COUNCIL OF REPRESENTATIVES

Report on Work since the Thirty-Ninth Session

In accordance with the Decision of 4 June 1960 establishing the Council of Representatives, the Council is required to report to the CONTRACTING PARTIES on the matters considered between sessions of the CONTRACTING PARTIES.

In carrying out its task, the Council has held ten meetings since the thirty-ninth session in November 1983. The minutes of these meetings are contained in documents C/M/174-C/M/183. Adoption of this report, which summarizes the action taken by the Council, will constitute approval by the CONTRACTING PARTIES of that action.

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1. **Work Program resulting from the 1982 Ministerial Meeting**

See L/5734/Add.1.

2. **Reviews of developments in the trading system (special meetings on Notification, Consultation, Dispute Settlement and Surveillance)**

   (C/M/177, 182)

At their thirty-fifth session in November 1979, the CONTRACTING PARTIES had adopted the Understanding Regarding Notification, Consultation, Dispute Settlement and Surveillance drawn up in the Multilateral Trade Negotiations (BISD 26S/210). In March 1980, the Council had adopted a proposal (BISD 27S/20) which provided for reviews of developments in the trading system to be conducted by the Council at sessions specially held for that purpose. The Council had held a number of such special meetings during 1980-1983. At its fifth special meeting in July 1983, the Council had agreed that these meetings would also serve to monitor paragraph 7(i) of the 1982 Ministerial Declaration (BISD 29S/9), and that such special meetings would preferably be held twice each year.

At the special meeting on 15 May 1984, the Chairman drew attention to the background document entitled "Developments in the Trading System" (C/W/437 and Corr.1) drawn up by the Secretariat, and pointed out how the present document differed from its predecessors.

The Director-General said he hoped that the new document would provide the Council with a firmer basis for judging the course of events than had been possible at its previous special meetings, and said that the Secretariat intended to continue on this path. The document confirmed all too clearly that trade policy remained in difficulty, even if international trade itself was at last picking up. There was a certain amount of good news in the field of tariffs, but little comfort elsewhere. Referring to the need for transparency, he said that the Secretariat expected to put forward some ideas which might usefully be considered at the next special meeting. If each contracting party undertook, as a matter of routine, to inform the Secretariat each month or every third month of any changes in its trade régime, the basis would be established for a thorough-going revision of notification procedures; this would also oblige national administrations to have a focal point for collecting the material necessary for such notifications. However, transparency was not an end in itself; it carried the risk that when one government was shown to be resorting to particular kinds of action, not necessarily covered by GATT rules, others would find it harder to resist pressures to act in the same way. The aim in improving transparency, and the aim of these special Council meetings, was surely to make the rules a more effective force for the expansion and liberalization of trade.
The representatives of Jamaica, United States, Peru, Sweden on behalf of the Nordic countries, India, South Africa, Canada, Nigeria, Korea, Pakistan, Colombia, European Communities, Singapore, Yugoslavia, Spain, Hungary, Israel, Japan and Australia spoke on the matter under discussion, and gave clarification and additional information on points concerning their national trade policies and régimes as referred to in document C/W/437.

Many representatives expressed satisfaction with document C/W/437, saying it had improved transparency and had given the Council a better basis for assessing trends in the trading system. However, a number of representatives said that the Secretariat's documentation should in future reflect more on trends and on the broader implications of trade policy measures. It was also suggested that future documentation should differentiate among the various commercial measures according to their relative importance for world trade.

A number of representatives welcomed the Director-General's statement that the Council's next special meeting would have before it a Secretariat paper suggesting ways of improving notification procedures.

The opinion was expressed that if the Council failed to make the necessary assessments of trends in the development of the multilateral trading system, this was no fault of the special meetings themselves or of the documentation prepared for them; it was the task of the Council members to make an overall assessment of developments in the trading system and to see what conclusions could be drawn from the factual information in the Secretariat's documentation. It was suggested that document C/W/437 contained some references which, though important, were of unequal weight; and also, that the documentation for future special meetings should be issued earlier than the ten-day rule which applied to documents for Council meetings generally.

It was suggested that the Council might proceed differently in future by inviting the Secretariat to provide for the special meetings a brief summary of trends in international trade. If the Council were to receive such a summary in advance, it could make a useful assessment of trends in trade and of compliance with paragraph 7(i) of the Ministerial Declaration. Since there were two special meetings of the Council each year, it might review in detail the annual GATT report on international trade during one special meeting and the suggested summary during the other.

The representative of Sweden, on behalf of the Nordic countries, said they considered that the Council's special meetings should emphasize and facilitate review of protectionist measures from the point of view of the commitments in paragraph 7(i) of the Ministerial Declaration. He suggested that informal consultations take place before the next special meeting in order to determine how such an examination could best be arranged. Support was expressed for this proposal.
The Director-General, referring to the question of to what extent actions in the private sector should be reported in the Secretariat's documentation, pointed to paragraph 5 of document C/W/437, which said that inclusion of a measure should not be taken to imply any judgement on its legal status under the General Agreement. Noting that the Secretariat had made only a few comments in the document, he recalled that the Secretariat normally expressed its own views only in the annual GATT report on international trade. He suggested that it might be useful if, during further refinement of reviews of developments in the trading system, the Council was provided twice a year with an assessment by the Secretariat, perhaps as an introduction to the Secretariat's documentation for the special meetings. Referring to comments on certain gaps in document C/W/437, he said his suggestion, made earlier in the meeting, in favour of notifications by contracting parties at regular intervals on the totality of changes in their trade policies, was precisely directed at remedying problems resulting from piecemeal notifications; he invited the Council to give more guidance to the Secretariat on the areas to be covered by the documentation for the special meetings. Improvement of the documentation also required a co-operative effort on the part of delegations which, for instance, might reply more quickly to the Secretariat's requests for comments or information on matters to be included.

Concern was expressed about the state of the GATT dispute settlement system. It was noted that of the 13 disputes under Article XXIII referred to in document C/W/437, three-quarters had involved delays of one sort or another in the final resolution of the matters in question, despite the Ministerial Decision on Dispute Settlement Procedures (BISD 29S/13).

Concern was also expressed that developments over the past six months in the trading system had not facilitated international trade or contributed to world economic recovery. Except for certain advanced tariff reductions in the framework of the MTN tariff cuts and some improvements in their Generalized System of Preferences (GSP) schemes by some contracting parties, protectionism had been increasing in the trade policies of developed countries, particularly protectionism outside GATT disciplines and primarily in sectors which were vitally important to developing country exports, such as textiles and clothing, steel, agriculture, motor vehicles and consumer electronics. While it was expected that economic recovery in some developed countries would contribute to liberalizing trade and to the resolution of balance-of-payments difficulties of developing countries, developed countries had resorted increasingly to import restrictions as well as to anti-dumping and other non-tariff protective measures against alleged unfair competition. The share of developing countries in the overall imports of developed countries in the last few years had been held down as a direct result of escalation of such measures. Recent growth of non-tariff barriers and voluntary restraint agreements had prevented
competition and had lessened the positive impact of trade on the process of structural adjustment in the world economy. There had been an increased search for short-term solutions to trade problems and some major trading partners seemed to be questioning the carrying out of internationally assumed obligations, specifically the principles of special treatment for developing countries and of non-discrimination and non-reciprocity on which the GSP was based. Contracting parties had committed themselves in the 1982 Ministerial Declaration to work towards completing and reinforcing the GATT multilateral trading system as the only reliable instrument for the development of world trade, and to contribute through concrete actions to restoring confidence in the basic GATT principles and rules. The first step in that direction should be the elimination of obstacles to exports from developing countries as well as the establishment of more favourable conditions for access of goods from developing countries to industrialized country markets.

The Chairman said that the comments by representatives should assist the Secretariat in preparing for the next special meeting a document which would facilitate the Council's task of assessing trends in international trade and in the trade policies of contracting parties. He suggested that informal consultations be held before the next special meeting to enable the Council to examine more efficiently the implementation of the Ministerial Declaration and of the GATT work program.

The Council agreed that the review of developments in the trading system (special meeting on Notification, Consultation, Dispute Settlement and Surveillance) had been conducted.

At the special Council meeting on 6 November 1984, the Chairman drew attention to the background document (covering the period April-September 1984) entitled "Developments in the Trading System" (C/W/448 and Corr.1) drawn up by the Secretariat. He pointed out that this document differed from its predecessors in that it included an "overview" section with comments by the Secretariat. The Secretariat had also revised the document (covering the previous six-month period) used at the special Council meeting in May 1984 (C/W/437/Rev.1) for use as a reference for the present review. He also drew attention to the Secretariat paper on "Improvement of Notification Procedures" (C/W/446) which had been prepared at the request of delegations.

The representatives of Pakistan, New Zealand, the European Communities, Japan, Yugoslavia, Canada, Egypt, Brazil, Australia, Korea, Jamaica, Finland on behalf of the Nordic countries, Norway, Uruguay, Spain, Bangladesh, Austria, Hungary, India, the United States, Argentina, Singapore and the Philippines spoke on the matter under discussion. Some representatives gave clarification and additional information on points concerning their national trade policies and régimes as referred to in C/W/448 and Corr.1.
Many representatives expressed satisfaction with document C/W/448 and Corr.1 and said that it was a considerable improvement on previous documentation for the special Council meetings. A number of representatives said that the "overview" section was a valuable addition, and there were some suggestions that the Secretariat's analysis and interpretation of developments, as included in this section, be expanded. The "non-events" resulting from governments' successful efforts to resist protectionist pressures, were also said to be important to note and appreciate.

With regard to improvements in the notification and review procedures, several representatives considered that informal discussions should be held, noting that improved notification procedures could lead to greater transparency and to more substantive discussions in the special Council meetings. There was a suggestion that non-notified information included in the documentation be cleared with the country in question before publication by the Secretariat, and that information on modifications of GSP schemes be more complete to allow for proper assessment of these measures.

Several representatives were of the view that there was an imbalance in the documentation in that it focused on measures affecting the trade of the developed countries and did not give sufficient attention, as called for in paragraph 24 of the 1979 Understanding, to matters affecting the interests of the developing countries. It was suggested that the review exercise be orientated towards more precise identification of measures which had been taken in disregard of the commitment in paragraph 7(i), and that the document prepared for the next special meeting should include a chapter on developments of concern to developing countries.

Concern was expressed over the fact that protectionist pressures had continued to increase, even during the recent period of economic recovery. Although the advanced application of the Tokyo Round tariff reductions undertaken by some developed countries helped to build confidence in the trading system, new or intensified non-tariff measures outweighed the few liberalizing actions taken. There had been some important successes in resisting protectionist pressures, but the global losses outweighed the gains. In spite of a few encouraging signs, there had been no real rollback of protectionism and no evidence of significant dismantling of trade restrictions. A source of great concern was the trend toward bilateralism manifest in the growing number of bilateral agreements. Governments were more and more faced with circumstances in which bilateralism appeared to be the preferred choice. It was said that fluctuating exchange rates had contributed to the build-up of protectionist pressure in certain countries.
Some representatives cautioned against proceeding with work in new areas at the expense of progress in others where past attempts in GATT had failed to produce satisfactory results. It was said that the Committee on Trade in Agriculture needed to evolve into a negotiating phase if further progress were to be achieved in that sector.

One serious development was the increasing frustration among individual contracting parties with the multilateral system, and there were differences of opinion as to whether it was still holding firmly together. Some representatives referred to the increasing resort to grey area measures; and references were made to a decrease in the willingness on the part of some governments to consult within GATT's multilateral framework. This had resulted in erosion of confidence in the trading system; and some of the smaller contracting parties, both developed and developing, found themselves to be spectators to debates in GATT dominated by their major trading partners.

Trade in textiles and clothing was cited as a specific sector where the lack of progress in implementing standstill and rollback commitments had a serious negative impact, particularly for the developing countries. Attention was drawn to measures taken by the United States in this sector; these had been examined in the context of the MFA. It was absolutely necessary that markets in this sector be opened to these countries, especially to those with heavy debt burdens and balance-of-payments problems.

Some representatives found particularly disturbing the degree to which major contracting parties were taking actions in direct contravention of their multilateral obligations; the recent US Trade and Tariff Act, the Japanese measures on imports of leather, and the Community's actions on butter sales and its new policy instrument on unfair trade practices by third parties were cited as examples. It was said that these countries should assume a leadership role in re-energizing the basis of GATT and the world trading system by making a genuine attempt at trade liberalization. Such action was needed to preserve the credibility of the GATT system.

While some representatives suggested that the best way to resist protectionist pressures was to push ahead with the Ministerial Work Program and to be more strict in the application of existing GATT disciplines, others were of the view that the time had come for the contracting parties to consider a new round of multilateral trade negotiations.

