GENERAL AGREEMENT ON

TARIFFS AND TRADE

RESTRICTED

C/M/237
28 November 1989

Limited Distribution

COUNCIL
7 November 1989

MINUTES OF MEETING

Held in the Centre William Rappard
on 7 November 1989

Chairman: Mr. John M. Weekes (Canada)

1. Training activities (L/6581)

The Chairman drew attention to the Director-General's report on the trade policy courses organized by GATT (L/6581).

The Director-General, introducing the report, said that the training activities during 1989 had focused on trying to improve the contents of the program for the trade policy courses, in particular taking into account the latest developments in the various negotiating groups of the Uruguay Round. The demand for these courses continued to increase, as could be expected

from the corresponding increase in GATT membership. While the Secretariat did its best to satisfy requests from the different participating countries, the number of posts available was limited. The Secretariat tried to maintain the quality of the courses and to accommodate, as far as possible, candidates from countries that had just joined or were in the process of acceding to the General Agreement. He thanked the CONTRACTING PARTIES for their support in this task.

He also thanked the Belgian and French Governments and the European Communities' authorities for inviting the French-speaking course for a study tour in Belgium and France, as well as the Norwegian and Swedish Governments for the study tour organized for the English-speaking course. He thanked the Swiss authorities for their financial contribution which permitted the realization of a special workshop on trade negotiation techniques. He expressed his gratitude to the United Nations Development Programme (UNDP) for its help in the processing of applications, and to those members of permanent delegations and representatives of other international organizations who had participated as lecturers in the courses.

The representatives of India, Israel, Peru, Brazil, Yugoslavia, Sri Lanka, Indonesia, Bangladesh, Nigeria, Mexico, Colombia on behalf of Chile and Colombia, Egypt, Morocco and Jamaica stressed the immense value of the trade policy courses to their respective countries' officials in delegations or in capitals. They expressed appreciation for the courses and for the Secretariat's efforts in this area.

The representatives of India, Israel, Brazil, Yugoslavia, Sri Lanka, Indonesia, Colombia on behalf of Chile and Colombia, and Egypt expressed their countries' satisfaction with the large participation of developing countries' officials in the training activities which were designed to foster an understanding of the complexity of GATT and trade policy matters.

The representatives of India, Israel, Yugoslavia, Sri Lanka, Indonesia and Colombia on behalf of Chile and Colombia said that the ongoing Uruguay Round negotiations made the training courses even more important, with the growing need for expertise in complex matters, and that further impetus to the courses would be needed at the completion of the negotiations.

The representatives of India, Israel, Peru, Brazil, Yugoslavia, Sri Lanka, Nigeria, Mexico, Colombia on behalf of Chile and Colombia, Egypt, Morocco and Jamaica expressed particular appreciation to the host countries for having organized study tours and to the UNDP for its assistance in processing applications.

The representative of Brazil said that for countries with insufficient training facilities, the GATT trade policy courses provided an excellent opportunity for familiarizing administration officials with the often very complex and technical issues relating to GATT's work and its role in the international trading system. These training activities had been extremely useful in allowing many government officials a greater insight into alternative perceptions of how GATT and the international trading system functioned.

The representative of Yugoslavia referred to the need to provide adequate training to officials in different governmental bodies.

The representative of Indonesia suggested that in future, consideration be given to allowing more than one participant per country.

The representative of Bangladesh thanked the Secretariat for its assistance in organizing an inter-regional workshop with participation by least-developed country representatives.

The Council took note of the statements and of the report (L/6581).

2. Dispute settlement

(a) Roster of non-governmental panelists - Extension of roster (C/W/615)

The Chairman recalled that in November 1984, the CONTRACTING PARTIES had decided to establish, on a trial basis and for a period of one year, a roster of non-governmental panelists so as to facilitate the composition of panels in those cases in which the parties to the disputes were unable to agree on panelists (BISD 31S/9). In November 1985, the Council had approved a list of non-governmental panelists in document L/5906, and the roster had been subsequently extended three times for one year at a time. In November 1988, the CONTRACTING PARTIES had agreed to extend the roster until the end of 1989. He understood that a number of delegations were of the opinion that the Council should agree to extend the roster for an additional year.

The representative of the United States suggested that given Mr. Julius L. Katz's present status as a US Government official, his name be removed from the roster (page 7 of C/W/615). The United States would, however, propose another nominee in the near future.

The representative of the European Communities said that the Community agreed to a further extension of the roster. The Community attached great importance to the fact that the individuals listed on the roster be seen as independent and highly competent in trade matters. This was generally the case; however, with respect to a few individuals, no information was provided concerning their professional or non-professional activities. He suggested that the Secretariat contact the delegations concerned to complete the information or, alternatively, remove the names involved from the list. Similarly, the names of individuals who had, since their inclusion in the list, taken up government responsibilities should also be removed. He welcomed the US statement in this respect.

The representative of Tanzania supported the Community's position.

The representative of Japan welcomed the extension of the roster. With regard to the Community's statement, he said that a curriculum vitae

had been provided for individuals mentioned on page 5 of C/W/615 and consequently their names should be marked with an asterisk.

The Council took note of the statements and agreed to extend the roster of non-governmental panelists for an additional year as set out in C/W/615 as amended.

(b) Status of Work in Panels and Implementation of Panel Reports - Report by the Director-General (C/170)

The Chairman drew attention to the report by the Director-General on the Status of Work in Panels and Implementation of Panel Reports (C/170).

The Director-General, introducing the report, said that in the past he had issued his report on this subject twice yearly on the occasion of the Special Council meetings. Given the 12 April 1989 Decision (L/6490, paragraph "F") to no longer hold those meetings, he proposed henceforth to provide this report at the Council meetings in June and November. November 1989 marked the tenth anniversary of the 1979 Understanding[1], the first major codification of the GATT dispute settlement procedures. This anniversary prompted him to make a few remarks on the use of these procedures during the past decade.

Eighty-two complaints had been initiated under Article XXIII since January 1980, bringing the total number of complaints under that provision to 140. Thus, almost 60 per cent of all disputes had been brought in the most recent decade of GATT's forty-year history. It was noteworthy that about 60 per cent of these disputes had arisen in the field of agriculture. Developing contracting parties had been parties in about a quarter of the cases (in 16 cases as complainants and in five as defendants) and had intervened as interested third parties in 14 cases. Developing contracting parties had resorted to Article XXIII mainly in reaction to measures discriminating specifically against them. Of the 82 Article XXIII disputes initiated since 1980, 37 had led to the submission of a panel report. The other disputes had been settled, or not pursued, or were still being examined by panels. In 32 of the 37 cases, the panels had found -- at least partly -- in favour of the party bringing the complaint. In three cases the panel had found against the complaining party, and in two others the panel had noted that a settlement had been reached. The fact that in over 90 per cent of the cases, panels had submitted a report favouring the party that had brought the complaint could be taken as an indication that contracting parties resorted to Article XXIII only after a careful examination of their case. As he had remarked on previous occasions, most delays in the dispute settlement procedures had occurred not during the substantive work of the panels but prior to their establishment and after the circulation of the reports to contracting parties. The Panels on average had submitted their reports to the parties within about eight

---

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

months of their constitution, well within the nine-month time limit imposed by the 1979 Understanding. In some cases, however, it had taken a long time to determine the panel's composition and terms of reference. As a result, the average period had been close to three months, compared to the thirty-day time limit provided for in the Understanding. He hoped that the new procedures on dispute settlement adopted in April 1989 (L/6489) relating to the constitution and terms of reference of panels would improve this situation. Similarly, long delays had occurred in the process of the adoption of panel reports and the implementation of their recommendations. There was considerable room for improvement in this area if GATT dispute settlement was truly to become, as stated in the April Decision, "a central element in providing security and predictability to the multilateral trading system".

The representative of the European Communities said that his delegation found the report useful and suggested that in future reports it might be interesting to include indications of the commercial importance of the disputes resolved through the panel process. With regard to the present report, mention was made of some panels established by the Council for which the matter had not, for whatever reasons, been pursued for quite some time. At the June Council meeting, the Director-General had asked what should be done with such cases in the absence of a procedure to deal with them. The CONTRACTING PARTIES had recently adopted new procedures (L/6489) which made a blockage of the panel process, up to the adoption of the report, nearly impossible. The Community suggested that the panels mentioned earlier be withdrawn from the list after a reasonable period of time -- one year, for example. He suggested that the parties which had not pursued the matters in question agree to remove these panels from the list, or alternatively, that procedural rules along the lines he had suggested be defined.

The representative of Chile expressed appreciation for the report, particularly in relation to the rollback commitment of the Uruguay Round. He wondered if it would be possible to include in future reports, after consultation, information as to how the reports had been implemented. It would be useful to know whether the measures or provisions which had been found to be GATT-inconsistent were still in force. Chile had raised this issue in the Negotiating Group on Non-Tariff Measures and thought it would be useful to raise it again.

The representative of Mexico said that the dispute settlement mechanism was a key instrument for the good functioning of the GATT and, ultimately, for the credibility of the system it represented. While his delegation appreciated that important improvements had been made to the mechanism, fundamental problems still existed which had to be overcome before the end of the Uruguay Round. He urged that contracting parties reiterate their firm policy to respect and comply with the principles of GATT, either collectively or individually. In Mexico's opinion, much remained to be done in the negotiations on dispute settlement, the first stage of which had focused on the process up to the end of panel consideration. As shown by the Director-General's report, the second stage should now aim at reinforcing the part of the process which consisted of the adoption of panel reports and, above all, the implementation of the

latter's adopted recommendations. In this context, Mexico had in mind not only the "Superfund" Panel (L/6175) but also its own faith, as a contracting party, in the multilateral trading system, in which parties solved their disputes without recourse to unilateral measures and all parties respected the contractual compromises.

The representative of Peru associated his delegation with Mexico's statement.

The Council took note of the Director-General's report and of the statements.

3. Consultative Group of Eighteen
- Statement by the Chairman of the Group

The Director-General, Chairman of the Group, recalled that at their Session in 1988 the CONTRACTING PARTIES had agreed that in view of the extreme pressure of work arising from the Uruguay Round, the Consultative Group of Eighteen should in principle remain in suspense during 1989. It had been accepted that if for any reason a meeting of the Group during this year had appeared desirable he would have convened it, having first requested the Council to take the necessary decision as to its composition. No such need had become apparent and the Group had therefore not met during 1989. He informed the Council that he intended to make a similar proposal at the forthcoming Session of the CONTRACTING PARTIES. The pressure of work, both in Geneva and in capitals, would be even more intense in 1990 than it had been in 1989, and one should clearly avoid convening any meeting of high-level trade officials except in cases of real necessity. Of course, it should again be understood that if it appeared that a meeting of the Group would be useful, he would convene it, and that the Council would then be asked to decide on its composition. He emphasized that a decision to allow the Group to remain in suspense during the Round would have no implication for its future activities; it would remain a necessary and important part of the GATT structure.

The Council took note of the statement.

4. Trade in Textiles
(a) Report of the Textiles Committee (COM.TEX/62 and Add.1)
(b) Report of the Textiles Surveillance Body (COM.TEX/SB/1490 and Add.1)

The Director-General, Chairman of the Textiles Committee, introduced the Committee's report on its third annual review of the operation of the Multifibre Arrangement[1] (MFA) as extended by the 1986 Protocol (BISD 33S/7). Article 10:4 of the MFA required the Committee to conduct a review of the operation of the Arrangement once a year and to report thereon to the Council. The review in the third year -- carried out in

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

October 1989 -- was a major review of its operation in the preceding years. In conducting this major review, the Committee had had before it: (a) a report by the Secretariat on demand, production and trade in textiles and clothing (COM.TEX/W/219) and (b) a report by the Textiles Surveillance Body (TSB) which was also before the Council (COM.TEX/SB/1490 and Add.1). The Committee had also heard a report from the Chairman of the Sub-Committee on Adjustment on the progress of the work in this area.

