Austria, Czechoslovakia, New Zealand, Nicaragua, Romania, Sweden, Tanzania, Uruguay, Yugoslavia.

He emphasized the CONTRACTING PARTIES' intention, in creating this Group, that it should in principle consist of high officials with the responsibility for formulating trade policy in capitals, and that it should serve to create better understanding of the common problems of policy makers in different countries. He continued to attach the highest importance to this aspect of the Group's work.

The Council approved the composition of the Consultative Group of Eighteen for 1986 as proposed by the Director-General.

The representative of Egypt said that this was a complex issue and that much time and effort had been required for its solution. While his delegation did not want to block the consensus that had emerged on this there was some inequality in the Group's membership with regard to the representation of regional groups. The Group's composition for 1986 should not be taken as a precedent, and his delegation hoped that parity among the groups would be restored for 1987.

The representative of the United States said that this was a difficult and sensitive subject. The Group had been intended to be a small, informal gathering in which delegates from capitals could exchange views on issues in the trading system. That had proven useful in the past. Enlarging the Group to 22 would effectively mean a group of 80 participants; this was not the small informal consultative group that had been foreseen. The US representatives would continue to attend the Group's meetings as long as they felt it appropriate, given their heavy schedules. However, as the proposed membership was for 1986 only, the United States was willing to see how it worked.

The representative of the European Communities said that the Community and its member States accepted the Director-General's empirical solution for 1986. Their position was close to that of the United States. He stressed that the Group was a consultative, not a policy-making body, and that its initial purpose should not be lost sight of; therefore, difficulties such as geographic distribution, which had nothing to do with the Group's consultative rôle, should be avoided. Consultations should take place and not exclude a return in 1987 to the Group's initial membership.

The representative of the Côte d'Ivoire said that her delegation appreciated the opportunity to work within the Group and hoped that the Group would fulfil its mandate with the efficiency expected of it.

The representative of Indonesia, on behalf of the ASEAN contracting parties, said that the Director-General's proposal represented a fair and reasonable geographical distribution and welcomed its adoption so that the Group could begin to function as expeditiously as possible.

The representative of Jamaica said it remained standing practice that the Group's composition was decided each year, and that the present decision should not be interpreted as applying to anything other than the Group's membership for 1986. He said that regarding Argentina, Brazil, Colombia and Jamaica as titular members for 1986, Colombia had agreed to have Chile occupy its adviser's chair and Jamaica would do the same for Trinidad and Tobago. The full implications of equitable geographic distribution had to be considered.

The representative of Japan said that while a temporary solution to the Group's membership had been achieved, it was likely that in future the contracting parties would continue to search for a more permanent and rational arrangement.

The representative of Canada said the fact that so many contracting parties wanted to be included in the Group was perhaps an indication of the success of this rather unusual institutional mechanism.

The Council took note of the statements.

11. Committee on Budget, Finance and Administration
- Membership for 1986 (L/5964)

The Chairman recalled that at its meeting in October 1985, the Council had decided to invite four additional members to sit on the Committee on Budget, Finance and Administration. It had also agreed that membership of the Committee for 1986 would be decided by the CONTRACTING PARTIES at their November 1985 Session or by the Council at its first meeting in 1986. Following consultations with delegations, he suggested that the Committee's membership for 1986 remain unchanged.

The Council so agreed.[1]

12. State trading
- Communication from Chile (L/5955)

The representative of Chile, speaking under "Other Business", referred to the communication in L/5955 and said that Chile had experienced difficulties in replying to the questionnaire on state trading because the meaning and coverage of the term "state enterprise" in Article XVII:1(a) were unclear. There was a discrepancy of criteria regarding the coverage of the obligation to notify. Since earlier consultations had not yielded positive results, his delegation had

[1] See L/5964.

proposed in L/5955 the establishment of a periodic review procedure and that consultations be held to clarify the meaning and coverage of Article XVII:1(a). Chile asked that the Council establish a body to clarify these ambiguities.

The representative of Cuba said that her authorities had not had time to review L/5955 and asked that the Council postpone consideration of this item.

The representative of the United States said his delegation agreed with the central point of Chile's communication that the meaning and coverage of Article XVII:1(a) needed clarification. The United States had encountered the same conceptual problems noted in L/5955 in preparing its own notifications, and agreed that criteria should be developed that would aid contracting parties in making valid distinctions among state enterprises engaged in trade, in order to carry out the notification requirements contained in Article XVII:4. The United States believed that periodic examinations of the notifications required under Article XVII:4(a) would also be appropriate, and supported inclusion of this item on the agenda for the Council's next meeting.

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

13. United States - Trade measures affecting Nicaragua

The representative of Nicaragua, speaking under "Other Business", said that his delegation had intended to inform the Council of developments following the Council's decision to establish the Panel to examine the US measures applied against his country, but preferred to revert to this matter at a later meeting.

The Council took note of the statement.

14. Norway - Import liberalization

The representative of Norway, speaking under "Other Business", informed the Council that with effect from 1 January 1986 his authorities had liberalized entirely a number of products which had previously been subject to licensing requirements. The tariff numbers in question were contained in Annex III to document NTM/W/6/Rev.2/Add.5.

The Council took note of the statement.

15. Canada - Import, distribution and sale of alcoholic drinks by provincial marketing agencies - Panel terms of reference

The Chairman, speaking under "Other Business", recalled that at its meeting on 12 March 1985, the Council had established a panel to examine the complaint by the European Communities, and had authorized the Council Chairman, in consultation with the parties concerned, to draw up the Panel's terms of reference and to designate its Chairman and members. The terms of reference of the Panel were as follows:

Terms of reference

"To examine in the light of relevant GATT provisions, the matter referred to the CONTRACTING PARTIES by the European Communities in document L/5777, that is, whether certain practices of provincial agencies which market alcoholic beverages (i.e. Liquor Boards) are in accordance with the provisions of the General Agreement, and whether Canada has carried out its obligations under the General Agreement; and to make such findings as will assist the CONTRACTING PARTIES in making recommendations or rulings as provided for in paragraph 2 of Article XXIII.

"In carrying out its examination the Panel would take into account, inter alia, the provincial statement of intentions concluded in the context of the Tokyo Round of multilateral trade negotiations with respect to sales of alcoholic beverages by provincial marketing agencies in Canada."

The Council took note of this information.