The Director-General, referring to suggested improvements in the documentation for the special meetings of the Council, said there should be a joint effort on the part of the Secretariat and the contracting
parties, with the clear objective of achieving greater transparency. The proposals in C/W/446 were aimed at rationalizing the notifications already required and at improving their content; there was no intention to add any new burdens on the contracting parties. Regarding the suggestions made by various delegations that C/W/448 lacked a balance of focus on developed and developing country interests, he pointed out that all contracting parties were part of the same system and all were affected by its successes and failures. With regard to an assessment by the Secretariat of the GATT legality or illegality of trade measures, this was clearly the responsibility of the CONTRACTING PARTIES. The open discussion which had transpired in the present special Council meeting was precisely what was needed, and it was important that it had taken place formally and within the GATT. He noted that representatives' views differed as to the current situation; in any case, trends had been identified which sounded an alarm signal, and he appealed to all contracting parties to use the instruments at their disposal - the General Agreement and the Work Program - to try to correct these trends. Amidst the monetary, fiscal and budgetary uncertainties of the present economic climate, the contracting parties could and must introduce elements of certainty and predictability by putting into action their commitment to the GATT principles of most-favoured-nation treatment and non-discrimination in international trade.

The Chairman said that the quality of the documentation prepared for the present special meeting had made possible for the first time a genuine substantive examination of the evolution of international trade. While both optimistic and pessimistic views had been expressed, the general feeling seemed to be that despite the difficulties which it faced, the house of GATT remained firmly attached to its foundations. Nevertheless, there were clear indications that activities were taking place outside it, which were not in conformity with its rules. The principal conclusion to be drawn from this was that all the GATT rules had to be respected by all the contracting parties if the system were to remain intact, and in this regard, greater efforts had to be made in resisting protectionism. The second necessary element for maintaining the integrity of GATT was to carry out the Work Program. While differing views had been expressed as to future work, and in particular whether there should be a new round of negotiations, he considered that it was too early to venture an opinion on this. As to what practical use could be made of the discussions at the present special meeting, the Council's consideration of the Work Program at its regular meeting would give it a better idea of how to proceed.

The Council agreed that the review of developments in the trading system (special meeting on Notification, Consultation, Dispute Settlement and Surveillance) had been conducted.
3. Consultative Group of Eighteen (C/M/183)

At the Council meeting on 6-8 and 20 November 1984, the Director-General, Chairman of the Consultative Group of Eighteen, presented its report for 1984 (L/5721). During the Group’s three meetings in 1984, it had discussed five subjects: subsidies in the GATT system; the relationship between trade policy and the international financial system; structural adjustment; countertrade; and the status of the 1982 Ministerial Work Program. He described the main themes and results of the discussions, and noted that on both occasions when the Group had discussed developments in the Work Program, concern had been expressed about the need for a stronger sense of joint commitment to strengthening the GATT system. There had been agreement on the need to achieve the maximum possible progress in implementing the Program before the November 1984 session of the CONTRACTING PARTIES, and for that session to provide a clear and positive directive for the continuation of work in 1985.

The representative of Colombia suggested that the CONTRACTING PARTIES at their fortieth session examine the effectiveness of the representation of various regions in the Group with a view to taking necessary corrective action. This suggestion was supported by a number of other representatives, including the representative of Brazil, who proposed that the Director-General, as Chairman of the Group, hold consultations and report to the Council as soon as possible on how the balance of the Group’s representation could be improved.

The representative of Chile suggested that a better feedback system could perhaps be arranged to transmit the results of the Group’s discussions to other GATT bodies.

The representative of Jamaica congratulated the Director-General for making the Group a place where effective dialogue took place. He suggested that the Group pay greater attention to the monetary and financial policies of the major reserve currency countries and to how these affected the trading system. Care should be taken that trade policy questions did not move outside the GATT framework to other institutions.

The representative of Egypt, referring to section V of the Group’s report, said that countertrade could also have a trade-creative effect for developing countries by enabling them to pay for their imports through increased exports.

Several representatives of developing countries said that it would be helpful if the Group could issue its reports earlier.

The Director-General said he was ready to hold the consultations that had been proposed concerning the Group’s composition, but warned the Council of the difficulties involved. This was indeed a key issue, because the efficiency and flexibility of the Group depended on its
being small enough to allow for and encourage real dialogue. He appealed to representatives that the CONTRACTING PARTIES should agree at their fortieth session to maintain the present basis for selecting the Group's members for 1985, on the understanding that the proposed consultations would be held thereafter.

The Council took note of the report (L/5721) and of the statements, including the request to the Director-General to hold informal consultations on the effectiveness of the Group's membership after the fortieth session of the CONTRACTING PARTIES.

4. Sub-Committee on Protective Measures (C/M/179)

The Committee on Trade and Development had established the Sub-Committee on Protective Measures in March 1980, in accordance with the CONTRACTING PARTIES' Decision of 28 November 1979 on the Examination of Protective Measures Affecting Imports from Developing Countries (BISD 26S/219).

At its meeting on 14 June 1984, the Council considered the Sub-Committee's reports on its fifth and sixth sessions (COM.TD/SCPM/5 and 6), which had been adopted by the Committee on Trade and Development at its meetings in October 1982 and November 1983, and which had been forwarded to the Council.

The Council adopted the reports.

5. Tariff matters

- Committee on Tariff Concessions (C/M/183)

In January 1980, the Council established the Committee on Tariff Concessions, with a mandate to supervise the task of keeping the GATT schedules up to date, to supervise the staging of tariff reductions, and to provide a forum for discussing questions relating to tariffs.

At the Council meeting on 6-8 and 20 November 1984, the Vice-Chairman of the Committee, on behalf of the Chairman, reported on its activities, noting that since its last report to the Council in November 1983, the Committee had met in December 1983 and in April and November 1984. The meeting in December 1983 had been devoted to the question of establishment of a common data base in connexion with the introduction of the Harmonized Commodity Description and Coding System, and with Article XXVIII negotiations. Agreement had been reached that the Secretariat should begin preliminary work to establish a common data base. Interested delegations had held several informal meetings during the year to advise the Secretariat on the technical needs relating to the data base. Progress was being made in computerizing the information
necessary for the negotiations. As in the past, the Secretariat was ready to provide technical assistance to developing country delegations which might not have the technical means to participate in the data base, so that they could take full part in these negotiations. He recalled that the Harmonized System was to be implemented on 1 January 1987, and noted that several countries had started work on preparing documentation and had exchanged the agricultural chapters of their schedules. He reported that the submission of loose-leaf schedules had progressed slowly; verification of schedules submitted years ago had also progressed slowly. No consensus had so far been reached regarding the application of Article XXVIII to new products, and further informal consultations would be required before this item could be taken up again in the Committee. At its November meeting, the Committee had considered the possibility of preparing a Sixth Certification of Changes to Schedules. The question of implementation of MTN tariff concessions had been placed on the November agenda of the Committee, and a proposal had been made that contracting parties inform the Committee of the status of their implementation of remaining tariff cuts; this proposal would be considered further at the next Committee meeting in the spring of 1985.

The Council took note of the report (TAR/87).

6. Trade in Textiles

(a) Reports of the Textiles Committee and Annual Reports of the Textiles Surveillance Body (C/M/176, 178, 183)

At its meeting on 13 March 1984, the Council considered the reports of the Textiles Committee (COM.TEX/35 and 36) and the annual report for 1983 of the Textiles Surveillance Body (COM.TEX/SB/900 and Corr.1).

The Director-General, Chairman of the Textiles Committee, noted that document COM.TEX/35 was the report by the Textiles Committee on its annual meeting held in December 1983, when it had carried out the second annual review of the operation of the MFA1, as extended by the 1981 Protocol. The Committee had also considered a report by the Textiles Surveillance Body (TSB) on its activities during the period 27 November 1982 to 9 November 1983. This report (COM.TEX/SB/900 and Corr.1) contained findings by the TSB on its review of all restrictions and bilateral agreements notified by various parties to the MFA. Document COM.TEX/36 was the report on a special meeting of the Textiles Committee held in January 1984 to discuss certain procedures announced

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1 Arrangement Regarding International Trade in Textiles (BISD 21S/3) as extended by the 1981 Protocol (BISD 28S/3).
by the United States in December 1983 for reviewing whether or not imports of particular textile products from particular sources were causing market disruption, or threat thereof, for textile products not subject to restraint. Serious concern had been expressed by both importing and exporting countries over these procedures; the Committee had noted the statement by the US delegation that, notwithstanding the use of internal procedures, the MFA remained the legal framework within which US trade policy on textiles would be conducted. During this meeting, the Committee had also adopted a proposal by Pakistan for a review to be undertaken by the TSB on the application of the consultation provisions of the agreements concluded under the 1981 Protocol.

The representative of Mexico, speaking as an observer, noted that Mexico was a party to the MFA and said that he was speaking on behalf of developing countries exporters of textiles and clothing. He recalled that at the Textiles Committee meeting in December 1983, the developing exporting countries had expressed their concern about the changed situation in one major importing market. These developments, along with the points made by the TSB in Chapter II of its report (COM.TEX/SB/900 and Corr.1), merited close examination of the increasingly restrictive trend that was emerging in international textiles trade. The developing exporting countries considered that this situation should be kept under close scrutiny by the Council.

The representative of Pakistan, referring to paragraph 48 in COM.TEX/36, said this looked like a summary by the Chairman, whereas it was his understanding that this paragraph contained the conclusions of the Textiles Committee itself. He also suggested that the Chairman of the TSB should in future present that body's report to the Council in order to underline its importance.

The Director-General, referring to paragraph 48 of COM.TEX/36, said he saw no difference with the Pakistan representative's understanding. The text of the report as it now existed had been drawn up in consultation with the delegations concerned.

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

At the Council meeting on 15/16 May 1984, the representative of Pakistan, speaking on behalf of developing country exporters of textiles and clothing, said that since the special meeting of the Textiles Committee in January 1984, the number of consultation calls issued by the United States had risen to more than 80, covering a large number of developing countries and a wide range of textiles and clothing products. The developing exporting countries were increasingly concerned at this trend and had analysed the factors of market disruption, referred to in Annex A of the MFA, as they applied to the current US textile market.
Although the rates of increase in US imports of textiles and clothing from both developing MFA and developed suppliers were quite impressive in relative terms, it had to be emphasized that the overwhelming part of US consumption was still accounted for by domestic production, and that the proportion of total US imports represented by imports from developing MFA suppliers had declined in 1983 for the fourth consecutive year.

The representatives of the United Kingdom on behalf of Hong Kong, India, Argentina and Turkey supported the statement by the representative of Pakistan.

The representative of the United Kingdom, on behalf of Hong Kong, noted that a number of exporters had challenged the justification of individual calls affecting them and had taken their complaints to the TSB, which had been able to deal with these cases quickly and effectively. This demonstrated that the TSB was an appropriate forum for pursuing concerns on this subject.

The representative of India said that the facts outlined in the statement by the representative of Pakistan contradicted the assurances given by the United States as contained in paragraph 48(f) of COM.TEX/36. Furthermore, the TSB had found that in some cases which had been brought before it, market disruption had not been demonstrated.

The representative of the United States said his delegation understood the concerns expressed by the representative of Pakistan, but did not share the opinion that recent US measures undermined the MFA or signalled a more sharply protectionist policy. The criteria adopted by the United States for its internal review process, and the requests for consultations which had since been made, were designed to deal with a very real problem of sharply increased US textile and apparel imports. Imports from developing countries had accounted for about 70 per cent of this increase. This rate of growth in imports was not the sign of a strongly protectionist policy, but did pose problems which the United States had to address within the framework of the MFA and the relevant bilateral agreements.

The representative of Argentina said that his delegation wanted the decision of the Textiles Committee, as contained in paragraph 49 of COM.TEX/36, to be carried out, so that the TSB could present to the Committee a review of the way in which the consultation provisions of agreements concluded under the 1981 Protocol of Extension had been applied.

The representative of Turkey voiced concern over departures from the MFA system; implementation of the MFA had become increasingly rigid, and importing countries had imposed stricter restrictions on
exports from developing countries. Turkey called on importing countries not to remove from textile producers the possibility of increasing their sales of these products.

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

At its meeting on 6-8 and 20 November 1984, the Council considered the reports of the Textiles Committee (COM.TEX/38 and 39) and the annual report for 1984 of the Textiles Surveillance Body (COM.TEX/SB/984 and Add.1).

The Director-General, Chairman of the Textiles Committee, noted that document COM.TEX/38 related to the special session of the Textiles Committee held on 4-5 September 1984, which had considered two sets of measures taken by the United States; one involved countervailing duty petitions by the US industry with respect to textiles and clothing imports from 13 developing countries, and the other concerned country-of-origin regulations. The Textiles Committee had noted a common view on the measures under discussions, and had agreed to keep this, as well as related matters, under consideration and to review the situation in the light of developments.