The report of the Textiles Surveillance Body covered the entire period since the beginning of MFA IV (1 August 1986 - 30 June 1989). In its final chapter, the report set out an analysis of the implementation of the MFA as extended by the 1986 Protocol. The Committee had agreed at its meetings on 9 and 31 October 1989 that, unless a party to the MFA communicated to him, as Director-General of the GATT, not later than 1 December 1989 its objection to the amendment proposed in paragraph 3 of the Committee's Decision of 26 April 1989, as modified by its Decision of 20 July 1989, the composition of the TSB for 1990, with effect from 1 January, would be from members nominated by Brazil, Canada, China, the European Economic Community, Indonesia, Japan, Hong Kong, Pakistan, Sweden and the United States. The reports of the Textiles Committee on its meetings in April and July were contained in documents COM.TEX/60 and 61, respectively.

He mentioned that the Textiles Committee was required, pursuant to Article 10:5 of the MFA, to meet not later than one year before the expiry of the Arrangement to consider whether it should be extended, modified or discontinued. Accordingly, the Committee would have to meet before 31 July 1990, for this purpose.

The Council took note of the statement and of the report of the TSB (COM.TEX/SB/1490 and Add.1) and adopted the report of the Textiles Committee (COM.TEX/62 and Add.1).

5. United States - Taxes on petroleum and certain imported substances - Follow-up on the Panel report (L/6175)
   (a) Communications from Canada (L/6559, C/W/608)
   (b) Communications from the European Communities[1] (C/W/540 and Add.1)

The Chairman recalled that at several meetings in 1988, the Council had discussed the communications from the European Communities, and that at its meetings in April, May, June, July and October 1989, it had discussed the communications from Canada. In October, the Council had agreed to revert to this matter at the present meeting.

The representative of Canada recalled that at the October Council meeting, Canada had asked for authority from the Council to withdraw concessions, outlined in C/W/608, from the United States. The United States had said then that, as legislation to achieve compliance with the

[1] Item 6 on the Proposed Agenda (C/W/619). Items 5 and 6 were taken up together.

Panel recommendation was imminent, the United States believed that it was inappropriate to consider retaliatory withdrawal of tariff concessions, and that it could not agree that Canada's withdrawal of concessions was justified. Since then, the proposal to achieve compliance forwarded by the US Administration had not been passed by the Senate. Indeed, the contrary had occurred -- Canada understood that the proposal had been deleted from the Senate version of the budget reconciliation bill; as a result, it was for all intents and purposes dead. As legislation to achieve compliance was now far from imminent -- indeed it appeared to be non-existent -- he asked whether the United States was now in a position to agree to Canada's request.

The representative of the European Communities recalled that at the October Council meeting, the Community had indicated its continuing concern and interest in this matter and its desire that it be resolved as rapidly as possible for the good of the organization, for the dispute settlement process, for the complaining parties -- Canada, the Community and Mexico -- and indeed for the good of the United States. Two and one-half years had passed and these parties had still not obtained satisfaction in this dispute. To date, all attempts to obtain a change in the US "Superfund" legislation, to receive compensation, or be granted authority to withdraw equivalent concessions had been blocked. If what Canada had just said was true, the Community would have to ask the United States if it was now ready to accede to the Community's request for withdrawal of equivalent concessions as set out in C/W/540/Add.1, which the Community had submitted some eighteen months earlier.

The representative of Mexico maintained his delegation's view that the Council should authorize the requests by Canada and the Community. After almost three years of operation of the "Superfund" and because of the lack of tangible results to remedy the inconsistencies of that fund with GATT, circumstances were now sufficiently serious to authorize one or several contracting parties to suspend the application of concessions or compliance with other obligations, bearing in mind prevailing circumstances, as was set out in Article XXIII:2 of the General Agreement. In Mexico's view, a Council decision along the lines suggested by the Community and Canada would have a positive effect on the US authorities, which still seemed unconvinced that it was essential to modify the US legislation. If the collective responsibility of Council members was not fully shouldered, this would encourage repetition of this sort of anomaly which, in the long run, would erode a system which all wished to maintain. As time was passing, and the country concerned had still not complied with the Panel recommendation, Mexico suggested that the different phases might be reversed -- first, the Council should authorize the suspension of concessions or other obligations as requested by Canada and the Community and then, if there were any doubts as to the amounts involved, it could be decided how to proceed to change them. In Mexico's view, the amounts requested were in both cases very modest. While these requests referred to "substantially equivalent concessions", the only precedent regarding the application of Article XXIII:2 clearly showed that the measures to be applied went beyond merely substantially equivalent concessions. However, even in the theoretical case in which the amounts requested by Canada and the Community were higher than they should be, it would be logical to assume that the margin which would exist provisionally -- between the

applied and authorized amounts -- would be very inferior tc the benefits obtained by the United States during the two and one-half years that it had failed to implement the Panel recommendation.

The representative of the United States said that Canada's statement was inaccurate in almost all respects with regard to the state of the legislative process in the United States. The legislation in question was far from dead; inaction by one chamber of the Congress on a particular piece of legislation did not prevent a conference of the two chambers from agreeing on a piece of legislation passed by the other chamber. In the present case, the "Superfund" equalization measure, which would bring the United States into conformity with its obligations as set forth in the Panel report, had been approved by one chamber. The Bill in question was now under consideration in a conference of the two chambers. The US Administration had indicated publicly, including in previous Council meetings, that it was fully committed to obtaining approval of this legislation by the Congress in the present legislative session, which was due to adjourn in late November or early December. The US Administration had received assurances from many of the participants in that legislative process that they fully supported the measures in question and would strive to approve them as the Bill went through the conference committee. On that basis, the appropriate course for the Council was to refrain from considering retaliation of any sort at this stage. The United States believed that the parties in question were interested not in retaliation, but in seeing a contracting party bring itself into conformity with GATT, and they had the full support of the US Government in this endeavour. He pointed out that the measure in question, while clearly found to deny national treatment to certain imported products, was of such a low level of tax that it had had virtually no trade effect; no country was suffering real economic damage from it. In fact, it was uncertain that foreign suppliers were involved at all in the revenue aspects of the tax, since the tax was being paid by US importers rather than Canadian or European exporters, who continued to receive the world price for their petroleum products sold to the United States and who, in fact, continued to enjoy increasing levels of imports to the United States. Thus, it would seem that Canada and the Community should be willing to abstain from seeking retaliation at this juncture and to give the US Government the balance of the present legislative session to bring its practices into conformity.

The representative of Canada said that his delegation did not intend to enter into an economic debate. The point was that the United States had not removed a discriminatory tax found to be inconsistent with the General Agreement. He was glad to hear that the proposed legislation was not dead and would report this back to his authorities. However, the fact was that the "Superfund" Panel report had been adopted in June 1987, more than two and one-half years earlier. In the period since then, one had heard of the United States' good intentions with respect to implementation of the Panel recommendation, but had seen no concrete evidence of those intentions being transformed into implementation. The United States' track record gave little reason to believe that this latest approach would succeed. Canada considered that more than a reasonable period of time had elapsed for the United States to remove the discriminatory aspects of the "Superfund" tax. Canada would be delighted to see the US Congress pass the legislation in

question, and would like to be optimistic. In the meantime, however, his delegation suggested that the United States agree at the present meeting to the authorization of Canada's request, on the condition that such authorization would only be acted upon if the Congress did not pass legislation withdrawing the provision in question before the end of 1989. He asked whether on this basis, the United States would agree to Canada's request.

The representative of the European Communities reiterated that the Community's very clear preference was for the removal of the offending legislation rather than for the alternative courses open under the General Agreement -- namely, to find agreement by compensation or to proceed to retaliation. While the US statement at the present meeting provided a ray of hope to this long drawn-out saga, the Community could perhaps encourage the Congressional process with a request that the US delegation report back to Washington the views of the Community and of many other delegations, and ensure that these were fully heard in all the fora involved in the passage of the legislation in question. For nearly two and one-half years the United States had stood indicted in the GATT for maintaining a system of discriminatory taxation inconsistent with its contractual multilateral obligations. It had thus far neither abandoned the legislation nor brought it into line with those obligations. While there had been discussion on the subject of compensation, the United States had not offered compensation. It had blocked the due process set out in Article XXIII:2 of the General Agreement providing for the compensatory withdrawal of equivalent concessions. During this same period, the United States had been in the forefront of those pressing for adherence to and the improvement of the dispute settlement procedures. The United States had applied itself vigorously to achieve such improvements during the mid-term review. Again, during these two and one-half years, the United States had repeatedly justified resort to its own bilateral and unilateral dispute settlement procedures on the grounds that the multilateral system did not work; no adopted Panel reports had been awaiting implementation as long as those on the "Superfund" tax and the US Customs User Fee. The United States had thus opened up a yawning credibility gap between words and deeds and was seen to be the principle obstacle to a better dispute settlement system. This situation could not in any circumstances be allowed to last indefinitely. Therefore, the Community asked the United States, as a matter of urgency, to provide a positive response, both to the Community and to Canada and Mexico, to the following: was the United States going to play by the rules or would it merely ask others to do so? In the event that the United States still considered Canada's and the Community's requests to be unreasonable, would it agree to have those requests examined prior to the CONTRACTING PARTIES' Session by a small group of experienced and respected third-party trade officials? This possibility should be considered in the event that the United States were to continue to consider the requests to be unreasonable.

The representative of the United States said that at this stage in the process of implementation by the United States, his delegation was not prepared to accept such a group. However, he reiterated the US commitment to obtaining the implementation of this corrective measure before the end of the current legislative session. That necessarily implied that if the United States were unable to obtain such a result, it would be appropriate

for the Council to return to consideration of the pending requests by Canada and the Community. He said that this should help to demonstrate the United States' good faith efforts, and that nothing more could be done in the Council to stimulate those efforts, which were moving at as rapid a pace as the US Administration was capable of achieving. While the United States appreciated Canada's and the Community's patience in this matter, it was not prepared to accept any sort of small group or any other formulation of individuals to consider their requests.

The representative of Canada expressed his delegation's disappointment at the United States' refusal to agree to Canada's and the Community's requests. Canada's conclusion were that the credibility of the dispute settlement system was at stake. That system had to apply to all contracting parties without exception for size or form of government. His delegation expected the United States either to agree to Canada's request at the next meeting or to have made an offer by that time to provide compensation.

The representative of Japan said that the United States' explanation did seem to provide a ray of hope in this matter. Japan was disappointed, however, that there had as yet been no concrete progress in the United States on this issue, and that this put into question the credibility of the dispute settlement process. Although Japan still believed that retaliation under Article XXIII:2 should be taken only as a last resort, the proposals by Canada and the Community were legitimate under the circumstances, and in Japan's view, consideration should be given to them at an appropriate time.

The Council took note of the statements and agreed to revert to these matters subsequently.

6. United States - Customs user fee
- Follow-up on the Panel report (L/6264)

The Chairman recalled that at its meeting in February 1988, the Council had adopted the Panel report (L/6264) and that at its meetings in March 1988, on 8-9 February and in May and June 1989, the Council had considered the follow-up to the Panel report. The item was on the agenda of the present meeting at the request of the European Communities.

The representative of the European Communities said that this matter seemed to have been overshadowed for quite some time by that of "Superfund"[1]. Although the Customs User Fee Panel report had been adopted in February 1988, the Community had not pressed for its implementation with the same vigor as for the "Superfund" Panel report. Even though the Council had not followed a consultation, compensation or withdrawal of concessions process, this report was nonetheless an outstanding one where a party was under strong recommendation to bring its legislation into conformity with the General Agreement. Under these circumstances, the Community asked the United States for a report on the situation as it stood in the context of the US legislative process to implement the Panel recommendation in conformity with the United States' GATT obligations.

---

[1] See item 5.

The representative of Canada recalled that Canada had been a co-complainant in this case. His delegation supported all the comments made by the Community. He asked the United States to provide information about the level of the fee that was currently applied and that which would be applied in the event that the US legislation was not changed in the near future. He recalled the assurances given by the United States to the Panel that the fee would be reduced under the existing legislation if excess fees appeared to have been collected. The Panel had found that significant excess fees were being collected, yet the United States had not reduced them. Should the Senate not pass the amended legislation, he asked when the level of the fees would be adjusted, as an interim measure until other action was taken to bring the US legislation into conformity with the General Agreement.