Document COM.TEX/39 contained the Committee's report on its annual meeting held on 17 and 22 October 1984. The principal objective of this meeting had been to carry out the major review during the third year of the operation of the MFA as provided for in its Article 10:4. The Committee had also reviewed recent developments affecting international trade in textiles, including the matters dealt with at the Committee meeting on 4-5 September. The major review had been supported by two reports: the first (COM.TEX/SB/984 and Add.1) was by the TSB on the MFA's operation since 1982, containing findings and conclusions by the TSB on its review of all restrictions and bilateral agreements notified by various parties to the MFA; the second was a report by the Sub-Committee on Adjustment analyzing information provided by participating countries on adjustment measures and policies, and containing recommendations by the Sub-Committee on its future work program. At its annual meeting, the Committee had also considered a request by Panama for accession to the MFA, and membership of the TSB for the year 1985. He recalled that the Committee was required, under Article 10:5 of the MFA, to initiate discussions on the MFA's future one year before its expiry. Since the current Protocol would expire at the end of July 1986, the Committee had to meet for the purpose of initiating its discussion before the end of July 1985.

The representative of Pakistan, speaking on behalf of the developing country exporters of textiles and clothing, noted that Chapter IV of the TSB's report clearly reflected that they had been treated in a discriminatory and restrictive manner. The seriousness of the problems caused by the US measures was evident from the spate of criticisms recorded in that report.
The Council took note of the statements and adopted the reports of the Textiles Committee (COM.TEX/38 and 39).

(b) United States - Imports of textiles and clothing (C/M/174, 179, 181)

At the Council meeting on 7 February 1984, the representative of Pakistan, speaking on behalf of developing country exporters of textiles and clothing, noted that the United States had announced that as from December 1983 it would follow additional criteria to address the concerns of its textile and apparel industries. These criteria were contrary to those contained in the MFA, and specifically contravened its fundamental provision concerning market disruption as set out in Annex A. The US announcement had caused widespread insecurity in international trade in textiles, and marked a shift towards a protectionist policy which contravened commitments given during the 1982 Ministerial meeting.

The representative of the United States said his delegation understood the concern expressed by the developing exporting countries, although it did not agree that the US internal measures undermined the system. The United States had tried to address that concern by making clear at the Textiles Committee meeting in January 1984 that any request for consultations would be made in accordance with the provisions of the MFA and of relevant bilateral agreements.

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

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

The representative of the United Kingdom, on behalf of Hong Kong, urged that all consultation calls by the United States be notified to the Textiles Surveillance Body (TSB) as soon as possible.

The Council took note of the statements.

At the Council Meeting on 14 June 1984, the representative of Pakistan, speaking on behalf of developing country exporters of textiles and clothing, expressed concern over a bill entitled "Textile Employment and Fair Trade Act of 1984", recently introduced by a group of US Congressmen, which would further restrict US imports of textiles and clothing.

The representatives of Egypt, Uruguay and Korea endorsed the statement by the representative of Pakistan, and hoped that further US restrictions on textile imports -- which would contradict US obligations under the MFA -- would not come into force.
The representative of the European Communities appealed to the United States to act responsibly and to respect its declarations of attachment to free trade.

The representative of the United Kingdom, on behalf of Hong Kong, endorsed the statements by the representatives of Pakistan and of the European Communities. His delegation hoped that new restrictive legislation of this nature would not be enacted by any contracting party, and also that it would not be used to secure any unilateral departure from existing obligations under the MFA or the General Agreement.

The representative of the United States emphasized that the proposed legislation had been submitted not by the US Administration but by Congressmen whose districts were affected by textile imports. His delegation would convey to Washington the concerns expressed so that the Administration could take them into account when it considered the proposed legislation.

The Council took note of the statements.

At the Council meeting on 2 October 1984, the representative of Pakistan, speaking on behalf of developing country exporters of textiles and clothing, referred to the application of the additional criteria adopted by the United States in December 1983, under which the United States had made more than 100 calls on more than 20 developing suppliers affecting a wide range of textiles and clothing products. Subsequently, in late July 1984, countervailing duty petitions had been filed in the United States on nearly all textiles and clothing products imported from 13 developing countries; the US Department of Commerce had initiated investigations within 20 days of the petitions being filed. Almost simultaneously, new customs regulations had been published which radically transformed existing law and practice on rules of origin. Like the December 1983 measures, these additional measures had disregarded the basic objectives of the MFA and of the 1982 Ministerial Declaration; their impact on and implications for trade were considerable. As for the countervailing duty petitions, even if the Department of Commerce did not eventually impose countervailing duties, the investigations themselves were impediments to trade. Discussion of these issues at special meetings of the Textiles Committee in January and September 1984 had shown overwhelming support for the views held by the developing countries. However, the response from the United States had been negative. The developing country exporters of textiles and clothing therefore proposed to the United States that it enter into plurilateral consultations so as to find appropriate solutions for rectifying the problems facing their trade.
The representative of the European Communities recognized the developing countries' concerns and gave them full moral and political support. He said that the new US rules of origin had been brought into force suddenly, and he listed the negative effects of the new regulations. The instrument chosen by the United States was out of proportion to, and would go beyond, the aim— which the Community shared— of preventing and penalizing fraud. Referring to the conclusions of the September 1984 Textiles Committee meeting (COM.TEX/38), he appealed to the United States to withdraw the new rules for reconsideration. Regarding the countervailing duty actions, a fundamental issue for consideration was whether the United States could, under Article I of the General Agreement, renounce in a selective and discriminatory manner the legal coverage of the Protocol of Provisional Application (BISD IV/77) in applying the injury criterion only to those contracting parties that had signed the Subsidies and Countervailing Measures Code.¹

The representative of Japan said that his delegation fully understood the concerns of developing countries in this matter. Japan had been actively promoting structural adjustment in the textile field, and at the September 1984 Textiles Committee meeting had joined in asking the United States to reconsider its measures.

The representative of Colombia said that the US countervailing duty investigations were discriminatory; none of the countries whose textile and clothing imports were being investigated were signatories to the Subsidies and Countervailing Measures Code, so the United States did not have to show proof of injury. Colombia, as one of those countries, had indicated in various GATT bodies that it was thinking of signing that Code but, because of commitments which the United States intended to impose on Colombia, it had not been able to sign.

The representative of the United Kingdom, on behalf of Hong Kong, supported the statement by the representative of Pakistan. Whereas the September 1984 Textiles Committee meeting had examined these issues primarily in the MFA context, his delegation wanted to examine them in the wider context of the General Agreement. The US countervailing duty petitions appeared to amount to little less than harassment and could hardly be regarded as consistent with the aims and objectives of the General Agreement. As for the new US rules of origin, they should not be applied in the textiles sector outside the framework of the GATT, the MFA and the bilateral agreements; more specifically, the use of origin rules by any contracting party as a protective measure could not be justified in terms of the General Agreement. He supported the call by

¹Agreement on Interpretation and Application of Articles VI, XVI and XXIII (BISD 268/56).
the representative of the European Communities for withdrawal of the US measures, and the proposal by the representative of Pakistan, on behalf of developing country exporters of textiles and clothing, for plurilateral consultations between the United States and affected countries on these issues.

The representative of the United States said he would report to his authorities the concerns over the recent US measures expressed by developing and developed countries. His delegation considered that the appropriate place to discuss these issues was in Washington. He expressed surprise at being advised by the Community on how to run a textile import program. The fact remained that US imports of textiles and clothing had continued to increase. The countervailing duty petitions met the requirements of US laws and the Administration thus had no alternative in this regard.

The Council took note of the statements.

7. Balance-of-payments import restrictions

(a) Arrangements for consultations in 1984 (C/M/174)

Arrangements for consultations in 1984 on balance-of-payments import restrictions were presented to the Council on 7 February 1984.

The Council took note of the arrangements.

(b) Consultation with Brazil (C/M/174)

In December 1983, the Committee held a consultation with Brazil. The report (BOP/R/135) was presented to the Council on 7 February 1984. The Committee had noted that Brazil's balance-of-payments and reserves situation had deteriorated sharply due to a number of factors. While recognizing Brazil's need to maintain import restrictions in the current situation, the Committee had noted that the Brazilian import system remained complex and lacked transparency. It had welcomed a statement by Brazil that it was reviewing the possibility of modifying, simplifying or phasing out a number of import measures. Brazil had mentioned the extent to which import measures adopted by its trading partners had impinged upon its balance of payments. The Committee had recognized the importance of giving particular attention to the possibilities for alleviating and correcting balance-of-payments problems through measures that contracting parties might take to facilitate an expansion of the export earnings of consulting contracting parties.

The representative of Brazil said his delegation had referred to paragraph 12 of the 1979 Declaration on Trade Measures Taken for Balance-of-Payments Purposes (BISD 26S/205), as well as to the recognition by the Consultative Group of Eighteen that balance-of-
payments adjustment should be based on export expansion rather than import contraction. Brazil was not proposing any new rules or mechanisms, nor was it asking the Committee to seek any new commitments from any contracting party beyond those implied in the 1979 Declaration. Brazil was trying to bring about, through appropriate consultations under existing provisions, a climate of cooperation, in which contracting parties currently maintaining measures restricting his country's trade might see fit to suspend some of those measures unilaterally, in order to promote an expansion of Brazil's exports during its balance-of-payments adjustment period. Such a suspension would be effected within GATT rules on a non-discriminatory basis. Brazil hoped that the same spirit of co-operation would prevail in the case of other consulting countries.

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

(c) Consultation with Ghana (C/M/174)

In December 1983, the Committee held a consultation with Ghana. The report (BOP/R/136) was presented to the Council on 7 February 1984. The Committee had welcomed Ghana's efforts to overcome its economic difficulties with the aid of multilateral financial institutions. It had noted that Ghana's import régime had been simplified and that it operated without discrimination regarding sources of supply, except for bilateral clearing systems maintained with a few countries. The Committee had encouraged Ghana to pursue its efforts to adjust to the current difficulties, and had hoped that Ghana would soon fulfil its intention to relax trade restrictive measures as soon as its balance-of-payments situation improved.

The Council adopted the report.

(d) Consultation with Nigeria (C/M/178)

In March 1984, the Committee held a consultation with Nigeria. The report (BOP/R/139) was presented to the Council on 16 May 1984. The Committee had recognized that Nigeria faced a serious balance-of-payments problem and that the measures taken during the period 1982-84 had been introduced in view of the extreme urgency of the situation. Efforts had been made to make the existing system more efficient; however, there was still considerable scope for further simplification of the measures and greater transparency in the implementation of the system. The Committee had welcomed the statement by Nigeria that the measures were temporary, and had encouraged the Nigerian authorities to pursue policies of economic stabilization and diversification of production and exports, which would lead to a sounder external position and permit the progressive elimination of the measures.
The representative of Nigeria said that the current economic stabilization measures being taken by his Government represented forward movement in Nigeria's efforts to meet its GATT obligations.

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

(e) Consultation with Hungary (C/M/179)

In May 1984, the Committee held a consultation with Hungary. The report (BOP/R/141) was presented to the Council on 14 June 1984. The Committee had noted that Hungary's balance-of-payments situation had improved as a result of the demand management measures it had taken, despite some continuing negative external factors. The Committee had welcomed Hungary's efforts to ease the restrictions introduced in 1982 and, taking into account the various internal and external factors affecting Hungary's balance of payments, had reiterated the hope that in the light of progress achieved in internal adjustment, Hungary would soon be in a position to announce a timetable for phasing out the remaining restrictions and returning to automatic licensing, in accordance with paragraph 1(c) of the 1979 Declaration.

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

(f) Consultation with Israel (C/M/179)

In May 1984, the Committee held a consultation with Israel. The report (BOP/R/142) was presented to the Council on 14 June 1984. The Committee had recognized that Israel faced serious and persistent balance-of-payments difficulties, and that policies pursued in the recent past had not led to an improvement of the situation. The policies now being followed comprised a wide range of measures, priority being given to alleviating balance-of-payments problems. There were initial signs that these policies were showing positive effects. The Committee had asked the Secretariat to seek clarification about the status of the licensing measures notified by Israel. The Committee had recommended that Israel should avoid the cumulation of different trade measures taken for similar ends, and indicate -- as soon as practicable in line with improvements in its balance-of-payments situation -- a time schedule for phasing out the restrictions.

The Council adopted the report.

(g) Examination under simplified procedures

- Consultations with Peru, Tunisia and Turkey (C/M/174)

In December 1983, the Committee had held consultations with Peru, Tunisia and Turkey under the simplified procedures. The report (BOP/R/137) was presented to the Council on 7 February 1984.
The Council adopted the report and agreed that Peru, Tunisia and Turkey be deemed to have consulted with the CONTRACTING PARTIES and to have fulfilled their obligations under Article XVIII:12(b) for 1983.