The representative of the United States said that his observations on the preceding item, dealing with the "Superfund", applied also to the Customs User Fee as both matters were included in the same legislation. Consequently, his delegation was hoping for the same type of results. With respect to the specific question on the level of the fees, he would provide the answer to Canada and other interested contracting parties separately. The current level was set forth in the statutes which would be changed by the proposed legislation seeking to bring the fee into conformity with the requirements of the Panel that the fee be based on the value of transactions. For this reason, he preferred not to discuss what his authorities' intentions might be if the proposed legislation were not adopted. However, he would be pleased to provide information in another forum.

The Council took note of the statements.

7. Committee on Budget, Finance and Administration
- Report of the Committee dated 26 October 1989 (L/6577)

Mr. Broadbridge, Chairman of the Committee on Budget, Finance and Administration, introduced the Committee's report in L/6577. The Committee had met on 3 July, 25 and 26 September, and on 10 and 17 October. The report called for decisions from the Council on three issues: the Director-General's report on the 1988 accounts and the subsequent report by the external auditor; the budget estimates for 1990, including the GATT contribution to the budget of the International Trade Centre; and the nomination of a representative and an alternative representative of the CONTRACTING PARTIES to the ICITO/GATT Staff Pension Committee.

On the 1988 accounts, paragraph 9 of L/6505 noted an overall 1988 deficit of SwF 272,065 which was some SwF 3 million lower than the 1987 deficit, thanks to an improvement in the rate of receipt of outstanding contributions. The deficit had been met by a transfer from the Working Capital Fund. The Committee recommended to the Council that the CONTRACTING PARTIES approve the audited accounts for 1988 and convey to the external auditor their thanks for the assistance given to the CONTRACTING PARTIES in the audit of these accounts. The original 1990 expenditure proposal of SwF 76,303,000 represented an increase of 17.6 per cent over the 1989 budget. The revised proposal of SwF 74,571,000 represented an increase of 15 per cent over the 1989 budget. Almost half of the increase

arose for reasons that were beyond the Secretariat's control, such as exchange rate changes, inflation, increases in United Nations Common System allowances and GATT's contribution to the International Trade Centre (ITC)'s budget. The other half was needed to fund the Trade Policy Review Mechanism at full strength for an entire year, as opposed to three months in 1989, and generally to allow GATT to meet its responsibilities in the final year of the Uruguay Round. For these reasons, the Budget Committee saw 1990 as an exceptional year which should not be taken as a precedent or a basis for the 1991 budget proposals. The Secretariat would exercise the utmost financial restraint and discipline in 1990.

A provision of SwF 600,000 had been included to meet certain staff and pension costs arising from recommendations of the International Civil Service Commission and the United Nations Joint Staff Pension Board to the United Nations General Assembly. However, the Committee recommended that, in the event that the General Assembly of the United Nations should not approve or should approve only part of the afore-mentioned increases, the Secretariat should modify the contributions assessed and make a corresponding credit to contracting parties' accounts.

With regard to the provision of SwF 220,000 for renting conference rooms, interpretation, staff and other costs for meetings which would have to be held outside the Centre William Rappard (CWR), the Committee recommended that this amount be used exclusively for this purpose and any savings not be transferred without prior approval by the Budget Committee. The Secretariat had undertaken to report to the Committee regularly during the year on the use made of the funds.

On the GATT contribution to the ITC's budget, the Committee recommended that the estimates of expenditure for the ITC UNCTAD/GATT for the biennium 1990-1991 be US$ 31,402,800. The net amount to be provided to the Centre from the 1990 GATT budget, equal to the contribution to be made by the United Nations, represented SwF 11,340,000. The 1989 provision had amounted to SwF 10,130,000.

As a result of its examination of the 1990 budget estimates, the Committee recommended for Council approval, total expenditure amounting to SwF 74,571,000. This sum would be covered by contributions of SwF 73,600,000 from contracting parties and by miscellaneous income estimated at SwF 971,000.

On current Pension Fund developments, the Committee had noted the report prepared by the CONTRACTING PARTIES' representative (Annex II of L/6577). The Committee had noted that the mandate of the current representative, Mr. Nils-Erik Schyberg, and alternate representative, Mr. Munir Ahmad, would expire on 31 December 1989 and had expressed its appreciation for the service they had performed. As they were both agreeable to serve for another term of three years, the Committee recommended that the Council approve their nominations to represent the CONTRACTING PARTIES on the ICITO/GATT Staff Pension Committee for another three-year period commencing on 1 January 1990.

Among other items considered, the Committee was continuing with its reviews of "current expenditure against budget" which was now a feature of

every meeting. The projected end-of-year budgetary deficit was SwF 620,000 and arose from unforeseen factors as described earlier at the time the 1989 Budget had been approved. This budgetary deficit would be covered by a withdrawal from the Working Capital Fund.

The Committee was keeping under review the measures to improve the cash situation of the GATT, which had been approved by the Council in 1988, and was appreciative of the cooperation of those contracting parties and observers which had responded positively to the implementation of the package. The Committee was grateful to those contracting parties which were paying their arrears for 1987 and earlier by instalments and to those observers who had contributed a minimum of SwF 1,000 towards the cost of the documentation services provided by the Secretariat. At present, there were some SwF 30 million contributions outstanding, but a substantial portion was expected to be forthcoming shortly, which would cover all expected expenditure for the present financial year. The Committee was still examining a request by Bangladesh to review the basis for calculating its contribution to the budget and a request by Nicaragua to pay the balance of its 1988 contribution by annual instalments.

In conclusion, he recommended that the Council approve the report of the Committee contained in document L/6577, in particular the points for decision in paragraphs 8, 28, 53, 54, 55 and 64.

The representative of Brazil said that like most other contracting parties, his delegation had been quite concerned by the initial 1990 estimates proposed by the Secretariat, which would have represented an increase of around 18 per cent over current expenditures. Valid reasons could be argued in favour of every item in the budget. Nevertheless, his delegation felt that, even considering that 1990 was the final year of the Uruguay Round and that some increases were inevitable, the estimates suggested were in a way excessive. Since this concern had been shared by other members of the Committee, a series of intense discussions had been held with the Secretariat which had led to ways of trimming significantly the estimates. Although this represented an improvement, Brazil had still felt that it could have gone further.

His delegation's main concern was over the proposed allocation of funds for the renting of conference rooms outside the CWR. There was obviously a need to ensure that all negotiations were carried out effectively so that the Uruguay Round ended successfully. The crux of the matter, however, had been that the Committee was taking a decision that could undermine and prejudge one of the principles established in Punta del Este for the conduct of negotiations, i.e., the holding of no more than two meetings at the same time. Evidently, as the Round drew to a close in 1990, negotiations would become more intense. The Secretariat had argued that under these circumstances, it could be necessary to rent more rooms outside the CWR in order to ensure that adequate facilities were provided to all parties wishing to participate, thus maintaining the equally important principle of transparency. However, as his delegation had stated in the Committee, the availability of funds might encourage the proliferation of meetings, making it difficult for smaller delegations to attend them. It was essential, therefore, that if outside meetings were

deemed necessary, they be kept to a minimum, and that priority be given to normal GATT bodies for outside meetings so that the Uruguay Round negotiations remained under one roof in the CWR, thereby facilitating attendance by all participants. His delegation still maintained these same reservations concerning the budget. In the Committee, and in a spirit of cooperation, Brazil had not blocked approval of the budget estimates -- Brazil's position was found in paragraph 50 of the report. Likewise, at the present meeting, it would not stand in the way of the adoption of the Committee's report but could not join in the consensus. Brazil would, however, keep very close watch in the coming year on the way resources were spent, in particular with respect to the convening of meetings outside the CWR, and expected the Secretariat to cooperate actively in keeping a tight rein on expenditures so that, by the end of 1990, contracting parties would not once again be faced by an overspending of the initial estimates.

The representative of Tanzania drew attention to page 22 of the report which listed Tanzania's outstanding contributions. He wished to put on record that, contrary to what the list might imply, his country had been making contributions since 1988 towards both outstanding and current contributions.

The representative of Israel registered his delegation's difficulty and reservation with regard to the allocation of funds for meetings to be held outside the CWR. This not only ran counter to the intentions of the Punta del Este Declaration, but would also create a burden for smaller delegations trying to follow the negotiations. His delegation urged that such meetings be kept to a minimum and for exceptional cases. With this reservation, his delegation would join the consensus in adopting the report.

The representative of India said that his delegation had also had difficulty in the Committee with the proposed allocation of funds for meetings outside the CWR. Apart from the financial implications, a problem would arise with the transparency requirement of the negotiations. For the same reasons as those put forward by Brazil, his delegation would want the negotiation meetings to be held in the CWR, especially in the light of the decision not to hold more than two meetings at the same time. Notwithstanding the Secretariat's explanation that it might not always be possible to do so, India had not blocked the consensus in the Committee, on the understanding, recorded in the report, that these circumstances would be exceptional.

The Council took note of the statements, approved the Budget Committee's specific recommendations in Paragraphs 8, 28, 53, 54 and 64 of its report in L/6577, and agreed to submit the draft resolution referred to in Paragraph 55 to the CONTRACTING PARTIES for consideration at their Forty-Fifth Session. The Council approved the Budget Committee's report in L/6577 and recommended that the CONTRACTING PARTIES adopt it at their Forty-Fifth Session, including the recommendations contained therein and the Resolution on the expenditure of the CONTRACTING PARTIES in 1990 and the ways and means to meet that expenditure.

8. Appointment of presiding officers of standing bodies
- Announcement by the Council Chairman

The Chairman recalled that at the CONTRACTING PARTIES' Forty-Fourth session, the Council Chairman had suggested that "in future, at the first Council meeting each year, on the basis of a consensus which would have emerged from consultations, the Council Chairman should propose the names of the presiding officers of the Committee on Balance-of-Payments Restrictions, the Committee on Budget, Finance and Administration and the Committee on Tariff Concessions for the current year. This would not preclude the re-appointment of an incumbent" (SR.44/2). The CONTRACTING PARTIES had taken note of that suggestion. The proposal would be preceded by consultations, open to all delegations and conducted so as to ensure transparency of the process. In the light of the foregoing, he announced that such consultations would be carried out shortly and asked the Secretariat, in consultation with the next Council Chairman, to make the necessary arrangements and to contact delegations. These consultations would be open to all delegations.

The Council took note of this information.

9. Accession of Costa Rica
- Report of the Working Party (L/6589 and Add.1)

The Chairman recalled that in July 1985, the Council had established a Working Party to examine Costa Rica's application for provisional accession. In June 1987, the Council had agreed to change the Working Party's terms of reference in order to take account of Costa Rica's subsequent request for full accession. The Working Party's report was now before the Council in L/6589. He drew attention to the Schedule LXXXV - Costa Rica, which had been circulated in L/6589/Add.1.

Mr. Lacarte-Muró (Uruguay), Chairman of the Working Party, introducing the report, said that pursuant to its mandate, the Working Party had carried out an examination of the foreign trade régime of Costa Rica and its compatibility with the General Agreement. The main points brought out in the Working Party were set out in paragraphs 28 to 61 of the report. Matters taken up by the members included Costa Rica's tariffs and levies systems, agricultural policy, other non-tariff issues, fiscal and financial incentives, regional trade relations and adherence to the MTN Codes.

Having carried out the examination of Costa Rica's foreign trade régime, and in the light of the explanations and assurances given by Costa Rica, the Working Party had reached the conclusion that, subject to the satisfactory conclusion of the relevant tariff negotiations, Costa Rica should be invited to accede to the General Agreement under the provisions of Article XXXIII. Schedule LXXXV - Costa Rica, which was annexed to the Protocol of Accession (L/6589/Add.1), listed the concessions resulting from the tariff negotiations between Costa Rica and contracting parties.

The Working Party had prepared a draft decision and Protocol of Accession which could be found annexed to the report. In addition to the standard provisions for such legal texts in GATT, paragraphs 3 and 4 of the

draft Protocol reflected certain commitments agreed to by Costa Rica regarding the elimination of import surtaxes and surcharges when these were in excess of levels bound in the Schedule, and the gradual elimination of current import licensing and quantitative restrictions over a certain period of time. It was proposed that the Council approve the texts of the draft decision and Protocol of Accession and adopt the report of the Working Party.

The representative of Costa Rica, speaking as an observer, recalled that in 1983 his Government had begun a process of association with the GATT which had been translated into requests in 1984 for observer status, in 1985 for provisional accession, and in 1987 for full accession. This had been a logical consequence of the development strategy adopted by Costa Rica which called for the development of a competitive export sector and the recognition of GATT as the main forum for discussing and negotiating the principles and procedures of world trade. The accession process had been fruitful for the internal negotiation in which the public and private sectors had carried out an in-depth and rigorous analysis of the country's trade policy and had together developed its negotiating position. This process had highlighted the need for a serious effort by Costa Rica to adapt progressively the norms and principles found to be inconsistent with the General Agreement.

The Working Party's report established clearly Costa Rica's status a developing country with a limited internal market and no plentiful natural resources of a strategic nature. Costa Rica could also be seen as having to comply with its international trade policy undertakings vis-à-vis Central America and other countries in the region. Through its accession, Costa Rica was seeking to support and strengthen the GATT as a multilateral forum for trade negotiations and dispute settlement and as an instrument to promote a just and balanced growth of trade and development.

Costa Rica also hoped that by participating actively in the Uruguay Round, it could improve market access for its exports. At the same time, it expected that adequate recognition would be given to its modernization and liberalization efforts in the context of its development policy and the agreements signed with the International Monetary Fund and the World Bank.

One of the reasons for seeking approval of its accession request at the present meeting was that Costa Rica's Government could propose the Protocol of Accession for ratification at the next extraordinary session, which would thus allow the current Administration to complete the task it had included in its mandate. Another reason was that Costa Rica was celebrating this same day -- 7 November -- one hundred years of democratic government and that Costa Rica's accession to GATT offered a happy occasion to commemorate this important date.

The representatives of the United States, the European Communities, Canada, Colombia on behalf of Chile and Colombia, Norway on behalf of the Nordic countries, Peru, Mexico, Nicaragua, Brazil, Israel, Jamaica, Turkey, Switzerland, Argentina, Thailand on behalf of the ASEAN contracting parties, Tanzania, India, Nigeria, Romania and Morocco expressed satisfaction with the results of the Working Party's work. They welcomed

Costa Rica's decision to accede fully to the General Agreement and supported adoption of the report along with the draft Protocol and related decisions.

The representatives of the United States, Colombia on behalf of Chile and Colombia, Norway on behalf of the Nordic countries, Peru, Mexico, Israel, Jamaica, Tanzania, India, Nigeria and Morocco looked forward to close cooperation with Costa Rica as a GATT contracting party and participant in the international trading system.

The representatives of the United States, Mexico, Nicaragua, Israel, Turkey, Argentina, Thailand on behalf of the ASEAN contracting parties, Tanzania and India said that Costa Rica's accession to GATT would strengthen both the GATT and the multilateral trading system and would benefit not only Costa Rica but also all contracting parties.

The representatives of the United States, Peru, Mexico and Brazil, referring to Costa Rica's centennial of democracy on the present day, said that it was an excellent augur for its future cooperation in GATT, and that Costa Rica's accession was a good way to commemorate the event.

The representative of the United States said that Costa Rica's approach to this accession process had been characterized by a clear appreciation of GATT principles and of the concept of trade liberalization. The terms of this accession put Costa Rica in the forefront of countries engaged in the effort to bring about a full realization of the goals and principles of GATT. His delegation could not but note that the leadership demonstrated by Costa Rica in hemispheric and in world affairs was an example to all Council members.

The representative of the European Communities recalled that it was at Punta del Este in 1986 that Costa Rica's Trade Minister had indicated Costa Rica's interest in becoming a contracting party. This had taken two years. He found that to be a long time and would have preferred things to have advanced more rapidly. However the well-balanced results were now before the Council. It was also symbolic that GATT, more than ever, was still attractive, in particular for developing countries -- a symbol of democracy. Costa Rica, democratic for a hundred years, was joining the GATT institution in its evolution towards a contractual democracy. For that reason alone, he would congratulate Costa Rica on behalf of the Communities and all of the member States, without exception. He hoped that very soon Costa Rica would be playing an important and influential rôle in the Council.

The representative of Canada noted the significance of Costa Rica's accession in terms of its economic and trade policies, and in particular, commended Costa Rica's acceptance to bind its tariff schedule fully. In this connection, he also noted that Canada had already signaled its interest in negotiating further with Costa Rica in the context of the Uruguay Round.

The representative of Norway, speaking on behalf of the Nordic countries, said that they had been participating actively in the Working Party as well as in tariff negotiations with Costa Rica. They expressed satisfaction at the expeditious way the process of accession had been carried out. Costa Rica had shown a very constructive attitude throughout the entire process. The Nordic countries were aware of Costa Rica's interest in concluding its accession process in the very near future. They hoped that the final stages of the process would be carried out in as smoothly and timely a fashion as the substantive part of the negotiations.

The representative of Brazil said that his country had excellent bilateral relations with Costa Rica. Brazil was pleased to see another Latin American country highly admired for its democracy, and for its contributions to peace and to the causes of Latin American cooperation and international cooperation.

The representative of Israel said that when a small developing country took a decision to join the GATT, it was a good signal of the latter's strength and that the trading system and the GATT were operating.

The representative of Jamaica said that his delegation looked forward to the speedy completion of the accession procedures.

The representative of Turkey said that although his country had not participated in the Working Party, it had followed developments closely and was happy to note once again that the outcome of the Working Party's examination had led to Costa Rica's accession to the General Agreement.

The representative of Argentina said that Costa Rica's accession was further evidence of the importance GATT was assuming, as already seen by the fact that more and more countries, developing countries in particular, wished to accede to GATT.

The representative of Tanzania said that Costa Rica's joining the GATT was indeed strengthening both the GATT system and the ranks of the developing countries in that system.

The Council took note of the statements, approved the text of the draft Protocol of Accession, approved the text of the draft decision, agreed that the Decision be submitted to a vote by postal ballot, and adopted the Working Party's report in L/6589.

10. Committee on Balance-of-Payments Restrictions
    (a) Consultation with Colombia (BOP/R/185)
    (b) Consultation with India (BOP/R/184)
    (c) Consultation with Korea (BOP/R/183 and Add.1)

Mr. Boittin (France), Chairman of the Committee, introduced the three reports.

(a) Consultation with Colombia (BOP/R/185)

Mr. Boittin, Chairman of the Committee, said that at the simplified consultation with Colombia on 17 October 1989, the Committee had concluded that there was no need to hold a full consultation and had decided to recommend to the Council that Colombia be deemed to have fulfilled its obligations under Article XVIII:12(b) for 1989. It had also noted that Colombia's trade policy would be examined by the Council in the spring of 1990 in the context of the Trade Policy Review Mechanism.

The Council took note of the statement, agreed that Colombia be deemed to have fulfilled its obligations under Article XVIII:12(b) for 1989 and adopted the report in BOP/R/185.

(b) Consultation with India (BOP/R/184)

Mr. Boittin, Chairman of the Committee, said that on the occasion of the full consultation with India on 16 October 1989, the Committee had noted that India's balance-of-payments and reserves situation had clearly deteriorated since the previous consultation for a number of reasons, notably the effects of rapid economic growth on demand for imports and a large increase in debt repayment obligations. It had noted that India's more rapid economic growth was likely to imply continuation of pressures on its balance of payments. The Committee had noted the International Monetary Fund (IMF)'s view that control of fiscal deficits, monetary restraint and supportive exchange-rate policy would be necessary to contain any further deterioration of India's external balance without reinforcing import restrictions. It had recognized that these efforts should be complemented by adequate aid flows and access to markets. The Committee had welcomed the measures being taken by India, despite growing difficulties, to liberalize and expand trade, including the easing and rationalization of import and export procedures. It had noted that the structure of the restrictions remained broad and complex, and had thus urged India to continue as vigorously as possible the simplification and liberalization process, bearing in mind the provisions of the 1979 Declaration.[1]

The Committee had noted that India was in the process of improving the transparency of its import policy through the establishment of a detailed list of import restrictions at the tariff line level in conformity with the Harmonized System. The Committee had welcomed this development and had invited India to notify the list to GATT as soon as possible. The Committee had taken note of all the points related to access for India's exports, in accordance with paragraph 12 of the 1979 Declaration. It had recognized that the Uruguay Round negotiations remained the most appropriate framework in which to resolve the problems raised by India.

The Council took note of the statement and adopted the report in BOP/R/184.

---

[1]Declaration on Trade Measures Taken for Balance-of-Payments Purposes (BISD 26S/205).

(c) Consultation with Korea (BOP/R/183 and Add.1)

Mr. Boittin, Chairman of the Committee, said that the full consultation with Korea, which had been suspended in June, had resumed on 23 October. In its conclusions, (paras. 9-14 of BOP/R/183/Add.1), the Committee had taken note of the evolution of Korea's balance of payments since the most recent consultation. It had noted Korea's statement concerning its present economic situation and future prospects, and the IMF's statement on the strength of the reserves position and the positive results of Korea's economic policies. The Committee had welcomed Korea's decision to disinvoke Article XVIII:B by 1 January 1990, Korea's substantial progress in trade liberalization since the consultation in 1987, and the current liberalization program up to 1991 (BOP/289/Add.1). The Committee had recognized that appropriate flexibility was necessary for Korea to phase out -- or bring into conformity with other GATT provisions -- its remaining restrictions. It had noted that these restrictions were largely concentrated in the agricultural sector.

The Committee had welcomed Korea's undertaking to eliminate its remaining restrictions or otherwise bring them into conformity with GATT provisions by 1 July 1997. It had also welcomed Korea's undertaking to continue to phase out its remaining restrictions in a generally even manner, on an m.f.n basis, over two three-year programs beginning on the expiry of the current liberalization program. It had recognized Korea's undertakings to report the progress of liberalization annually to the Council, to notify its three-year programs for liberalization by March of the year preceding their introduction, and to give all due consideration, in drawing up its programs, to the interests of other contracting parties in a balanced manner. Such interests would be communicated to the Secretariat. The Committee had understood that, on the basis of the implementation of these undertakings by Korea, other contracting parties would exercise due restraint in the application of their rights under the General Agreement in relation to products included in the programs of liberalization.

The representative of Japan welcomed Korea's decision to disinvoke Article XVIII:B by 1 January 1990 and its undertaking, despite economic difficulties, to liberalize remaining restrictions or to bring them into conformity with GATT. He noted, however, that Korea still maintained discriminatory import restrictions not allowed under GATT on certain products originating in Japan. Japan reserved its GATT rights in this regard and would want to address this matter at an appropriate time.

The representative of Switzerland expressed satisfaction with Korea's decision. As his delegation had stated in the Committee, Switzerland believed that the solution which had been found offered Korea the necessary time and flexibility to eliminate or bring into GATT conformity the measures which it had taken for balance-of-payments reasons. His delegation trusted that Korea's future liberalization measures would be implemented on a strictly m.f.n basis and that the interests of all exporting countries would be treated in an equitable way.

The Chairman said that it was his understanding that the conclusions of the Committee on Balance-of-Payments Restrictions concerning Korea were without prejudice to the consideration by the Council of, or to any contracting party's rights concerning, pending dispute settlement cases before the Council.

The Council took note of the statements and adopted the report in BOP/R/183 and Add.1.

11. United States - Section 337 of the Tariff Act of 1930 - Panel report (L/6439, L/6487, L/6500)

The Chairman recalled that in October 1987, the Council had agreed to establish a panel to examine the complaint by the European Communities. At its meetings on 8-9 February, 6 March, 12 April, 10 May, 21-22 June, 19 July and 11 October 1989, the Council had considered the Panel report (L/6439), and in June had agreed to derestrict it. At its October meeting, the Council had agreed to revert to this item at the present meeting.

The representative of the United States recalled that at the October Council meeting, he had stated that the United States would be prepared to announce a decision on adoption of the panel report on Section 337 in the autumn. He was prepared to make such an announcement. It would come as no surprise that the United States had severe difficulties with many aspects of this report. The United States disagreed with the Panel's interpretation of the United States' GATT obligations and with the application of GATT standards to this case. The United States was troubled by the report's implications for future disputes with respect to other laws and practices, and had previously stated in detail its reservations with respect to these matters.