- Consultations with India and Yugoslavia (C/M/179)

In May 1984, the Committee had held consultations with India and Yugoslavia under the simplified procedures. The report (BOP/R/143) was presented to the Council on 14 June 1984.

The Council adopted the report and agreed that India and Yugoslavia be deemed to have consulted with the CONTRACTING PARTIES and to have fulfilled their obligations under Article XVIII:12(b) for 1984.

(h) The trading environment and balance-of-payments consultations (C/M/174, 176, 178, 179, 183)

Following its October 1983 meeting, the Chairman of the Consultative Group of Eighteen had invited the Chairman of the Committee on Balance-of-Payments Restrictions to discuss how the trading environment confronting consulting countries could be given greater weight in the Committee's deliberations (L/5572, paragraph 11).

In a report (BOP/R/138) to the Council on 7 February 1984, the Chairman of the Committee said that this subject had been discussed at informal consultations during November 1983 and January 1984, with particular reference to paragraph 12 of the 1979 Declaration (BISD 26S/208) and to paragraph 2 of the procedures established in 1970 for full consultations (BISD 18S/49). The proposals made by Brazil, referred to in sub-item (b) above, had been taken into account as one main element in the background material for the consultations. Further consultations would be necessary before any firm conclusions could be drawn, and the consultations would continue in the coming weeks.

The Council took note of this information and of document BOP/R/138.

At the Council meeting on 13 March 1984, the Chairman of the Committee drew attention to the main points of a statement, made on his own responsibility, concerning the trading environment and balance-of-payments consultations. The statement was subsequently circulated in document C/125.

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

At the Council meeting on 15/16 May 1984, the representative of the Philippines endorsed the statement in document C/125 and supported its recommendation that the Committee should examine in depth not only the measures taken for balance-of-payments purposes by consulting countries, but also the external trading environment confronting them.
The representative of the United States agreed that the CONTRACTING PARTIES needed to consider ways of improving the balance-of-payments consultative process so as to make it more effective and more relevant to the efforts of consulting countries to alleviate their balance-of-payments difficulties. However, the primary focus of the Committee's consultations should continue to be on the responsibility of the consulting country to obtain balance-of-payments stability through adjustments in its own domestic policies. While the United States was willing to examine suggested actions to remove impediments to export expansion by consulting countries, he cautioned against raising unrealistic expectations. Some of the measures identified by the Committee, such as anti-dumping and countervailing duties, were not protective measures but were actions taken to remedy unfair trade practices by other countries; modification of these measures would not be possible. Certain other measures were taken for similar legitimate reasons, and their modification would encounter considerable opposition. The United States was also concerned that focusing too sharply on individual countries might lead contracting parties to depart from the principles of multilateralism and non-discriminatory treatment.

The representative of the European Communities endorsed the statement in document C/125. Contracting parties should not be lured into a bilateral, discriminatory approach to trade; developing countries needed access to markets, and if the developed and more advanced developing countries opened their markets as much as possible, such an effort would assist in relieving the severe difficulties faced by heavily-indebted nations.

The representative of Jamaica said GATT was concerned with individual products traded by individual countries or groups of countries, and therefore it was essential for the Committee to focus on single countries. In recent years, the developing countries had been forced into the most rigorous domestic measures, and they had little room for further adjustment and stabilization. Measures to assist individual countries should be consistent with the Declaration on Differential and More Favourable Treatment, Reciprocity and Fuller Participation of Developing Countries (BISD 26S/203).

The representative of Argentina said some countries could not adjust their economies more than they were already doing. As far as anti-dumping and countervailing duties were concerned, very much depended on how investigations to determine injury were carried out, whether there were injury tests, and how the duties were applied.

The representative of Brazil supported the statement in document C/125. While adjustment was mainly the responsibility of the consulting country, the process could become not only very difficult but perhaps even impossible without proper consideration of the external factors. The Committee had recognized that it had to look into the question of how the international trading community could co-operate with a consulting country in alleviating its problems. This was a question which could be placed at the level of a certain obligation which surplus countries had towards deficit countries.
The representative of the European Communities said there were some areas, such as safeguards and anti-dumping, where special treatment for developing countries would be inappropriate; in others, such as the dismantling of quantitative restrictions, priority for developing countries was both feasible and appropriate. There was no problem in a bilateral approach to trade problems so long as the results of such agreements were transparent and were profitable to all contracting parties.

The Chairman of the Committee said that document C/125 did not imply any call on contracting parties to renounce their GATT rights; however, paragraph 17(b) called for great caution in launching such new actions concerning products for which a consulting country was a principal or substantial supplier.

The Council took note of the statements and approved the statement by the Chairman of the Committee (C/125).

At its meeting on 14 June 1984, the Council's attention was drawn to points raised by members during the Committee's meeting in May 1984, as reflected in document BOP/R/144.

The representative of Brazil, referring to procedural suggestions in document C/125, confirmed that his country had suggested to its main trading partners a list of co-operative actions that they might adopt on an m.f.n. basis during Brazil's balance-of-payments adjustment period. Brazil was holding bilateral consultations with its main partners to this effect.

The Council took note of document BOP/R/144 and of the statements.

At the Council meeting on 6-8 and 20 November 1984, the Chairman of the Committee informed the Council about the outcome of meetings held by the Committee between 30 October and 2 November 1984 to conduct full consultations with Portugal and Korea and simplified consultations with Bangladesh and the Philippines. The Committee had also considered several items under "Other Business", including a statement from Brazil concerning bilateral consultations held with its major trading partners on possible trade measures which might be taken by them on an m.f.n. basis to help alleviate Brazil's balance-of-payments problems. Complete reports on these consultations would be forwarded to the Council shortly.

The representative of Korea said that the consultations with his country had been an important and useful exercise for the Korean representatives.

The representative of Colombia considered there was a lack of balance between the obligations of developing and industrialized contracting parties. Developing countries could find themselves in a continuing process of consultations under procedures to determine the legality of their trade measures and policies at regular intervals.
Developed countries did not invoke Article XVIII:B, but had sometimes stated that because of disproportionate increases in their imports, in many cases coming exclusively from developing countries, they had found themselves obliged to take corrective measures which often fell into what had been termed the grey area, they had adopted legislation inconsistent with the General Agreement or with other agreements subscribed to by them as in the case of textiles, or they had applied countervailing duties as a form of import restriction. Colombia considered that there should be a GATT procedure under which developing countries could make as detailed an examination of developed country measures as was made of their own in the Balance-of-Payments Committee. Measures by developed countries to restrict imports from developing countries should be examined in the Sub-Committee on Protective Measures. However, the developed countries had always resisted this, and the developing countries had no specialized forum in GATT where such measures could effectively be examined. His delegation would revert to this matter in the Balance-of-Payments Committee but wanted to express its concern in the Council over whether GATT rules established in favour of developing countries were really being implemented, and whether those countries effectively received more favourable treatment in GATT than the more developed contracting parties.

The representative of Chile said that the earlier statement by the Chairman of the Committee in C/125 had been the subject of broad consultation and discussion; some members of the Committee, including Brazil, had made significant contributions towards what appeared to be a substantial consensus. He noted that under present GATT practices, a country facing serious balance-of-payments problems could apply import restrictions; the existence of these problems and their dimension were verified by the International Monetary Fund; the CONTRACTING PARTIES then considered whether the restrictions were commensurate with the balance-of-payments problems as well as the immediate effects of the measures and the period for which they were to operate. In such cases the CONTRACTING PARTIES acted on the assumption that efforts to expand exports in order to ease the balance-of-payments problem had already been exhausted. Under present arrangements, this assumption could have some validity, but it was a false one in terms of economic, political and legal logic. Chile considered that a preventive mechanism was needed to supplement existing provisions, and to utilize possibilities for export expansion before moving on to the stage of import contraction. Apart from economic considerations, this approach would have the political advantage of placing the country faced with payments difficulties in the more positive position of defending trade liberalization. In the consultations, conditions of market access would be examined, particularly for products of special interest to the country concerned, and immediate action that could be taken to improve those conditions could be considered. The mechanism would have to be flexible and effective, with participation by the secretariats of the Fund and of GATT. If the Council were to find these ideas acceptable, Chile proposed that the Chairman of the Committee undertake consultations with the support of delegations wishing to contribute to this suggested improvement of procedures.
The representative of Brazil reiterated the statement by his delegation to the Committee on 2 November 1984 (BOP/R/148), noting that Brazil had submitted to its main trading partners a list of suggestions for co-operative action that they could autonomously adopt on an m.f.n. basis during the adjustment period of Brazil's balance of payments. However, there had so far been no positive specific reaction to the Brazilian approach, but only responses of a general nature. Brazil's offer to make itself available for consultations on its suggestions had not been taken up by any of the countries approached. He expressed his delegation's disappointment at the lack of results from Brazil's initiative. In some cases, barriers to his country's exports had since been strengthened and new ones created. His government would take these facts into account in examining any future request for balance-of-payments consultations with Brazil.

The representatives of Argentina and Peru supported the statements and suggestions made by the representatives of Colombia and Chile.

The representative of the European Communities said that the Community had agreed that an effort should be made to enable Brazil to increase its exports rather than reduce its imports, and had tried to help Brazil by refusing certain protectionist measures which had been called for in the Community. He added that the Community had given Brazil precise answers to its proposal in the fields of the GSP and textiles. He emphasized that it was difficult for the Community to undertake spectacular measures in this regard, but noted that efforts to help countries in balance-of-payments difficulties should be a matter for cumulative efforts by all contracting parties to reverse trends. He noted that Brazil's trade balance with the Community had continued to improve.

The representative of Uruguay supported the statements by the representatives of Colombia, Chile and Brazil.

The Council took note of the statements and agreed that the Chairman of the Committee on Balance-of-Payments Restrictions would hold consultations concerning the proposals made by Colombia and Chile.

8. Emergency action

- United States - Article XIX action on imports of certain specialty steels (C/M/174, 175)

At the Council meeting on 7 February 1984, the representative of the United States said his authorities believed that the compensatory measures notified by the Community in document L/5524/Add.15 were excessive by the standards of Article XIX:3(a). He outlined the major points of US concern about the measures, and added that his delegation understood the Community was considering adjustment of the measures to
address the fact that its quota levels were denominated in ECUs rather than in terms of quantities, which had resulted in an increased dollar impact of the quotas proposed by the Community. There were significant discrepancies between US export data and the Community's import data on products subject to proposed retaliation on both quota and tariff items, particularly with regard to chemical products. The increased Community tariffs on the two chemical items would have a much more severe impact on US trade performance than the US tariffs applied to specialty steel from the Community. He agreed that the Community had the right to retaliate under Article XIX:3(a), unless the Council disapproved of such action. His delegation was not asking the Council to do this at the present meeting. However, more time should be allowed for the two parties to reconcile the major discrepancies and problems in the Community's calculations before the Community retaliated. The United States was therefore requesting the Council to extend the time limit under Article XIX:3(a) for an additional thirty days until the middle of March.

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

The representative of the United States said that his delegation had been informed that the Community had suggested to its member States a 20 per cent increase in the quotas in retaliatory items in order to adjust the differences caused by using a particular ECU/dollar exchange rate. In his view, this was an implicit acknowledgement by the Community that its retaliatory action was larger than intended, and it would be appropriate that the action be delayed a short period so that the necessary corrections could be made before the Community actually retaliated, thus avoiding yet another escalating trade dispute.

The representatives of Brazil and Jamaica asked whether the Council would be competent to take a decision or make a recommendation relating to the US request for deferral of the measures.

The Director-General said that if the Community agreed to the US request for an extension of the date of entry into force of the retaliatory measures, this could be done. If the Community did not agree, its retaliatory measures could be put into force on 1 March unless the Council were to disapprove them; but, in the absence of disapproval, the Council could not postpone the entry into force of the measures, because this was the Community's sovereign right.
The representative of India said that the provisions of Article XIX:3(a) were clear: if the Community wanted to suspend substantially equivalent concessions or other obligations, it could do so after the expiry of thirty days on the condition that the CONTRACTING PARTIES did not disapprove, and the Council was not now being asked to do that. The United States could ask the Community to defer the retaliation; but given the language of Article XIX:3(a), India could not see the Council having any role to recommend such a deferral, which would have to come unilaterally from the Community if it wanted to agree to the US request.

The representative of Egypt emphasized that retaliation was an exceptional case and that contracting parties had to be careful about such measures.

The representative of the European Communities said that the United States and the Community were fully aware of the gravity of the measures taken by both parties. The Community's decision to implement its measures on 1 March was irrevocable unless the Council disapproved them within the appropriate time. If, after 1 March, the United States considered that the Community's measures were excessive, then the CONTRACTING PARTIES would have the right, as stressed by a working party in 1955, "to require adjustments in the action taken if they consider that the action goes beyond what is necessary to restore the balance of benefits" (BISD 38/182).