Section 337 of the Tariff Act of 1930 was one of the United States' strongest tools for the enforcement of intellectual property rights against infringing imports. Because of the special difficulties in enforcing such rights, the United States had found it necessary to adopt certain procedural rules that applied only to imported products, which it believed were necessary to enforce effectively its intellectual property laws against such imports. These differences were a recognition of the special problems that the practice of importation created in cases involving patent, trademark or copyright infringement. However, even under these special rules, the United States believed that its system extended significant rights and protection to importers. The United States had as good a record of protecting the rights and interests of foreign companies in the intellectual property sphere as any other GATT member. Its laws afforded a higher level of intellectual property rights than most GATT members. The irony of this case was that a country with one of the most comprehensive systems of intellectual property rights for both domestic and foreign firms was the only country to be found deficient in its intellectual property régime under GATT rules. That said a great deal about the need for better international rules governing standards and enforcement in this area.

This report was all the more difficult to accept because of the numerous countries that offered inadequate protection of intellectual property. Implicit in the report was the message that a national system which ignored intellectual property rights altogether was more GATT-consistent than one which afforded high levels of respect for human inventions but treated imports somewhat differently. The United States believed that such a backward result required that GATT rules in this area be changed.

While the United States could not agree with much of the reasoning behind the Panel report, nor with its conclusions regarding the need for, or the fairness of, Section 337, it recognized that its position had not prevailed in the Council. Other contracting parties had stated strong support for the reasoning and findings in the report and had strongly urged that the Council adopt it. In light of this fact, the United States would not block a consensus in the Council to adopt the report, even though it could not join in that consensus, because it was convinced that it was important for all contracting parties to seek to comply with adverse panel reports, even those they found most difficult to accept. He hoped that this would be seen as a vote of confidence in the GATT, which others would have ample opportunity to emulate in the coming months.

He noted that adoption of the report did not automatically change Section 337. Indeed, only an act of Congress could change those features of Section 337 that the Panel had found objectionable. Therefore, until such time as there were legislated changes in Section 337 enacted by the US Congress, the policies that had guided the President's review of Section 337 orders prior to the Panel report would continue to apply. The Panel's findings that procedural differences existed in the treatment of imports would not be a basis for disapproval of future orders issued under Section 337 until that law was amended. He also recalled that contracting parties were now engaged in an effort to negotiate adequate and effective standards for the global protection of intellectual property rights. The United States' expectation was that these negotiations would result in multilateral obligations to provide effective border enforcement of intellectual property rights. He pointed out that the US Administration's ability to obtain legislation amending Section 337 would be maximized should the latter be in the context of legislation implementing the results of the Uruguay Round. The United States was committed to seeking to bring itself into compliance with GATT rules. However, it hoped and expected that broad recognition by contracting parties of the benefits of adequate and effective enforcement of intellectual property rights would lead to an international agreement providing for stronger disciplines in this area.

Because an international consensus on greater intellectual property protection was emerging, the United States was prepared to consider, and to discuss with its trading partners, appropriate changes in the way it handled infringing imports. Although it was committing itself to such a course of action at the present meeting, the United States could not accept a diminution of the safeguards which currently existed for its trademark, patent and copyright holders facing worldwide competition. Any revisions in US law, as well as any new international agreement on this subject, would need to reflect the United States' commitment to strong enforcement of intellectual property rights.

The representative of the European Communities said that he had followed the US statement with great relief. That statement had been unavoidable -- it was just a question of time. He could now assert that the Community had confidence in the United States' good faith and he wanted to share this confidence with the Council. He had some reproaches to make to the United States. Was it not throwing doubt and discredit on the Panel's work without providing any serious counter-argument? He was perturbed by the argument concerning the unilateral -- purely United States' -- link established between respect for the fundamental principles of national treatment and the effective implementation of intellectual property rights. That type of argument perhaps made sense at the domestic level, but was not wise at the multilateral level. As to implementation of the Panel's recommendation, it seemed that the United States -- while not wishing to postpone it indefinitely -- would not give priority to it until the end of the Uruguay Round. That was a very long period of time. It was in fact rendering implementation dependent on acceptance of the US call for vigorous implementation of intellectual property rights. That was rather audacious, hypothetical and farfetched. If the time period were not so long, the US statement could be acceptable; however, as it was rather long, it would not be wise for the US President not to use his discretionary power with regard to the Panel's conclusions. The Community hoped to be informed in six, or perhaps nine months of the United States' preparations to implement the Panel report.

The representative of Japan welcomed the United States' decision to unblock the consensus on the adoption of this report, because this would contribute to the credibility of the GATT multilateral system in general and its dispute settlement system in particular. However, Japan was concerned that the United States seemed to be indicating that it would take a long time to implement this report and that it might not be able to implement it fully. The adoption of a panel report would lose its significance unless it was fully implemented within a reasonable period of time. Therefore, Japan called upon the United States for an early implementation of this report, now that it had taken a decision after deliberate examination of the policy and legal problems presented by its implementation.

The representative of India welcomed the United States' decision to unblock adoption of the report. His delegation had stated at the October Council meeting that the establishment of a link between adoption of this Panel report and the Uruguay Round negotiations on intellectual property rights was not valid. His delegation continued to hold that view and noted with regret that US implementation was being made contingent on the outcome of those negotiations, which were independent and should not be linked in this way to this report. His delegation had also stated in October that the report was not so much about intellectual property rights as about the fundamental GATT principle of national treatment.

The representative of Brazil welcomed the thrust of the US statement. He hoped, however, that implementation of the Panel report would not be made conditional on the outcome of the Uruguay Round negotiations. If that were to be the case, the United States would seem to be saying "Obey but do not apply".

The Council took note of the statements and adopted the Panel report in L/6439.

12. Korea - Restrictions on imports of beef - Panel reports
(a) Complaint by Australia (L/6504)
(b) Complaint by New Zealand (L/6505)
(c) Complaint by the United States (L/6503)

The Chairman recalled that in May and September 1988, the Council had established panels to examine the complaints by Australia, New Zealand and the United States related to Korea's restrictions on imports of beef. At its meetings on 21-22 June, 19 July and 11 October, the Council had considered the reports of the three Panels in documents L/6504, 6505 and 6503 respectively, and at its meeting on 11 October, had agreed to revert to this item at today's meeting.

The representative of Korea said that his Government continued to have serious reservations about some of the Panels' findings and conclusions, in particular as to the fact that the Panels had prejudged the result of the Balance-of-Payments (BOP) Committee's work by making a ruling on the compatibility of BOP restrictions before the BOP Committee could have reached a conclusion. However, now that the BOP consultation with Korea had been concluded[1], and also in an effort to contribute to the efficient functioning of the GATT system and its dispute settlement procedures, Korea would not stand in the way of a consensus to adopt the Panel reports. With regard to their implementation, his delegation hoped that the parties to the dispute, and also other contracting parties, would understand the extreme difficulty of reaching a mutually satisfactory solution within the period recommended by the Panels, due to tremendous political and economic problems arising from the fragile and adverse conditions surrounding Korea's livestock farming. Korea sincerely hoped that a practical solution could be found and would engage in consultations toward that end.

The representatives of Canada, Australia, New Zealand, the United States, Japan, the European Communities and Hungary welcomed Korea's decision not to stand in the way of adoption of the reports.

The representative of Canada reiterated his country's interest in the Panels' findings and in being associated with the consultations referred to by Korea.

The representative of Australia noted that in conformity with the GATT dispute settlement procedures and in particular with the Panel's findings that the measures had not been taken for balance-of-payments reasons, Korea's obligations to bring its régime into conformity with GATT were separate from and in addition to the trade liberalization undertaking it had agreed to with respect to its BOP restrictions.

---

[1] See item no. 10.

The representative of New Zealand noted that New Zealand expected to hold consultations with Korea and hoped to conclude those within the period envisaged by the Panel. New Zealand had conveyed to Korea the principles which it thought should guide the consultations.

The representative of the United States said that his delegation recognized that the issues raised by the Panel reports -- difficult problems of domestic policy -- were quite sensitive for the Korean Government. The United States was pleased that Korea was ready to consider steps towards implementation of the Panel's recommendation and looked forward to working with Korea in this regard.

The representative of Japan said that his delegation understood the real domestic difficulties Korea faced. Korea should be credited for its decision, which contributed to maintaining the credibility of the GATT system.

The representative of the European Communities said that his delegation could echo word for word Japan's statement. Korea's decision was the sort of signal needed to show the world that GATT's dispute settlement system was working and that GATT members could expect their problems to be attended to in the multilateral trading system.

The representative of Hungary said that Korea's decision was important not only because it was good for the credibility of the GATT, but also because of his country's trade interest. Hungary, too, was interested in the said consultations.

The Council took note of the statements, adopted the Panel reports in L/6504, L/6505 and L/6503 and agreed that in accordance with the procedures adopted by the Council in May 1988, the reports were thereby derestricted.

13. Canada - Quantitative restrictions on imports of ice cream and yoghurt - Panel report (L/6568)

The Chairman recalled that in December 1988, the Council had established a panel to examine the complaint by the United States related to Canada's quantitative restrictions on imports of ice cream and yoghurt. At its meeting in October 1989, the Council had considered the Panel report (L/6568), had agreed to derestrict it, and had agreed to revert to this item at the present meeting.

The representative of the United States urged Canada to give serious consideration to adoption of this report. This was a matter both of principle and of significant economic impact and should be considered seriously. At the October Council meeting, Canada had asked for more time to study the report; by now, Canada had no doubt done that. The United States hoped that it would have some good news from Canada, and asked that delegation for its comments on the adoption of the report.

The representative of Canada said that this report raised a number of questions about the feasibility of operating any kind of effective dairy

policy in conformity with the provisions of Article XI. Canada had set out some of these concerns at the October Council meeting. Canada's supply management program had been designed specifically with Article XI in mind. Given the implications of the Panel finding, it was clear that the revision of Article XI had to be addressed in the course of the Uruguay Round negotiations. A perverse and patently inequitable situation, such as that which existed in the North American dairy market, undermined the credibility of the rule-based trading system. Unambiguous and identical rules had to apply to all GATT members. His Government was examining carefully the implications of the Panel report and was currently engaged in a process of consultations. It had not yet taken a decision on the disposition of this report, and first wished to hear the views of other contracting parties.

The representative of the European Communities said that the Community understood the concerns expressed by Canada on this Panel report. However, the Council was dealing with the specific report at hand, which the Community believed was sound, was based on traditional interpretation of the General Agreement and was in conformity with the Community's interpretation. Therefore, the Community supported the adoption of the report as early as possible.

The representative of Switzerland said that his authorities had carefully studied the Panel's findings and conclusions. This was the latest panel report in a series of panels dealing specifically with Article XI and on the conditions it imposed on the legality of quantitative import restrictions. The Panel's findings, as those of other recent panels on Article XI, interpreted the criteria contained in Article XI:2(c)(i) in a very restrictive way and reconfirmed the principle that these criteria were to be considered as conditions which were cumulative. However, the interpretation given to the criteria of "directly competitive" and of "necessary to the operation of the governmental restrictions" raised serious questions. The Panel itself had recognized that there could be concern over the practicability of applying the criteria of Article XI:2(c)(i) with respect to processed products (paragraph 60 of L/6568). Recent panel findings had raised the general question of whether it was possible at all to meet the conditions stipulated by Article XI for the authorization of any quantitative import restriction. The case at hand was of particular interest because it dealt with the operation of supply management or production controls in an important sector of agriculture. How would it be possible to operate a system of production controls -- a central element in the agricultural policies of a number of countries, both net importers and net exporters of agricultural products -- given the recent panel interpretations of Article XI? In Switzerland's view, production controls could have a significant and immediately effective impact on supply/demand imbalances and had been successful in easing world market imbalances and agricultural trade tensions, and in maintaining access possibilities for agricultural exporters. As the Panel had noted in paragraph 60, there was dissatisfaction with Article XI:2(c)(i), and its revision was under discussion. Switzerland remained convinced that if Article XI was to be a realistic rule applicable to and applied by all contracting parties, factors such as supply controls had to be taken into account. While it had serious concerns about the implications of the Panel finding, Switzerland would not oppose adoption of the report.

The representative of Finland, speaking on behalf of Norway and Finland, recalled that at the October Council meeting, they had noted that this report raised some fundamental issues concerning the interpretation and application of Article XI. After further studies of the Panel's findings and Canada's concerns, their authorities had concluded that the report had serious implications, in particular for the application of Article XI to the dairy sector. At the present stage in the Uruguay Round negotiations on agriculture -- in which the whole issue of GATT rules and disciplines was being reconsidered -- these countries were reticent to endorse findings which might have passed the test of legal theory but which in practice seemed to exacerbate some of the problems contracting parties jointly were trying to solve in the Round. This issue involved the virtual exclusion of the dairy sector from the scope of bona fide application of this Article, and the even more unsatisfactory situation of the balance of rights and obligations of contracting parties under GATT. Norway and Finland understood the basic problems Canada had with this report and agreed that contracting parties should be allowed to reflect further on this matter. While these two countries would not formally object to the adoption of the report, they had serious reservations concerning, in particular, the reasonableness of the Panel's interpretation of the key term "directly competitive", and did not accept that adoption of the report constituted a valid precedent for any future corresponding cases or that it could prejudge the outcome of the Uruguay Round negotiations on the key issues related to the application of quantitative restrictions to agricultural products.

The representative of Japan said that like Canada, Japan was concerned that the Panel had interpreted Article XI:2(c)(i) in an extremely narrow manner in limiting "like products" strictly to the product in its original form. The Panel's finding was tantamount to affirming that for dairy products, no import restrictions were allowed under Article XI:2(c)(i) except on fresh milk, which, as the Panel had noted, was hardly traded in its original form. It would give rise to serious implications regarding the effective operation of this Article. Japan was also concerned over the Panel's view concerning the concept of "perishability". Even though the Panel had found it unnecessary to make a finding on perishability in this specific case, it had concluded that a previous panel report on Minimum Import Prices for Processed Fruits and Vegetables (BISD 25S/68) did not provide sufficient guidance for distinguishing between perishable and non-perishable items. Rapid changes in technology since the General Agreement had been drafted raised doubts as to the practicability of using the concept of "still perishable" to distinguish items that fell within the scope of Article XI:2(c) from those that did not. Japan had difficulty accepting this view because it would lead to the total disregard of the nature of trade in agriculture.

Also, Canada's views concerning the double standard were valid ones. A basic inequity of rights and obligations among contracting parties would result if one party continued to maintain, under a waiver, import restrictions on certain agricultural products while import restrictions by other contracting parties would -- as the result of an extremely narrow interpretation of the Article XI:2(c)(i) -- virtually never be permitted. Given the implications of this finding and other recent cases, Japan

believed it even more necessary to remove this imbalance and, through the Uruguay Round negotiations on agriculture, to improve Article XI so that it functioned more effectively. That Article should be more clearly defined, taking into account the actual trading and transaction practices in agricultural products, and the diversity of each government's measures. However, in the interest of maintaining the credibility of the GATT system, Japan would not oppose the adoption of this report if there was a consensus to do so, on the understanding that Japan's reservations on it would be duly registered and that the report would not be considered as a precedent for the operation of Article XI:2(c)(i) or future interpretation of the term "like products".

The representative of New Zealand said that his delegation fully supported adoption of this report, which it considered to be orthodox, and its findings unexceptionable. The report built on existing jurisprudence in GATT on Article XI:2(c). His delegation could not agree with some of the statements of national position that had been made, particularly by Finland on behalf of Finland and Norway. It agreed with Canada's view on double standards and that there was a potential, with the adoption of this report, to have an unusual situation in place in North America and one which New Zealand hoped would not continue too long. Many of the statements made under this item should more appropriately have been made in the Uruguay Round negotiations on agriculture. All should bear in mind that the objective of the Uruguay Round was to reduce trade distortions, not to legalize them.

The representative of Australia recalled that at the October Council meeting, his delegation had welcomed the Panel's findings and recommendations. After further study of the report, Australia remained strongly of that view and hoped that the report could be adopted soon. There were a variety of ways to overcome the imbalance of trading opportunities in agricultural products. Australia only hoped that whatever route was chosen would be in the context of a substantial multilateral trade liberalization in the agricultural sector.

The representative of Israel said that this was an important report which, in addition to other reports on the use of Article XI:2(c), marked the direction of the treatment of quantitative restrictions, particularly with regard to national agricultural policies. Israel had some sympathy with the difficulties faced by Canada. This was related to the larger question regarding the role of Article XI:2(c) in the conduct of national agricultural policies. This and other questions had to be addressed in another forum. Israel would not oppose adoption of this report on the understanding that this would neither prejudge similar cases that might be brought to GATT nor contracting parties' positions in the Uruguay Round negotiations.

The representative of the United States expressed his delegation's disappointment that Canada could not agree to adoption of the report at the present time. However, Canada's statement provided cause for optimism, as it indicated that Canada continued to play a leading role in pressing for respect for the dispute settlement process. Regarding other delegations' reservations about the report, he said that in the US view, there were

similarities between their arguments with respect to Article XI and the US arguments with respect to Article XX in the context of the Panel report on Section 337[1]. There were similarities in the language of both exceptions -- one spoke of measures necessary to enforce laws on patent, trademarks and intellectual property, and the other spoke about measures necessary to enforce supply control programs. These panel reports demonstrated that on occasion, all contracting parties might be faced with accepting interpretations that did not correspond with domestic policies.

The Council took note of the statements and agreed to refer this matter to the CONTRACTING PARTIES for consideration at their Forty-Fifth Session.

14. United States - Countervailing duty on pork from Canada - Recourse to Article XXIII:2 by Canada (L/6583)

The Chairman drew attention to a request from Canada for a panel to examine the United States' countervailing duty on imports of pork from Canada (L/6583).

The representative of Canada said that on 19 September his delegation had asked for Article XXIII:1 consultations with the United States because Canada considered that the United States' decision to impose countervailing duties on imports of Canadian pork products violated US obligations under Article VI:3 of the General Agreement. The specifics of the complaint could be found in DS7/1 of 28 September 1989. These consultations had been held on 11 October but had not led to a satisfactory resolution of the matter. His delegation therefore requested the establishment of a panel under Article XXIII:2 to examine this matter.

The representative of the United States said that Canada was asking for expedited establishment of a panel. He noted that the request for consultations had been made only on 19 September, or less than 60 days earlier. While the United States recognized that under the appropriate dispute settlement rules (L/6489) Canada was entitled to a panel within 60 days, his delegation was somewhat troubled that the Canadian authorities had never asked his authorities if they considered that the consultations had failed to settle the dispute. Had they done so, they would have learned that his authorities did not consider that the consultations had failed and believed that greater effort should be made to resolve this matter through consultations.

The representative of Canada regretted that the United States could not agree to Canada's request at the present meeting. He asked that this matter be taken up again at the Forty-Fifth Session of the CONTRACTING PARTIES.

---

[1] See item 11.

The Council took note of the statements and agreed to refer this matter to the CONTRACTING PARTIES for consideration at their Forty-Fifth Session.

15. Consultation on trade with Romania
- Establishment of a working party

The Chairman recalled that the Protocol for the Accession of Romania provided for consultations to be held between Romania and the CONTRACTING PARTIES biennially, in a working party to be established for this purpose, in order to carry out a review of the operation of the Protocol and of the evolution of reciprocal trade between Romania and the contracting parties (BISD 18S/5). He suggested that the Council establish a working party for this purpose as follows, to carry out the review in the course of 1990:

Terms of reference

"To conduct, on behalf of the CONTRACTING PARTIES, the seventh consultation with the Government of Romania provided for in the Protocol of Accession, 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

Ambassador Lacarte-Muró (Uruguay) had been asked and had agreed to serve as Chairman of the Working Party.

The Council so agreed and took note of the statement.

16. Committee on Tariff Concessions
- Report of the Committee (TAR/177)

Mr. de la Peña (Mexico), Chairman of the Committee on Tariff Concessions, introduced the Committee's report (TAR/177) on its activities during 1989. The Committee had held two formal meetings, on 8 May and 13 October, and one informal meeting in July. The Committee had pursued its activities concerning the implementation of the Harmonized System (HS), its technical problems -- particularly the completion of information required in the various columns of the HS schedules -- and the related Article XXVIII negotiations. Since the HS had officially entered into force on 1 January 1988, sixty GATT contracting parties had decided to adopt the new system of nomenclature, covering more than 95 per cent of contracting parties' trade. This represented an important step towards facilitating international trade through the use of a common customs and statistics nomenclature. The Committee had also pursued its efforts towards obtaining additional consolidated pre-HS schedules in loose-leaf form. At present, 45 of the 62 existing GATT schedules had been circulated

and eighteen had been approved and certified. He urged delegations to intensify their efforts towards obtaining additional certified schedules.

The representative of Chile recalled that when the Committee had considered this report, her delegation had reserved all its rights under Article XXVIII of the General Agreement, particularly with respect to its Paragraph 3(a), regarding the HS negotiations. Chile's reservation related to the globality of the HS negotiation process, particularly with regard to Japan, the Community and the United States. Chile reiterated that reservation.

The Council took note of the statements and adopted the report (TAR/177).

17. Harmonized System - Requests for extension of waivers under Article XXV
(a) Mexico (C/W/616), L/6584)
(b) Sri Lanka (C/W/613, L/6578)
(c) Turkey (C/W/617/Rev.1, L/6585/Rev.1)

The Chairman drew attention to the communications from Mexico (L/6584), Sri Lanka (L/6578) and Turkey (L/6585/Rev.1) in which each of those Governments requested an extension of a waiver already granted in connection with its implementation of the Harmonized System (HS).

The representative of Canada said his delegation felt that the 12-month extension sought by Turkey was a bit long. Canada would have preferred a six-month extension and asked for other delegations' views on this matter.

The representative of Turkey recalled that his country had transposed its schedule to the HS as of 1 January 1989 and had submitted HS documents to contracting parties on 16 January 1989. Turkey's proposed entries for columns 5, 6 and 7 had been circulated to contracting parties on 23 June 1989. Turkey was still in the process of consultation and negotiation with the interested contracting parties and there were still some reservations. Thus, Turkey was trying to accommodate those contracting parties so that they could conclude their review of the reservations, and one year seemed to be an appropriate time to allow for this.

The Council took note of the statements, approved the texts of the draft decisions in C/W/616 (Mexico), C/W/613 (Sri Lanka) and C/W/617/Rev.1 (Turkey), and recommended their adoption by the CONTRACTING PARTIES by a vote at their Forty-Fifth Session.

18. Turkey - Stamp duty
- Request for extension of waiver under Article XXV (C/W/618/Rev.1, L/6586)

The Chairman recalled that in November 1987, the CONTRACTING PARTIES had granted Turkey an extension of its stamp duty waiver until 31 December

1989 (BISD 34S/35). He drew attention to Turkey's request for a further extension of the waiver to 31 December 1992 (L/6586) and to the draft decision (C/W/618/Rev.1) to this effect.

The representative of Turkey said that Turkey had taken radical steps to transform its economy into a vigorous free-market economy despite macro-economic constraints which required structural adjustment. Turkey had been pursuing a trade liberalization policy since the beginning of the 1980's and, somewhat uniquely, had not defaulted on its foreign debt servicing. This, in combination with the structural reforms, imposed an enormous strain on Turkey's budget, thereby requiring reliable sources of revenue, which it had tried to secure through means such as the introduction of a value-added tax (VAT). While at the outset this had provided a considerable source of revenue, it had not kept pace with the growing need for revenue. In addition, the revenue collected from customs duties aimed at reducing the public debt burden had decreased in line with Turkey's liberalization efforts in foreign trade. The total tax collected on imports in 1988 had been Turkish lira 371 billion less than the amount estimated for that year, which in turn had caused a higher rate of public sector deficit for the 1989 budget. The high inflation rate and increasing budget deficits were the two most serious issues confronting Turkey's economy at present. The stamp duty therefore had a role in offsetting public sector budget deficits. The importance of revenue from this source had become more pronounced, in particular since 1983, after Turkey had unconditionally permitted the free play of market forces, thereby subjecting the economy to a series of structural changes. The stamp duty was a fiscal measure necessitated by the rate of public sector expenditure, which tended to increase. On the other hand, his Government was committed to the steady servicing of the public debt, which necessitated enormous additional public expenditure. The revenue from the stamp duty was expected to be around Turkish lira 1,500 billion for the 1990 fiscal year, constituting a substantial additional income in view of the insufficiency of the VAT and the decrease in tariff revenues.