The representative of the United States said that his delegation was aware of its right to ask the Council to disapprove of the retaliation as provided in Article XIX; also, it could use GATT's dispute settlement procedures; but it was trying to achieve a practical solution short of either of those alternatives, and was simply asking for time to resolve this matter bilaterally.

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

At its meeting on 28 February 1984, the Council had before it a request by the United States (L/5524/Add.21) for disapproval of the measures notified by the Community. The United States had also provided additional information in document L/5524/Add.22 and Corr.1.

The representative of the United States reiterated that his delegation was not questioning the Community's right under Article XIX to suspend substantially equivalent concessions as retaliation for the US safeguard action on specialty steel. However, it was important for the integrity of the safeguard process that retaliatory action was not excessive. Following high-level consultations between the United States and the Community, US concerns with regard to procedural issues concerning this matter had been resolved. In these circumstances, the
proper action for the two parties concerned would be to advise the Council Chairman from time to time on any further developments. Consequently, the United States was not requesting that the Council disapprove, at this meeting, of the suspensions notified by the Community, but reserved its rights in this matter should circumstances change.

The representative of the European Communities reiterated that the Community's decision to implement its measures on 1 March was irrevocable, but that their scope could be adjusted, and that consultations were continuing, with the two parties showing goodwill in trying to find a satisfactory solution. He agreed with the conclusion reached by the representative of the United States, and recalled his own observation made to the Council on 7 February that in this case the two parties had followed GATT procedures in an exemplary way.

The Council took note of the statements.

9. United States - Imports of copper (C/M/176)

At the Council meeting on 13 March 1984, the representative of Chile said that eleven US copper producers, representing 85 per cent of US domestic production, had asked the US International Trade Commission to restrict imports of refined cathode and blister copper. Chile was deeply concerned at this development, which could impede free trade, and might revert to it in greater detail at a future Council meeting.

The Council took note of this information.

10. Norway - Termination of quantitative restrictions on imports from Hungary (C/M/181)

At the Council meeting on 2 October 1984, the representative of Hungary drew attention to document L/5675 announcing that Norway had abolished all quantitative restrictions, referred to in paragraph 4 of Hungary's Protocol of Accession, on imports from Hungary. He expressed appreciation for this measure, and noted that the member States of the European Economic Community were the only contracting parties maintaining quantitative restrictions, inconsistent with Article XIII of the General agreement, on imports from Hungary.

The Council took note of the statement.

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1 See also statement by Chile under item 1(c) on pages 11-12 of L/5734/Add.1.
11. Recourse to Articles XXII and XXIII

(a) Canada

(1) Foreign Investment Review Act (FIRA) (C/M/174)

In March 1982, the Council had established a panel to examine the complaint by the United States. The Panel had submitted its report (L/5504) in October 1983. At its meeting in November 1983, the Council had agreed to revert to this item at its next meeting.

At the Council meeting on 7 February 1984, the representative of Canada said his Government recommended the Council to adopt the report, and would take appropriate steps to make the relevant operations of the Foreign Investment Review Act (FIRA) consistent with Canada's obligations under the General Agreement. Canada noted that the report did not question the validity of the Act itself. The Government would continue to expect foreign firms doing business in Canada to contribute to its economy through their purchase and other business practices by ensuring that Canadian suppliers were given a full and fair opportunity to compete. His delegation had noted that the Panel's findings did not preclude the acceptance of purchase undertakings so long as these did not imply that imported goods were treated less favourably than domestic products. The Canadian Government would henceforth encourage foreign investors to avoid wording, in any purchase undertakings submitted to the Foreign Investment Review Agency, which might imply discrimination. Existing purchase undertakings entered into under the Act would be reviewed in the light of the Panel's report.

The representative of the United States said the report was clear, concise, and well-reasoned; the Panel's work had been exemplary of how the GATT dispute settlement process should function. His delegation commended Canada's decision to take the necessary steps to make FIRA operations consistent with Canada's GATT obligations. The United States believed that the Panel's conclusions added a useful application of relevant GATT provisions to the body of GATT law which all contracting parties had to follow.

The representative of India reiterated his delegation's view that the Panel's report could not be taken to provide an opening for the introduction of new themes, such as investments, in GATT. This dispute concerned two developed contracting parties, and adoption of the report could not contribute to the evolution of case law applying to less developed contracting parties. The report had acknowledged that in disputes involving less developed contracting parties, full account should be taken of the special provisions in the General Agreement and of dispensations relating to these countries, such as Article XVIII:C; thus it was clear that the provisions and arguments invoked against Canada in this case could not be legitimately invoked against less developed contracting parties.
The representatives of Chile, Pakistan, the Philippines, Colombia, Nicaragua and Peru supported the statement by the representative of India.

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

The representative of Brazil supported Argentina's position.

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

(ii) Measures affecting the sale of gold coins (C/M/183)

At the Council meeting on 6-8 and 20 November 1984, the representative of South Africa recalled that in May 1983 the Provincial Government of Ontario had announced that the Canadian Maple Leaf gold coin would, effective 11 May 1983, be indefinitely exempted from the 7 per cent Ontario retail sales tax, while this tax would remain in force on imported gold coins. Protracted bilateral efforts with Canada to rectify this discriminatory practice had not yielded any positive results. Consequently, South Africa had brought this issue to the attention of the CONTRACTING PARTIES on 3 July 1984 (L/5662). Subsequent Article XXIII:1 consultations with Canada had also been to no avail. South Africa maintained that the measure was in breach of Articles II and III of the General Agreement. There had been mounting losses in the sale of Krugerrands in the Province of Ontario since introduction of the measure. The Canadian Federal Government had not taken such reasonable measures as were available to it under the General Agreement to ensure observance of the provisions of GATT, as was required under Article XXIV:12. South Africa had therefore requested (L/5771) that the CONTRACTING PARTIES establish a panel under Article XXIII:2 to examine this matter with a view to giving appropriate rulings.

The representative of Canada said that his Government had been in frequent contact with the Provincial Government concerned and these contacts were continuing. Given that consultations under Article XXIII:1 had been held only in late September 1984, his authorities considered the South African request to be premature. Nevertheless, Canada did not oppose establishment of a panel.

The Council took note of the statements, agreed to establish a panel to examine the complaint by South Africa, and authorized the Chairman, in consultation with the parties concerned, to decide on appropriate terms of reference and to designate the Panel members.
The representative of Australia said the issues raised in South Africa's request were of concern to his Government, which reserved its right to make a submission to the Panel.

The Council took note of the statement.

(b) European Economic Community

(1) Imports of newsprint from Canada (C/M/174, 175, 176, 178, 183)

At the Council meeting on 7 February 1984, the representative of Canada drew attention to his authorities' request for consultations with the European Economic Community under Article XXIII:1, concerning the Community's decision to establish a duty-free quota of 500,000 tonnes for newsprint (L/5589). The consultations had not yet taken place, but informal bilateral discussions were continuing with a view to resolving the issue. In the absence of a settlement in the near future, Canada would return to the issue in the Council.

The Council took note of the statement.

At the Council meeting on 28 February 1984, the representative of Canada said that Article XXIII:1 consultations between Canada and the Community on this matter had failed to produce a satisfactory solution. Canada would therefore ask the Council at its meeting on 13 March to establish a panel to investigate this matter and make appropriate recommendations.

The Council took note of the statement.

At the Council meeting on 13 March 1984, the representative of Canada recalled that the European Economic Community had a bound tariff concession on newsprint at a zero rate within the limits of an annual tariff quota of 1,500,000 tonnes; on 1 January 1984, it had reduced this quota for 1984 to only 500,000 tonnes. This unilateral reduction had impaired Canadian rights under the concession, and had a direct adverse effect on Canadian export interests. Canada considered that the requirements of Article XXIII:1 had been met and asked for establishment of a panel, pursuant to Article XXIII:2. Canada also requested that the Panel be asked to deliver its findings within three months from the present meeting, as provided by paragraph 20 of the 1979 Understanding Regarding Notification, Consultation, Dispute Settlement and Surveillance (BISD 26S/210).

The representative of the European Communities referred to document L/5599 containing the reasons which had led the Community to open the new quota which, he emphasized, was provisional. The Community still hoped it would be possible to reach agreement with Canada. If
Canada insisted on requesting a panel, it had been traditional GATT practice since discussion of the legal framework in 1979 not to refuse such a request. The Community would therefore respect the tradition embodied in the 1979 Understanding, and hoped that other countries would do likewise in other cases.

The representative of Finland, speaking also on behalf of Norway and Sweden, and the representatives of Chile, Austria and New Zealand reserved their GATT rights in this case.

The Council took note of the statements, agreed to establish a panel, and authorized the Chairman of the Council to draw up the Panel's terms of reference and to designate its Chairman and members, in consultation with the parties concerned.

At the Council meeting on 15/16 May 1984, the representative of Canada asked the Director-General to make a statement concerning this item under paragraph (ii) of the 1982 Ministerial Decision on Dispute Settlement Procedures (BISD 29S/13).

The Director-General noted that although terms of reference for the Panel had been agreed, there had so far been no agreement on its membership. The time limit for establishment of panels set in paragraph 11 of the 1979 Understanding had been substantially exceeded. He knew of nothing in the special circumstances of this case which explained the failure over a period of two months to reach agreement on the Panel's membership. It seemed to him that with goodwill and with due regard for the procedures, it should have been possible to reach agreement.

The representative of Canada said his delegation was most concerned about the length of time being taken to reach agreement on the Panel's composition. The undertakings in paragraphs 11 and 12 of the Understanding, particularly with respect to timing, had not been met. Meanwhile, the impact of the measure about which Canada had complained was continuing to affect Canadian exporters and Community importers of newsprint.

The representative of the European Communities agreed that the process of agreeing to the Panel's composition had dragged on too long. The Commission was submitting to the Council of the European Communities a proposal to increase the provisional duty-free quota for newsprint, and the proposed increase would largely cover export possibilities from Canada until the end of 1984. It was therefore incorrect to say that this measure had had any economic impact until now.

The Chairman joined the Director-General in appealing to the two parties to make maximum effort to reach a speedy solution to this problem.

1For the Panel's composition and terms of reference, see document C/127 issued on 5 June 1984.
The Council took note of the statements and agreed to revert to this item at a future meeting.

At its meeting on 6-8 and 20 November 1984, the Council considered the Panel's report (L/5680).

The representative of the European Communities said that the Community was ready to have the report adopted, even though it disagreed with some of the Panel's observations. He noted in particular that the Panel had recognized that the Community might undertake negotiations under Article XXVIII in order to reduce the tariff quota without compensation being paid. He underlined that the Panel, while not excluding the application of Article XIII in such a situation, and while saying that the Community should have recourse to Article XXVIII, had recognized there was no GATT provision which would prevent the Community from opening a tariff quota of 1.5 million tonnes and counting imports coming from EFTA countries against this quota. Nonetheless, it had stated that such a practice was inappropriate and would create a bad precedent. This conclusion, if followed, could create a new obligation for contracting parties that was not based on any legal provision; it was thus unacceptable. The Community had submitted a notification (Secret/312) on 1 November 1984 that it was ready to begin negotiations on this matter under Article XXVIII.

The representative of Canada noted that the Community was ready for the Council to adopt the report. Canada considered that the Panel's conclusions presented well-reasoned interpretations and analysis of GATT rights and obligations, and wanted the report to be adopted as soon as possible, so that the Panel's conclusions could be implemented speedily. Since one delegation had not yet received instructions on this matter (although no problem on substance was foreseen), his delegation would agree to deferring Council action on the report's adoption until the resumed session of the present meeting on 20 November. Any delay beyond that date would create serious difficulties for his delegation.

The representative of New Zealand said that his delegation supported early adoption of the report. His delegation hoped that contracting parties could support both recommendations by the Panel in paragraph 56.

The representative of Finland, on behalf of the Nordic countries, said that the Panel's speed in reaching its conclusions within a short time contributed to the credibility of GATT's dispute settlement mechanism. They agreed with the Panel's conclusion that the Community was justified in engaging in renegotiations under Article XXVIII with the objective of reducing the size of the tariff quota, and that such a reduction would be without payment of compensation. They agreed with the Panel's suggestion in paragraph 56 that the EEC engage promptly in these renegotiations, and noted that the Community had already made a step towards that end. Regarding the dispute settlement mechanism generally, the Nordic countries felt that in order for panels to be able to fulfill the expectations attached to them, they should draw up
conclusions and recommendations that were well-reasoned and based on the provisions of the General Agreement or other agreed instruments. Referring to the Panel's view on one option proposed by the Community for which no specific GATT provision could be found to apply and for which no precedents existed, the Nordic countries noted that the Panel's mandate had been to examine this matter in the light of relevant GATT provisions. Despite the absence of relevant GATT provisions in this question, the Panel had expressed itself, thus attempting to create a precedent in a question that had not been solved in negotiations between contracting parties. In the Nordic view, the main purpose of the dispute settlement mechanism should be to assist in solving the dispute in question, and to examine the matter in the light of existing, commonly agreed rules. Panel reports going beyond this task risked complicating the functioning of the dispute settlement mechanism.