Another important aspect of the stamp duty was that it could in no way be perceived as a measure restricting trade, nor had it proved to be so in practice. Trade statistics showed that it had not led to a rising trend of import restriction. Within the framework of the liberalization policy, exemptions and reductions were applied to concessional tariffs bound in GATT on many products. Therefore, there could be little or no incidence of stamp duty on imports, since no stamp duty was imposed in cases of duty exemptions. Where it was applied, its effect was fully or partially offset, in most cases, by tariff reductions. Moreover, the trade liberalization policies Turkey had been pursuing had led to a considerable reduction in import restrictions; quantitative restrictions had been removed and customs duties and special import levies reduced substantially. Many of these reductions had provided duty-free treatment. He gave details of these measures, and said that the extent of the liberalization of imports into Turkey would reach approximately 95 per cent by the end of 1989. Therefore, it should be no surprise that the share of revenue from overall import activities had decreased from 17 per cent in 1987 to 15.2 per cent in 1988. This figure could be even lower in 1989 as a consequence of further cuts in tariffs realized through the course of this

year. Turkey had circulated a document (L/6588) which attempted to give a general insight into its efforts to further liberalize its foreign trade policy.

In summing up, he said that pending the completion of the ongoing process of finding alternative sources of revenue, particularly through tax reforms, it was imperative that the stamp duty be retained. Turkey was doing its utmost to find durable solutions to its economic problems. A request by a developing country for a three-year waiver should not, in the spirit of Part IV of the General Agreement, be taken as a conformist attitude. This period would be used to find sound alternatives. A draft bill in the Parliament set the present level of the stamp duty at a maximum of 10 per cent, and requested authority for the Council of Ministers to be able to decrease it to zero per cent as circumstances might permit. This was a clear manifestation of Turkey's goodwill. Any positive development in this regard would immediately be reported to the Council, as the draft decision set out. Turkey was sincerely trying to find effective and practical solutions to a difficult problem. The alternative would result in defaults in debt servicing, larger budget deficits, higher inflation and more protectionist measures.

The representative of the United States said that Turkey's efforts in recent years to liberalize its trade were laudable and appreciated. However, this was at least the twelfth time in the past 26 years that Turkey had requested a waiver from its Article II obligations which had allowed it to apply tariff surcharges of up to 25 per cent in excess of its bound rates of duty. The CONTRACTING PARTIES had regularly approved the request, despite the fact that during this period, Turkey had routinely violated the terms of its waiver for the stamp duty, as it was presently doing. This waiver in effect nullified Turkey's tariff schedule and severely disturbed the balance of concessions between Turkey and other contracting parties. In the two years since the most recent waiver extension, Turkey had again raised the tax, inconsistent with the level provided for by the waiver. The level of application had been ten per cent since October 1988, whereas the waiver extension granted in October 1987 provided for only a six per cent tax level. Such "mid-term" increases inconsistent with the terms of the waiver extensions had been a common occurrence. Turkey's stamp duty could no longer be considered a temporary measure. The United States encouraged Turkey to consider renegotiation of its bindings or removal of the tax from import items with bound rates of duty, and urged Turkey to move firmly towards eliminating the need to seek further extensions of the waiver. Under these circumstances, his delegation could not support extension of the waiver on the terms contained in C/W/618/Rev.1.

The representative of Morocco said that in light of the fact that Turkey's economic and financial situation -- described in detail by the representative of Turkey -- remained precarious, the period requested for the waiver was justified. Furthermore, the Turkish Government had given assurances that the stamp duty would be eliminated as soon as the financial situation had improved or other sources of revenue had been found. The conditions attached to the present waiver extension (C/W/618/Rev.1) would

safeguard contracting parties' essential rights under the General Agreement. For these reasons, Morocco fully supported Turkey's request and hoped that the Council would approve it.

The representative of Korea expressed his delegation's appreciation for Turkey's liberalization efforts. Korea believed that Turkey continued to have sufficient reasons to request a further extension of its stamp duty waiver in view of the economic difficulties its Government faced. His delegation therefore supported the draft decision in C/W/618/Rev.1 and hoped that the extension would be granted.

The representative of the European Communities said that the Community was not insensitive to the problems raised by Turkey and realized the importance of this issue for that country. However, in the Community's view, the continuation of the procedure of extending this waiver was not a welcome development in terms of contracting parties' GATT obligations. A stamp duty did not seem to be the right way to resolve Turkey's revenue problem, as it placed Turkey in contradiction with its GATT obligations. The VAT system provided an alternative route under GATT rules. This waiver had been in existence for too long, and Turkey had been unable to meet the conditions set when the waiver was last extended. In light of these considerations and of the Community's well-known position regarding the maintenance of waivers -- particularly long-term and open-ended ones -- the Community could not consider an extension under the terms requested by Turkey at the present time.

The representative of Yugoslavia supported Turkey's request and the draft decision. Her country appreciated the trade liberalization measures undertaken by Turkey since 1980 despite serious economic difficulties. However, Yugoslavia hoped that Turkey would succeed in its fiscal reform so as to be able to eliminate the stamp duty at the expiry of the waiver.

The representative of Egypt said that in Egypt's view, there was great justification for Turkey's request, as that country had been following the path of trade liberalization. The determining factor should be that the stamp duty had never been an obstacle to trade; on the contrary, Turkey's imports had increased substantially. Turkey was not the only country which had maintained a waiver for a long time; several contracting parties had done this. Turkey should give an indication that the waiver would not be requested beyond 1992, and that the stamp duty would be eliminated by then.

The representative of Canada said that his delegation shared some of the concerns expressed by the United States, the Community and others over the continuation, after 26 years, of a stamp duty which had been intended to be temporary.

The representative of Uruguay said that his delegation understood the views put forward by those delegations which had flagged the unusual length of time of this waiver and sympathized with points made concerning its actual application; these deserved to be taken into consideration. However, one could not but emphasize the substantive content of Turkey's statement, which briefly and clearly outlined a remarkable liberalization process in the Turkish economy and import régime. Turkey had also reminded

the Council that, contrary to many developing countries, it had been able to maintain its external debt servicing and that the stamp duty had contributed to making this possible. Turkey had pointed out that as a developing country it was abiding by Part IV in asking for this waiver. The draft decision clearly set out the end of the extension of the waiver in 1992, and the very stringent conditions (paragraphs 5 and 6) covering situations in which a country felt it needed some recourse to act. In his delegation's view, the whole situation which had been outlined had already been covered by the text. On balance, therefore, and bearing in mind the arguments both for and against, Uruguay supported the request for a three-year renewal of this waiver.

The representative of Israel said that his delegation was impressed by the trade-liberalizing measures -- described in detail in paragraphs 4-7 of L/6588 -- taken by Turkey over recent years. With regard to the request for the stamp duty waiver, his delegation was of the view that Turkey was taking all the necessary steps in order to find alternative sources of income, such as the VAT. While Turkey was reducing duties, its sources of income were understandably limited and there was a need to find alternative sources. That situation justified a sympathetic look into Turkey's request for an extension of the waiver as an interim measure. His delegation hoped that this would be the last time Turkey asked for such a waiver. He also noted that the terms and conditions in C/W/618/Rev.1 were very strict, and drew attention to paragraphs 5 and 6 regarding consultations; these should help the Council to look sympathetically at the request. His delegation could go along with the draft decision and urged other delegations to try to be as cooperative as possible.

The representative of Brazil said that his delegation, too, shared the view that waivers should always be temporary in nature. However, in this case one should also take note of the points made by Turkey and take into consideration that country's special situation and the tremendous liberalization process currently underway. For these reasons, his delegation supported adoption of the draft decision.

The representative of India said that the period of about 26 years during which Turkey had enjoyed this waiver did seem rather long; however, considering the problems faced by the Turkish economy, particularly the revenue implications of removing this stamp duty, his delegation understood and appreciated the situation because India faced similar problems. Given the fact that the Turkish Government had undertaken far-reaching liberalization measures which, to some extent, had created some of the problems which the continuation of the stamp duty sought to address, India was, on balance, favourable to accepting Turkey's request. His delegation also felt that the terms and conditions on which this request would be accepted would take care of contracting parties' interests.

The representative of Tanzania suggested that the hard-line position taken by one or two members might be usefully tempered by a more careful reading of the statement submitted by Turkey, especially in L/6588. Paragraphs 3-7 were illustrative, informative, and established a direct relationship between how imports had assisted the export performance and had therefore achieved some of the objectives of GATT, especially when one

looked at Turkey's available options. The fact that a large part of its imports was tax and duty-free was important, especially when the economy was undergoing structural adjustment with a view to dealing with contemporary problems. While the duration of the waiver might seem an important element, the nature of the waiver in particular circumstances should have a bearing on the Council's decision. Tanzania therefore fully supported the draft decision.

The representative of Peru said that his delegation, having heard Turkey's comprehensive statement, understood and sympathized with its request, and therefore supported the draft decision.

The representative of Turkey said that it was a fact that the duty had been applied since 1963 -- regrettably too long a period. However, as he had pointed out in his earlier statement, the important phase was the period starting in 1980 and more particularly 1983 onwards, when Turkey had tried to implement a basic structural transformation policy. The stamp duty revenue had only then acquired importance. He conceded that the rate had been increased from six to ten per cent, which did not conform to GATT practices, but said that this illustrated the needs stemming from the particular circumstances at that time. He referred to his statement about the draft bill before the Turkish Parliament freezing the ceiling of the duty at ten per cent and giving power to the Council of Ministers to level it out if circumstances permitted. As to offering a guarantee that no further request for extension would be made, he asked whether any delegation could do that. He had underlined his Government's good will and intention that, should alternative sources of revenues become available, the duty would be eliminated.

The representative of the United States recalled his delegation's earlier statement that it could not support the request on the basis of the terms proposed (C/W/618/Rev.1). If Turkey put forward different terms, his delegation could perhaps go along with such a request.

The representative of the European Communities said that the Community had already said that it could not go along with the request as submitted. He added that the question of waivers was currently under discussion in the Uruguay Round. It seemed sensible to let the discussion proceed to the end thereof, at which time the situation might be different. The Community was not closed to efforts to find a mutually acceptable solution between now and the CONTRACTING PARTIES' forthcoming session.

The Chairman asked whether the Council was willing to try to reach a compromise and to approve an amended request at the present meeting, or whether, as previous speakers had suggested, the matter should be referred to the Forty-Fifth Session of the CONTRACTING PARTIES. The main focus of concern seemed to relate to the proposed three-year period, which some delegations felt was too long. He asked whether a consensus could be achieved on some other period or whether Turkey preferred to maintain its three-year request.

The representative of Turkey said that his delegation wished to consult with the objecting contracting parties to find out what was or could be a reasonable period.

The representative of the European Communities recalled that he had stated earlier that the Community would be prepared to consider an extension of the waiver to the end of the Uruguay Round and perhaps a few months beyond. However, the Community had difficulty in agreeing to a longer period and would want the condition -- which had been set and which it believed to be reasonable -- for the rate of the stamp duty to be respected at six per cent.

The representative of Turkey said that his delegation had not expected to have this type of bargaining in the Council over the period of the extension. He understood that the United States preferred to defer consideration of the matter to the CONTRACTING PARTIES' session. Turkey could go along with that.

The Council took note of the statements and agreed to refer this matter to the CONTRACTING PARTIES for consideration at their Forty-Fifth Session.

19. Zaire - Establishment of a new Schedule LXVIII
- Request for waiver under Article XXV:5 (C/W/612, L/6575)

The Chairman drew attention to the request by Zaire for a waiver from the provisions of Article II of the General Agreement (L/6575) and to the draft decision (C/W/612) to this effect.

The representative of Zaire said that his Government's communication in L/6575 had explained the reasons which had led it to undertake a vast program of economic and financial adjustment with the support of the World Bank, the International Monetary Fund and certain of Zaire's trading partners. This program had necessitated important structural, technical and administrative reforms in the context of the application of the new policy of economic liberalization adopted in 1983. These reforms envisioned essentially the simplification and harmonization of Zaire's tax system with a view to reducing taxes and encouraging production. His Government would furnish as soon as possible statistical data for the most recent three years, as well as the new proposed list of tariffs and other information; these would be circulated to contracting parties within the next few weeks. He expressed his delegation's appreciation to contracting parties for their understanding of the difficulty of implementing such a program of structural adjustment.

The Council took note of the statement, approved the text of the draft decision (C/W/612) and recommended its adoption by the CONTRACTING PARTIES by a vote at their Forty-Fifth session in December.

20. Philippines - Rates of certain sales and specific taxes - Review under Paragraph 3 of the Protocol of Accession (C/W/614, L/6579)

The Chairman drew attention to a request by the Philippines (L/6579) for a three-year extension of the period allowed to the Philippines in the context of its accession to the GATT, to bring the application of its differential rates of sales and specific taxes on cigarettes into line with Article III of the General Agreement. He also drew attention to the draft decision (C/W/614) to this effect.

The representative of the Philippines said that the documents circulated to contracting parties clearly outlined the measures taken by her Government to realign the internal tax on 22 out of 23 domestic products and their imported counterparts. In the case of the remaining single product, cigarettes, her Government was undertaking all the necessary steps to realign existing sales taxes, but this process would be far from quick and easy. In light of the lengthy but necessary legislative and administrative procedures, her country requested another extension of the 1984 Decision (BISD 31S/7) for three years, until 31 December 1992.

The representative of the United States said that his Government recognized and gave full credit to the Philippine Government for the significant steps it had taken to eliminate the discriminatory aspects of its tax laws and to meet the obligations of Article III. Nevertheless, the United States had serious reservations regarding the Philippine request for an extension of this provision of its Protocol of Accession. While the United States welcomed the steps the Philippines had taken with respect to 22 of the 23 products originally subject to this provision, it nonetheless believed that action should be taken expeditiously. The Protocol had provided five years to bring the tax laws into conformity with Article III. In 1984 the Council had agreed to a further extension of five years, and the present request was for a further three-year extension. His Government was concerned with both the duration and conditions for the proposed extension and felt that a further three-year extension would be excessive. In addition, it was important that if there were to be any extension, it be based on a firm commitment that within the agreed time frame, all remaining discriminatory aspects of the Philippine tax system would be eliminated. The United States was aware and appreciative of the Philippine Government's efforts to secure passage of remedial legislation, and had been consulting closely with that Government to find a mutually satisfactory approach to this issue. Regrettably, the gap had not yet been closed. Therefore, the United States could not agree at the present time to the request for extension, but remained willing to continue efforts to try to find a solution which would permit a reasonable extension.

The representative of the European Communities said that the Community was sensitive to the Philippine request but did have direct interests at stake in this issue, as well as a general position on the renewal of derogations from GATT rules. The Community was open to discussing a further extension under conditions which were less automatic and would involve less than the three-year period requested. It would like to do this prior to the CONTRACTING PARTIES' session. The Community was looking

for a period which would accommodate the Philippines and also be consonant with the Community's overall position on derogations from GATT rules.

The representative of Thailand, speaking on behalf of Indonesia, Malaysia, Singapore and Thailand, said that these countries appreciated that the problem of structural adjustment faced by the Philippines was difficult and important. They were convinced that this country was taking substantial steps to fulfil its GATT commitments, and that it had made a great effort to align the internal tax on domestic and imported products. These countries strongly felt that the Philippine Government was honestly committed to bringing its policies into line with the spirit of the General Agreement, and thus appreciated the need for more time to achieve the alignment target. Therefore, they strongly supported the Philippine request and the adoption of the decision to this effect for another three years.

The representative of the Philippines thanked the ASEAN delegations which had expressed their support for the Philippine request. Regarding the objections and concerns of the Community and the United States, her country was prepared to continue the consultations and hoped to come to a mutually acceptable solution to this issue as soon as possible. She noted that when her Government had requested an extension of the 1984 Decision, there had been 23 products still outstanding the internal taxes of which needed to be realigned to conform to Article III. After five years, the rates of taxes of 22 out of the 23 had been realigned; only one product remained. There was at present pending in the Philippine Congress a Bill marked urgent by the Administration which when passed would finally bring this last remaining product in conformity with GATT obligations. Thus, it was clear from all of this that: (1) the Philippines took its commitment to GATT seriously and had worked hard since its accession to conform to GATT rules and obligations; (2) reducing a list of 23 products in 1984 to only one in 1989 was clear proof of this commitment; (3) presidential decrees, which were more expeditious, though not exactly ideal, had been the order of the day in the past Administration which, nevertheless, had to be given credit for its efforts to comply with its GATT commitments; (4) under the present democratic government, all democratic institutions had been fully restored, necessitating a slower process of legislation. While her Government was sympathetic to the United States' and the Community's concerns, it was constrained by the difficulty of complying fully and as quickly as possible with its GATT obligations, while allowing the legislative process to take the appropriate course. Like the US representative, she too hoped that her Government's firm commitment to the passage of the appropriate legislation at the soonest possible time would assuage the concerns expressed. Her country reaffirmed its commitment to, and faith in, the GATT multilateral system, and asked that this same trust and faith be accorded to it in its sincere efforts to contribute to the success of the multilateral system.

The Council took note of the statements and agreed to refer this matter to the CONTRACTING PARTIES for consideration at their Forty-Fifth Session.

21. International Trade in Agriculture
- Communication from Australia (L/6594)

The representative of Australia, speaking under "Other Business", said that his Government had decided to circulate for the information of contracting parties a study, entitled "US Grain Policies and the World Market", recently published by the Australian Bureau of Agricultural and Resource Economics (ABARE), an independent economic research agency responsible to the Australian Minister for Primary Industries and Energy. He recalled that there had been earlier studies in the same series on the agricultural policies of the European Economic Community (1985) and Japan (1989). His delegation had circulated some of the key findings together with a copy of the summary of the study in L/6594, and was providing all contracting parties with copies of the full study.

Australia believed that the present study, like its predecessors, served to shed light on the nature and extent of the distortions arising from agricultural support policies, and underlined the importance of efforts being made in the GATT and the Uruguay Round to reduce trade distorting support and protection in the agricultural sector. The United States, in its proposal submitted to the Negotiating Group on Agriculture in October, had itself acknowledged the need to rid the trading system of export subsidies and other policies which most distorted agricultural production and trade. Australia fully endorsed those objectives. He drew attention to some of the study's key findings, such as: (1) US policies have been costly to US taxpayers and to the US economy in aggregate; (2) they have been relatively ineffective in providing support to grain growers most in need; and (3) they have in part led to competitive subsidization and to reductions in grain production and exports being forced on largely non-subsidising exporters.

The representative of the United States welcomed the ABARE study, which said some revealing things about the need for reform of world agricultural trade rules and, when coupled with earlier studies on the Community and Japan, was an indication that certain policies now in place were harmful to the interests of all trading nations and should be addressed through the Uruguay Round. He suggested that ABARE now turn its attention to an analysis of Australia's high industrial tariffs and certain other restrictions that had an adverse impact on international trade. The United States would gladly see the latter distributed as a GATT document.

The representative of the European Communities said that the Community welcomed the analysis submitted by Australia but did not welcome it as an official GATT document. It seemed that there had been a sort of procedural waiver granted to Australia by the Secretariat without the CONTRACTING PARTIES' consensus. The Community had not endorsed the circulation of the two previous ABARE studies as GATT documents and maintained that position regarding the present study. If this were to continue, the Community might be forced to make good its threat to shower contracting parties with reports produced by para-statal or other organizations about the economies of other countries, as official GATT documents. The Community would prefer not to think in these terms as it was concerned that GATT was being used for the wrong purposes and with unwelcomed implications.

The representative of Japan recalled that a number of delegations had already expressed concern about the distribution of documents of this sort. Japan agreed with the Community that the proliferation of non-governmental documents could have serious implications for the efficient operation of the GATT.

The representative of Switzerland endorsed the statements by the Community and Japan. This case involved a procedural problem which might turn into a substantial problem should this practice be continued.

The representative of Australia welcomed the constructive aspects of the statements made. He pointed out to the United States that in the course of the forthcoming review of Australia's trade policy, in the context of the Trade Policy Review Mechanism, it would be seen that, by the mid-nineties, Australia's average tariff rate on imports would be down to 5.5 per cent and that there would be no quantitative restrictions. He said that research had shown a wide range of use of GATT documents, and noted that this study was the third and final in a series of three.

The representative of Chile said that it was important that the Secretariat be allowed to circulate, on the request of delegations, documents which those delegations felt should be circulated, regardless of their origin. Curtailing this liberty might have serious consequences for the less-developed contracting parties.

The Council took note of the statements.

22. Increasing use of anti-dumping measures

The representative of Hong Kong, speaking under "Other Business", recalled that his delegation had previously drawn attention to the increasing use of anti-dumping measures in circumstances that made them look worryingly like selective safeguard measures rather than a proper use of Article VI and the Anti-dumping Code[1]. This was disturbing because, among other reasons, it would be incompatible with ensuring the right environment for the Uruguay Round negotiations, particularly in their final, crucial phase. Hong Kong was raising this matter again because of recent anti-dumping investigations initiated by two contracting parties against certain textile and clothing products from Hong Kong. The products in question had been subject to restraints under the Multi-Fibre Arrangement (MFA)[2] for many years. It was recognized that a detailed examination of the anti-dumping measures in question was appropriate to such bodies as the MTN Negotiating Group, the Textiles Committee and the Anti-dumping Committee, but as a general point, Hong Kong wanted to draw attention to what it saw as a new, dangerous trend in the trading environment. In the most recent cases, by virtue of the MFA restrictions there was a cap on the ability of exporters to increase exports of the

---

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

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

products in question. Furthermore, Hong Kong did not provide financial assistance or subsidies to companies and its market was determined solely by the principles of free trade; thus, companies in Hong Kong had neither the motive nor the means to sell products subject to quantitative restrictions at less than market value. In short, there was no rationale for dumping, which called into question the reasonableness of subjecting trade in these products to the uncertainty associated with anti-dumping proceedings. It was clear from the most recent Protocol to the MFA (BISD 33S/7) that the MFA was the principal means of addressing problems which might arise in the textiles area. Other measures should be used only as a last resort when all the relief measures provided in the MFA were exhausted. The Anti-dumping Code was devised to deal with unfair trade, but contracting parties had a concomitant responsibility to ensure that anti-dumping measures did not become, of themselves, an instrument of unfair trade.

The representative of Korea said that his delegation shared Hong Kong's view concerning the use of anti-dumping measures on textile products subject to MFA quota restrictions. Once quotas under bilateral agreement had been mutually agreed upon and put into operation, the injury to industry had to be considered as having been removed. He drew attention to paragraph 26 of the conclusions of the Textiles Committee adopted in connection with the most recent MFA Protocol, which stated that "all participants should refrain from taking measures on textiles covered by the MFA, outside the provisions therein, before exhausting all the relief measures provided in the MFA" (BISD 33S/7). In Korea's view, MFA signatories could resort to other GATT provisions only after all MFA relief measures had been exhausted. The anti-dumping action on MFA quota items would not only be incongruous with MFA provisions but also would undermine the ongoing Uruguay Round negotiations.

The representative of Japan said that his delegation shared Hong Kong's concern over the tendency to apply anti-dumping rules for other purposes through arbitrary or unilateral interpretation of those rules. Japan therefore believed it was all the more important to establish clearer anti-dumping rules in the Uruguay Round negotiations.

The Council took note of the statements.

23. Report of the Council (C/W/611)

The Secretariat had distributed in C/W/611 a draft of the Council's report to the CONTRACTING PARTIES on matters considered and action taken by the Council since the Forty-Fourth Session.

The representative of Bulgaria, speaking as an observer, referred to the point in the report related to the accession of Bulgaria. He reiterated his country's interest in starting as soon as possible the normal procedures for examining Bulgaria's request for accession in the Working Party. That request dated back to September 1986. In June 1988, Bulgaria had submitted the Memorandum on its Foreign Trade Régime (L/6364) and in May 1989 had sent to all contracting parties information on the new

legislation adopted after the submission of the Memorandum. Bulgaria regretted the delay in making the Working Party operational, as every acceding country had the right to have its request examined.

The Chairman proposed that the Council took note of the statement and that the report, together with appropriate additions which the Secretariat was requested to make, be approved. It would be distributed and forwarded to the CONTRACTING PARTIES for consideration at their Forty-Fifth Session.

The Council so agreed.