The representative of Chile said that his delegation approved the Panel's conclusions and supported adoption of the report, which dealt with a complex subject and raised matters of general interest for contracting parties, including the scope and operation of Article XIII.

The representative of Austria supported the statements by the representatives of the European Communities and Finland. His delegation had doubts about the Panel's opinion in paragraph 55, which seemed to indicate that the Panel had established new rules; this raised the question of whether the Panel had gone beyond its mandate. Were this to be the case, it would in itself be an unfortunate precedent. Nevertheless, Austria supported adoption of the Panel's report.

The Council took note of the statements and agreed to revert to this matter at its resumed meeting after consideration of other items.

At the resumed meeting, the Council adopted the Panel's report (L/5680).

The representative of the United States said that the report raised some questions about the sanctity of GATT bindings, which all contracting parties should reflect on further.

The representative of Canada recalled his earlier statement and reiterated some of the points which he had made. He noted the effectiveness of GATT's dispute settlement process in this case. The report had addressed all issues raised by the parties and discussed with the Panel, including the so-called "Option B", which it had notably found would not be an appropriate solution. He further reiterated that, in its consideration of panel reports, the Council should not attempt to substitute itself for the interested parties. However, by adopting the report without qualification at the present meeting, the Council had completed one of the most important multilateral phases of GATT work on this dispute. It was now for the parties to follow up on the Panel's findings and conclusions. He again welcomed the Community's formally stated intention to enter into Article XXVIII negotiations; bilateral
negotiations would be needed to resolve a number of issues which the Panel had considered, such as compensation. In his view, this case came close to being a text-book illustration of how the panel process should work once a panel was established.

The representative of the European Communities referred to his earlier statements, and recalled that both the Community and the Nordic countries had questioned the Panel's conclusion on "Option B" - the opening of a tariff quota of 1.5 million tonnes against which imports from EFTA countries would be counted - as no GATT provision had been found to back up the Panel's rejection of this option. In so doing, the Panel had decided on a solution in a discretionary manner. The Community questioned Canada's statement that this constituted a precedent in panel findings. He said that some of the contracting parties in favour of adopting this report had qualifications, and that some clarification would be necessary as a result of the Canadian statement. He hoped that the Article XXVIII negotiations, which the Community had already begun, would proceed as quickly as had the panel process, and that an equally expeditious attitude would be shown by Canada should other cases arise between that country and the Community.

The representative of Canada said that his delegation was satisfied with the Panel's conclusions, which had not been subject to any reservation. His delegation was aware that disagreement had been expressed with some of the Panel's observations; each delegation had the right to express its views.

The Council took note of the statements.

(ii) Operation of beef and veal régime (C/M/183)

At the Council meeting on 6-8 and 20 November 1984, the Chairman drew attention to a communication from Australia (L/5715) requesting consultations with the European Economic Community under Article XXIII:1.

The representative of Australia said it was his Government's view that the operation of the Community's beef and veal régime had nullified and impaired Australia's benefits under the General Agreement and had also impeded the attainment of the objectives of the GATT as envisaged in Article XXIII:1(b). The Community had informally agreed to consultations, which were expected to begin before the end of 1984. Although it hoped that a satisfactory solution could be achieved, Australia reserved its right to bring this matter before the CONTRACTING PARTIES again under the relevant provisions of the General Agreement.

The representative of the European Communities said his delegation would accede to the request for Article XXIII:1 consultations but could not understand why, as this matter was being dealt with bilaterally, it was necessary to bring it to the multilateral level. Australia's desire to do this was either an attempt to put moral pressure on the Community, or an indication that it was not entirely sure of its case and perhaps felt it was a lost cause. It was not a good idea to create such procedural precedents.
The representative of New Zealand said his country wanted to be informed of the results of the proposed consultations and suggested it might be appropriate that they be reported to the Council in due course.

The Council took note of the statements.

(c) Japan

(i) Measures on imports of leather (C/M/176, 178)

In April 1983, the Council had established a panel to examine the complaint by the United States.

At its meeting on 13 March 1984, the Council considered the Panel's report (L/5623).

The representative of Japan said that his Government had not yet completed its examination of the report, and he asked the Council to revert to this item at its next meeting.

The representative of the United States said the Panel had properly applied the provisions of Article XI in finding that Japan's quantitative restrictions on leather imports contravened that Article's prohibition of such restrictions. The Panel had also underscored the fact that special historical, cultural and socio-economic circumstances, such as those referred to by Japan in this dispute, could not be used to justify import restrictions in applying the relevant GATT provisions. His delegation asked contracting parties to adopt the report at the next Council meeting and to recommend prompt compliance by Japan with its GATT obligations.

The representatives of Australia and Canada hoped that Japan would agree to adopt the report at the next Council meeting, and that it would provide a precise indication of the time frame over which the quantitative restrictions in question would be eliminated.

The representative of Chile said that his delegation fully agreed with the Panel's recommendation in paragraph 59. However, paragraph 60 raised several questions which would have to be clarified.

The representative of India expressed his delegation's support for the statements by the representatives of Canada, Australia and Chile.

The representatives of Pakistan, New Zealand, the European Communities and Peru agreed to Japan's request for deferment, but expected the report to be adopted at the next Council meeting.

The representative of the United Kingdom, on behalf of Hong Kong said that paragraph 59 alone should represent the CONTRACTING PARTIES' recommendation on this matter. Paragraph 60 contained a suggestion which did not follow logically from the rest of the report and should therefore be excluded from adoption of the report.
The Council took note of the statements and agreed to revert to this item at its next meeting.

At the Council meeting on 15/16 May 1984, the representative of Japan said that bearing in mind the report’s paragraph 43, his delegation was prepared to accept the report in its totality. If the whole report were to be adopted, Japan would make efforts progressively to liberalize import restrictions on leather in the direction of eventual conformity with GATT provisions, but this process would take a certain amount of time. He outlined the measures that Japan would take with a view to expanding leather trade, and added that his delegation would inform the Council periodically about the actions taken by his Government.

The representative of the United States welcomed Japan's willingness to have the report adopted. The United States agreed that, according to customary GATT practice, Japan should be given reasonable time to conform with GATT provisions. The first step which Japan intended to take was inadequate to restore the GATT benefits that had been nullified and impaired by the restrictions, particularly concerning US exports of finished leather. He stressed that the Panel had considered that special historical, cultural and socio-economic circumstances could not be used as a justification for import restrictions or even be considered by a panel in applying the relevant GATT provisions; such circumstances therefore could not be used to justify taking more than a reasonable period of time to eliminate those restrictions.

The representative of Australia supported the report's adoption on the understanding that the Panel's sole legal finding was set out in paragraph 59. The paragraphs which reflected on special factors affecting the manner in which Japan operated its quantitative restrictions on certain leathers could not modify other contracting parties' rights or Japan's obligations under the General Agreement. Australia would closely monitor how Japan implemented future trade liberalization measures on its leather imports.

The representative of Canada supported adoption of the report, and was willing to allow Japan a reasonable time for eliminating all Japanese quantitative restrictions on leather.

The representative of the United Kingdom, on behalf of Hong Kong, said that once a panel had reported clear findings and conclusions on the question of conformity with the General Agreement, recommendations adopted by the CONTRACTING PARTIES should be acted upon without delay and within a reasonable period of time. Any party to a dispute could always find reasons to argue that its circumstances were unique and required special consideration. If such arguments were once recognized as justifying delay, then the effectiveness of the GATT dispute settlement mechanism could be seriously prejudiced.
The representative of Pakistan said that his delegation could agree to Japan being given a certain amount of time to align its trade régime with GATT provisions, and hoped that Japan would consult with all interested parties and report periodically to the Council on further liberalization measures.

The representative of New Zealand supported the report's adoption and said the measures announced by Japan marked a first step in the right direction. New Zealand believed that the CONTRACTING PARTIES should have the reasonable expectation that, consistent with the finding in paragraph 59 of the Panel's report, Japan would take prompt, positive and progressive steps to make its measures conform with the General Agreement.

The representative of the European Communities shared the views expressed by the representative of Australia. He noted that Japan was now going to comply with its obligations under the Agreement on Import Licensing (268/154).

The representative of Chile said that adoption of the report would not mean that the Council was taking action on the recommendation in paragraph 60. His delegation also had reservations about the choice of words in the report's paragraph 43, which gave the impression that Japanese restrictions on agricultural products were justified or less prejudicial than those affecting manufacturers.

The representative of India said that India would agree to the report's adoption on the clear understanding that the sole legal finding of the Panel was contained in paragraph 59. His delegation continued to have serious doubts over paragraph 60. India would agree to Japan being given a reasonable period of time for reporting compliance with the recommendation in paragraph 59, and would continue to reserve its GATT rights in respect of the findings in that paragraph. Socio-economic reasons could not be a justification for continuing measures which were found to be illegal under the GATT.

The representative of Argentina could agree to the report being adopted on the understanding that Japan's obligations were fully reflected in paragraph 59. The suggestion in paragraph 60 went beyond the Panel's terms of reference. Argentina regretted that the report did not contain any findings in respect of Articles II, X:1 and 3, and XIII:1 and 3.

The Council took note of the statements and adopted the Panel report (L/5623).

See also follow-up item 13 on page 52
(ii) Japan - Measures affecting the world market for copper ores and concentrates (C/M/176, 178, 179, 183)

At its meeting on 13 March 1984, the Council considered a request (L/5627) by the European Economic Community for establishment of a working party under Article XXII:2 to examine Japanese measures affecting the world market for copper ores and concentrates.

The representative of the European Communities said that Japan at present had a dominant position on the world copper market; its tariff régime and purchasing policy enabled it to keep its domestic price higher than the world price and thus to keep a competitive edge over other producers. The Community had no raw copper resources and had to buy its ore and concentrates on the world market, but it was difficult to do this because the Japanese practices constituted barriers to trade; these practices also hurt mineral producers in developing countries which could not compete with Japanese producers. This problem dated back to the Tokyo Round, when the Community had asked Japan to reduce tariff protection for copper metal and products derived from copper, but without success. After the Tokyo Round the two sides had continued their bilateral negotiations on this issue, again without success, which had led the Community to open consultations in 1982 under Article XXII:1, in which a number of interested contracting parties had participated, but again no satisfactory settlement was reached. This was why the Community had decided to take up the problem in a multilateral framework and ask for a working party under Article XXII:2 rather than a panel under Article XXIII:2.

The representative of Japan said that his delegation was not convinced of the need to set up a working party under Article XXII:2. The Community had not explicitly referred to any specific Articles of the General Agreement to which this matter was related. However, Japan was willing for the matter to be discussed in a multilateral forum such as the Working Party on Trade in Certain Natural Resource Products; that body would examine both tariff and non-tariff measures as well as other factors in the trade of non-ferrous metals including copper.

The representative of the European Communities asked whether there was any precedent for a contracting party to refuse a request made by another contracting party to set up a working party under Article XXII:2.

The representative of Japan asked whether there was any precedent for Article XXII being invoked in a case which (a) had nothing to do with the Articles of the General Agreement, and (b) which fell within the ambit of private, independent enterprises in respect of which the Government was not in a position to take any measures. Japan had no government policy concerning copper pricing and purchasing practices.
The Director-General said there had been a series of Article XXII:2 working parties, the last of which had been established in 1968. Since that year, no such working parties had been requested, and the tendency had been to invoke Article XXIII.

The representative of the European Communities said that the tendency of some contracting parties to stick to the letter of the General Agreement, and to overlook its basic objectives, created unbalanced situations which placed their partners in uncomfortable positions. The Community could not understand Japan's refusal of the request for a working party to follow up and examine a matter which went back so many years.

The representative of Japan said it would be a dangerous precedent if a contracting party was automatically granted a working party on the basis that it was dissatisfied with the legitimate commercial activities of private enterprises in other contracting parties which fell outside GATT's purview.

The Director-General said, on a preliminary basis, that any contracting party had the right to raise a problem and have it studied without necessarily having to demonstrate that the problem was linked to a particular GATT article. As to the right of governments to raise questions in GATT concerning practices followed by private firms, he recalled that there were GATT provisions referring to the behaviour of private firms: for example, the Decision of 18 November 1960 concerning restrictive trade practices (BISD 95/28).

The representative of Japan said that all his Government was objecting to was improper invocation of GATT procedures, because the implications of this were so significant that it could change the nature of GATT.

Several representatives asked for further clarification of this issue, so that the Council could know what it was being asked to decide upon.

The representative of the European Communities wondered whether it was really true that the Japanese Government was totally powerless in this matter. If a country could only produce 50,000 tons of copper ores from its own natural resources, and it actually managed to produce 1,000,000 tons of refined copper then, in the prevailing world market situation, something was wrong somewhere.

The representative of India said it was clear that the implications of this issue were greater than those presented in document L/5627; the legal issues at least would have to be dealt with carefully.

The Chairman asked the two principally interested delegations, and delegations which had expressed their interest in this matter, to consult informally with him with a view to resolving this matter.
The Council took note of the statements and of the Chairman's request, and that the Community maintained its request for establishment of a working party, and agreed to revert to this matter at its next meeting.

At the Council Meeting on 15/16 May 1984, the representative of the European Communities maintained his delegation's request for a working party. The Community was not prejudging the results of such a working party and it was not seeking to condemn Japan. The Community had responded to the requests at the preceding Council meeting for more information on this matter by providing document L/5654, and was prepared to discuss the terms of reference proposed in document C/W/439.

The representative of Japan said that the problems of copper pricing and purchase by Japanese companies were to be seen purely on a commercial basis; he added that the present Japanese tariff rates were lower than the final concession rates agreed in the Tokyo Round. If the Community continued to insist that this problem belonged within GATT then, for reasons already stated, Japan believed that the Working Party on Trade in Certain Natural Resource Products was the most appropriate forum for discussing it.

The representative of Chile said that a contracting party had the right to have a working party set up under Article XXII if it so requested; however, such a working party should examine questions falling within GATT. If Japanese copper pricing and purchasing practices were the competence of private industry and if there was no intervention by the Government, it was difficult to see how the CONTRACTING PARTIES could review the question. As for document L/5654, instead of clarifying the situation, it had led to more confusion. Chile therefore suggested that the Chairman, with the help of the Secretariat, hold informal consultations to clarify this question.

The representatives of the Philippines and of Norway, on behalf of the Nordic countries, supported Chile's proposal.

The representative of the European Communities reiterated his delegation's objection to it being left to the Working Party on Trade in Certain Natural Resource Products to discuss this matter. The Community did not want to block work on a whole sector of the world economy because of one specific case. He agreed to the proposal for informal consultations organized by the Chairman, on which the Secretariat would report to the Council.

The Council took note of the statements and agreed that the Chairman, with the help of the Secretariat, would organize informal consultations among interested delegations in order to help find an appropriate solution to this problem.
At the Council meeting on 14 June 1984, the Chairman said that the consultations had begun, and he proposed to report on them at a future Council meeting when they had been concluded or had made further progress.

The Council took note of this information.

At the Council meeting on 6-8 and 20 November 1984, the representative of the European Communities said that documents C/W/439, L/5627 and L/5654 together with the relevant Council minutes during 1984, had provided Council members all the information necessary for a clear idea of this case. Informal consultations had also been held by the Chairman, and the Community now wanted the Council to agree to its request for a working party.

The representative of Japan said that the informal consultations had yielded no new convincing reasons as to why a working party should be established. The Community had rejected his delegation's offer to discuss this matter at a recent meeting of the Working Party on Trade in Natural Resource Products. Japan considered that its position had been in conformity with the requirements of Article XXII.

A number of representatives said that as this matter was still unclear; a further exchange of views was needed either in a working party or in continued informal consultations. They did not favour this matter being dealt with in the Working Party on Trade in Natural Resource Products, considering that a body of that kind should not be burdened by a dispute settlement question.

The representative of Chile suggested that perhaps a sub-group of the Working Party on Trade in Natural Resource Products could be created to examine this problem; if not, the informal consultations should continue.

The representative of the European Communities said it appeared clear that his delegation's request for a working party could not be met. It was difficult to prove that there had been violations of certain GATT provisions in this case; this was yet another "grey" or perhaps "dark" area in GATT. The GATT was apparently unable to respond to the serious difficulty of a contracting party. Although consensus was necessary for the establishment of a working party under Article XXII, there had been no precedent of such a request being rejected; this case would constitute such a precedent, and the Community would draw the appropriate conclusions concerning future applications by others of Article XXII as well as for its own future policy.

The representative of Jamaica suggested that the Chairman should continue the informal consultations and report back to the Council on the issues involved and the precedents relevant to them.
The representative of Norway, speaking on behalf of the Nordic countries, Austria and Portugal, expressed concern at the statement made by the representative of the European Communities. It would be a failure if the Council did not manage to resolve a matter where at least some contracting parties saw real problems.

The representative of Japan said that his delegation would agree to further consultations and would maintain an open-minded attitude. There had been no precedent for a request to establish a working party without presentation of reasonably convincing reasons for doing so. He said that the Community had made statements in the Council in the past to the effect that the Council should avoid automatically setting up working parties whenever a contracting party raised a particular issue.

The representative of the European Communities said that the procedures in this case had been far from automatic. This was the fourth time that the matter had been discussed in the Council, and despite informal consultations, no solution was in sight. The Community had no written proof in this case; there were certain practices which could not be pinned down to specific articles of the General Agreement. The copper industry in the Community faced a real problem and firms might soon close for good. Meanwhile, there was inconclusive discussion in the Council. This reflected poorly on the efficiency of the GATT. The Council's reaction was equivalent to outright rejection of the Community's request.

The Council took note of the statements, noted that there was no agreement on the request by the European Communities, agreed that the Chairman would continue informal consultations with a view to achieving a solution which would be satisfactory to all parties, and agreed to revert to this item at a future meeting.

(d) New Zealand - Imports of electrical transformers from Finland
(C/M/180, 181, 183)

At the Council meeting on 11 July 1984, the representative of Finland said that after New Zealand had initiated anti-dumping proceedings against imports of Finnish electrical transformers, Finland had requested Article XXIII:1 consultations, which had not led to a satisfactory solution. Finland believed that its GATT benefits had been impaired; it reserved its GATT rights and might revert to this matter at a future Council meeting.

The representative of New Zealand rejected any suggestion that it had contravened its GATT obligations on this matter, and reserved its GATT rights.

The Council took note of the statements.

At the Council meeting on 2 October 1984, the Chairman drew attention to document L/5682 concerning Finland's recourse to Article XXIII:2 on this matter.
The representative of Finland noted that in February 1984 New Zealand had decided to impose an anti-dumping duty on imports of two electrical transformers from Finland. The Finnish Government considered that these transformers had not been sold at less than normal value, and that this sale had neither caused nor threatened to cause material injury to New Zealand producers. Finland believed that benefits accruing to it under the General Agreement, especially Article VI, had been impaired. Recent consultations and high-level political contacts had not led to a solution. Consequently, Finland asked that a panel be established to investigate the matter.

The representative of New Zealand said that his Government continued to consider that the transformers had been sold at less than normal value, causing or threatening to cause material injury to the domestic industry in terms of Article VI. Although New Zealand was ready to take all practical steps possible to meet Finnish concerns on this issue within the terms of Article XXIII:1, if Finland asked for a panel, his delegation would not object.

The Council took note of the statements, agreed to establish a panel and authorized the Chairman, in consultation with the two parties concerned, to decide on appropriate terms of reference and to designate the Panel members.

At its meeting on 6-8 and 20 November, the Council was informed of the Panel's composition and terms of reference.

(e) United States

(i) Imports of sugar from Nicaragua (C/M/176)

In July 1983, the Council had established a panel to examine the complaint by Nicaragua.

At its meeting on 13 March 1984, the Council considered the Panel's report (L/5607).

The representative of Nicaragua recalled his delegation's position that the US measure violated Articles II, XI and XIII; the Panel's conclusions as to the inconsistency of the measure under Article XIII were so clear that they alone justified the recommendation for its elimination. However, Nicaragua considered that the United States, by administering its global quota in a discriminatory manner, was granting Nicaragua treatment less favourable than that established in the concession, and consequently it was also violating Article II:1. As for Article XI, Nicaragua considered that it was difficult to examine the reduction of the sugar quota in isolation from the internal regulation system of the US market without which the measure could not have been adopted. However, Nicaragua agreed with the United States on one point at least: regulation of the US sugar market was a matter so important as
to deserve specific treatment in GATT. His delegation proposed that all interested contracting parties should initiate consultations, in which the United States would participate, to define the most appropriate framework for examining this matter. Nicaragua expected that the US measure would be promptly terminated, and that the Council would closely monitor progress in this direction.

The representative of the United States reiterated that the US measure had been taken for broader reasons than trade considerations. The reduction in Nicaragua's sugar imports had not secured any economic or trade benefit for the United States, for US sugar producers or any other domestic industry. Discussion of this issue in purely trade terms within GATT, divorced from the broader context of the dispute, was disingenuous. The United States would not object to adoption of the report, but its view of the issue remained the same: the resolution of its broader dispute with Nicaragua was desirable, and within that context the United States could envisage the removal of the action which Nicaragua had challenged before the Panel.

A large number of representatives supported adoption of the Panel's report. Several representatives of developing countries emphasized the importance of a satisfactory settlement of this case for GATT's dispute settlement procedures, particularly as it involved a dispute between a small developing and a major developed contracting party. They considered that the US measure contravened Part IV of the General Agreement and the 1982 Ministerial Declaration (BISD 29S/9).

The representative of Argentina said that the US measure also contravened paragraphs 7.1 and 7.3 of the 1982 Ministerial Declaration. Argentina regretted that the United States had been unable to advance any argument based on the General Agreement to justify its measure. This had served to strengthen his delegation's conviction about the political nature of a measure directed against a developing country.

The representative of Australia supported adoption of the report on the basis of the recommendation in its final paragraph. He noted that the representative of Nicaragua had suggested that interested contracting parties might enter into consultations with the United States to find a framework for examining conformity of the US sugar quota system with Article XI. Australia would not rule out consideration of that suggestion, but this could not be considered as a condition on which Australia supported adoption of the report.

The representative of Cuba said this was yet another case of the violation of the General Agreement by the application of trade and economic measures for political motives.

The representative of Poland said that no measure implemented by a contracting party and having adverse trade implications for another contracting party could be dismissed as irrelevant for the GATT. The fact that such a measure had been motivated by non-economic considerations and objectives was certainly not an extenuating circumstance.
The representative of India hoped that the goodwill shown by both parties would result quickly in relief being granted to Nicaragua.

The representative of the Dominican Republic appealed to the United States to stop using economic measures for political reasons and to re-establish Nicaragua's sugar quota.

The representative of the United Kingdom, on behalf of Hong Kong, reiterated his delegation's position that once a panel report was adopted, it should be acted upon quickly.

The representative of Switzerland reiterated that, subject to the provisions of Article XXI, his country opposed the use of commercial measures for political ends, just as it opposed political measures being used for commercial ends, whatever country was affected.

The Council took note of the statements and adopted the Panel's Report (L/5607). It also took note that the representative of Nicaragua had asked to keep in touch with the Chairman of the Council as to the follow-up on this matter.

(ii) Manufacturing Clause (C/M/176, 178)

In April 1983, the Council had established a panel to examine the complaint by the European Communities.

At its meeting on 13 March 1984, the Council considered the Panel's report (L/5609).

The representative of the United States asked that the matter be deferred until the next Council meeting, when his delegation would be prepared to enter into full consideration of the report so that the Council could take appropriate action.

The representative of the European Communities agreed to the US request for deferment, but said his delegation expected the report to be adopted at the next Council meeting. He said the scope of this case extended well beyond the Manufacturing Clause, and noted that the report's conclusions were clear as to the scope and limitations of the Protocol of Provisional Application.

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

At the Council meeting on 15 May 1984, the representative of the United States noted that the Manufacturing Clause had been part of US copyright law for 93 years; its elimination would be a difficult issue.

See also follow-up item 14 on page 54.
requiring legislative action. Implementation of the Panel's recommendation would thus take time. The United States accepted adoption of the Panel's report and intended to make every effort to make its practice conform with GATT provisions.

The representative of the European Communities said that his delegation supported the concise conclusions in the report's paragraph 42 and 43. The Community welcomed the statement by the representative of the United States and hoped that satisfactory action on this matter would be taken very shortly.

The representative of Hungary supported the Panel's conclusions. His delegation was pleased to see the Community's position, as reflected in paragraph 23 of the report, defending the integrity of Article XIII.

The Council took note of the statements and adopted the Panel report (L/5609).

12. European Economic Community - Quantitative restrictions on imports of certain products from Hong Kong

- Follow-up on the report of the Panel (C/M/174, 178, 183)

In July 1983, the Council had adopted the report of the Panel (L/5511) which had examined the complaint by the United Kingdom on behalf of Hong Kong. The follow-up on the Panel's report had been discussed at subsequent Council meetings in 1983.

At the Council meeting on 7 February 1984, the representative of the United Kingdom, on behalf of Hong Kong, said the CONTRACTING PARTIES' recommendation that France should terminate the quantitative restrictions in question had still not been effectively acted upon. French action in November 1983 to liberalize trade in three product categories had been a token gesture which affected only 1.5 per cent of the total trade in all items affected by the recommendation, while the recommendation had called unconditionally and unequivocally for the removal of the restrictions. Hong Kong reserved its right to revert to this matter.

The representative of the European Communities said that the recommendation had to leave a certain latitude to the party concerned for implementation in accordance with its own internal procedures and requirements. He confirmed that the Community would conform with the recommendation. Meanwhile, it was investigating imports of quartz watches, and Article XIX safeguard measures were one possible outcome.

The representatives of Pakistan, Jamaica, India, Egypt, Nicaragua and Brazil expressed concern about the functioning of GATT's dispute settlement mechanism as it related to this case.
The representative of the United Kingdom, on behalf of Hong Kong, emphasized that the Panel's finding had resulted in a clear and unconditional recommendation. The Community's minimal increase in some quotas did not address the fact that the CONTRACTING PARTIES had recommended that they should be terminated. This was a matter of concern for the GATT dispute settlement mechanism.

The representative of Brazil suggested that the two parties discuss setting a timetable for implementing the recommendation.

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

At the Council meeting on 15/16 May 1984, the representative of the United Kingdom, on behalf of Hong Kong, said that the communication from the European Communities in document L/5645 (notifying Article XIX action on quartz watches) had caused concern to Hong Kong. In so far as the Community had replaced a national action that had been found to contravene the General Agreement with a Community action that claimed to conform with Article XIX, the Community had to be congratulated for taking a step in the direction of conformity with GATT and acceptance of the m.f.n. principle. However, Hong Kong was far from convinced of the justification for this new emergency action, because the new quota was restricted to digital quartz watches while the alleged damage had occurred in production of mechanical watches. France appeared to have had no digital quartz watch production until March 1984; perhaps the new measure was aimed at protecting that infant industry. He hoped the statement in document L/5645 that these measures were "subject to possible review in the course of their application" meant that the duration might be reduced but would certainly not exceed three years. Otherwise, at the end of that period, the Council might be faced with another similar communication extending the measures for a further three years. Finally, he drew attention to the fact that quota restrictions continued to be maintained by France, in contravention of the General Agreement, on a number of other products including radios, toys and umbrellas. These restrictions had existed for many years and Hong Kong had repeatedly pressed for their removal. He called on the Community to indicate what action France would take to comply fully, within a reasonable time, with the CONTRACTING PARTIES' recommendation in this respect. He reserved his delegation's right to revert to this matter at a future Council meeting.

The representative of Singapore noted that the new safeguard action taken by the Community was on an m.f.n. basis. This reaffirmed the basic principle that Article XIX safeguard action had to be non-discriminatory and should be taken only in exceptional circumstances.

The representative of the European Communities stressed that the Community was willing to hold consultations with any interested contracting party on this matter.
The representative of Canada considered that the Community had enjoyed the "reasonable period of time" referred to in paragraph 22 of the 1979 Understanding Regarding Notification, Consultation, Dispute Settlement and Surveillance (BISD 26S/210), and urged the Community to inform the Council as soon as possible of the further steps it would take to implement fully the CONTRACTING PARTIES' recommendation.

The representative of Korea endorsed the statement by the representative of the United Kingdom, on behalf of Hong Kong, concerning document L/5645, and reserved his Government's GATT rights on this matter.

The representative of Japan reserved his Government's GATT rights with respect to the Community's Article XIX action on quartz watches.

The representative of the European Communities said he had taken note of the comments by previous speakers.

The Council took note of the statements.

At the Council meeting on 6-8 and 20 November 1984, the representative of the United Kingdom, on behalf of Hong Kong, said that bilateral consultations on quartz watches had been held under Article XIX between Hong Kong and the European Communities and were expected to continue. However, France continued to maintain quota restrictions against Hong Kong on various other products despite definitive determinations by the CONTRACTING PARTIES that these measures did not conform with GATT. A reasonable time had elapsed since adoption of the Panel report in July 1983, and all such remaining restrictions should be removed without further delay.

The Council took note of the statement.

13. Japan - Measures on imports of leather

- Follow-up on the report of the Panel (C/M/183)

At its meeting on 15/16 May 1984, the Council adopted the Panel's report (L/5623) on the complaint by the United States.¹

At the Council meeting on 6-8 and 20 November 1984, the representative of the United States said his delegation sought a report from Japan on measures it had taken so far to implement the recommendation in the Panel's report, and on those measures which it intended to take in the near future, particularly with regard to

¹ See page 41
finished leather. Japan had informed the Council in May of the first step it intended to take, relating mostly to wet-blue chrome, but had not yet announced any steps in respect of finished leather. The United States was disappointed by the lack of action in this regard.

The representative of Japan recalled his delegation's statement, at the 15/16 May Council meeting, announcing his Government's intention to take various measures -- which he outlined -- with a view to the expansion of leather trade. Japan had been doing its utmost since then to implement those measures faithfully in the face of great difficulties. Since September 1984, Japan had increased the import quota for bovine and equine wet-blue-chrome, and had implemented the equivalent of automatic import licensing for this product. The import quota on leather had been established and published for the period October 1984 to March 1985, and the Government had been vigorously trying to advance the elimination of tariffs on bovine and equine wet-blue-chrome grain, with a view to getting the necessary legislation enacted by April 1985. Regarding finished leather, he stressed that his authorities were making great efforts to implement the measures announced in May, and were looking into all circumstances surrounding this matter.

The representative of Australia recalled that his delegation had agreed to adopt the report on the basis of the finding in paragraph 59 that Japan eliminate its quantitative restrictions on imports of semi-processed and processed leather products. He said that the steps taken by the Japanese constituted a quota, and thus had done nothing to address the problem. If Japan continued to take measures inconsistent with its GATT obligations, Australia might want to take the matter up in GATT.

The representative of India said that notwithstanding his delegation's position that paragraph 59 of the report constituted the sole legal basis for its adoption, India had concurred with the Council's decision that Japan be given some time to implement the Panel's recommendation. His delegation looked forward to expeditious compliance.

The representative of the European Communities noted the Japanese statement, which his delegation might want to bear in mind in future.

The representative of Brazil said that his delegation felt it was now time that Japan comply with the Panel's recommendation. He reiterated his delegation's view that there should be full compliance with the recommendations of all reports adopted by the Council which were clear and unequivocal.

The representative of Uruguay said that his authorities wanted to know what new measures Japan was planning to take on the products in question, whether the measures had been and would be implemented for all countries concerned and, if so, what the result had been.
The representative of New Zealand suggested that Japan address all aspects of the Panel report with as much energy as it had indicated had been brought to bear on implementation of the announced measures.

The representative of Japan recalled that at the time the report was adopted, his delegation had indicated that time would be needed to bring Japan's practices on leather imports into conformity with GATT; this seemed to have been recognized by everyone. He reiterated that measures would be taken one by one, pointing out that implementation of the initial steps announced had been very difficult and had required all the energies of the responsible authorities.

The Council took note of the statements.

14. United States - Imports of sugar from Nicaragua

- Follow-up on the report of the Panel (C/M/178, 180, 183)

At its meeting on 13 March 1984, the Council had adopted the report of the Panel (L/5607) which had examined the complaint by Nicaragua.

At the Council meeting on 16 May 1984, the representative of Nicaragua said that if his authorities were correctly informed, the United States had recently increased its total sugar import quota for the current fiscal year by about 100,000 short tons; however, Nicaragua had not received any share of the increased US quota. He asked the United States to inform the Council of its intention regarding the CONTRACTING PARTIES' recommendation.

The representative of the United States reiterated that for the United States to lift the measures in question would first require a resolution of the broader dispute between his country and Nicaragua. The United States had not obstructed Nicaragua's resort to the GATT dispute settlement process, and recognized that Nicaragua had rights under Article XXIII which it had preserved and could continue to exercise.

The representative of Cuba said that the United States was challenging the CONTRACTING PARTIES' recommendation by not reintroducing Nicaragua's sugar import quota. The United States had also taken other measures which hampered Nicaragua's trade and economic development, such as mining its harbours and exercising other means of military and economic pressure.

The representative of the United States said that the representative of Cuba had exceeded the extent of comments necessary under this item, and any enlargement of the discussion on the follow-up to the Panel's report was out of order.

1 See page 49.
The representative of Argentina said that the United States should implement the CONTRACTING PARTIES' recommendation; it was reasonable for Nicaragua to request specific information on when and how the United States intended to do this.

The representative of Nicaragua maintained her delegation's request to the United States for information on US intentions regarding the CONTRACTING PARTIES' recommendation.

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

At the Council meeting on 11 July 1984, the Chairman said that he had received a letter from Nicaragua's Minister of Foreign Trade asking him, in his capacity as Chairman of the Council, to urge the United States to notify the CONTRACTING PARTIES promptly of the measures it intended to take in order to comply with the Panel's recommendation. The Chairman said he had discussed this matter with the delegations of Nicaragua and the United States, and hoped to be able to provide the Council with further information at a later date.

The Council took note of the statement.

At the Council meeting on 6-8 and 20 November 1984, the representative of Nicaragua said that the United States had not only failed to take account of the Panel's recommendation, but had taken action in October on Nicaragua's sugar quota for 1984-85 which was deliberately contrary to the General Agreement; once again, it had failed to notify the measure to the CONTRACTING PARTIES. The US action would amount to a loss in Nicaragua's export earnings of about US$17 million. There was no doubt that this was a non-commercial measure applied in breach of paragraph 7(iii) of the 1982 Ministerial Declaration. Nicaragua considered that it had exhausted the procedures available under the GATT, and in such circumstances, it could only appeal for help from the CONTRACTING PARTIES. Nicaragua was unsure how to exercise its rights under Article XXIII. Retaliatory measures would be contrary to its own interests and were, moreover, contrary to the spirit of the General Agreement. His delegation was sure that the CONTRACTING PARTIES would make every possible effort to bring about a constructive solution to a dispute that was causing serious injury to a developing contracting party.

The representative of the United States said that his delegation's position on this case had not changed. The United States had not obstructed Nicaragua's resort to GATT's dispute settlement process; it had stated explicitly the conditions under which the issue might be resolved; and it recognized that Nicaragua had certain rights under Article XXIII which it had reserved and could continue to exercise.

The representative of Argentina reiterated his delegation's position that the United States should implement the recommendation by the Panel, and respect paragraphs 7(i) and (iii) of the Ministerial Declaration.
The representative of Brazil recalled the statement made by his delegation at the Council meeting in March 1984 when the Panel report had been adopted. Brazil attached great importance to speedy and full implementation of the Panel's recommendation.

The representative of Cuba said that her delegation was deeply concerned by the failure of a contracting party to comply with a panel recommendation, especially in view of paragraph 7 of the Ministerial Declaration, as such failure would be a dangerous trend for GATT.

The representative of Hungary quoted a recent statement, with which he fully agreed, by a ranking US Administration official to the effect that a high priority of US policy in GATT was to try to strengthen the dispute settlement procedure to make its rules more enforceable.

The representative of India recalled his delegation's statement at the Council meeting in March 1984 and said that, given the importance of the dispute settlement mechanism to the GATT system, India hoped that the United States would comply quickly with the Panel's recommendation.

The representative of Uruguay supported the statements made by the representatives of Argentina and Brazil.

The representative of Poland said that the Council should be very concerned to find itself in a blocked situation, where a major trading nation first disregarded a basic provision in the Ministerial Declaration in applying a commercial measure for non-economic reasons, and then stated that this contravention should be of no concern to GATT.

The representative of Nicaragua thanked representatives who had expressed support for her country's position. The attitude of the United States in this case gave cause for great concern because it had shown clearly that it had no intention of trying to find a satisfactory solution. Her delegation would reserve further comment on this matter until the fortieth session of the CONTRACTING PARTIES.

The Council took note of the statements.

15. United States tax legislation (DISC)

- Follow-up on the report of the Panel (C/M/180, 183)

At the Council meeting on 11 July 1984, the representative of the United States recalled that his delegation had pledged to the Council at its meeting on 1 October 1982 that the US Administration would seek new legislation to replace the Domestic International Sales Corporation (DISC) legislation so as to meet the concerns expressed by Council members. Since that meeting, his delegation had reported periodically to the Council on the Administration's progress toward reaching that
goal. He was pleased to inform the Council that on 27 June 1984, Congress had passed the Foreign Sales Corporation Act (FSCA) as part of the Deficit Reduction Act of 1984. The United States believed that the FSCA, as an alternative to the DISC, conformed with the General Agreement and the rulings of the Council on this matter.

The representative of the European Communities said that his delegation had a number of problems with the new Act, which seemed to pose problems of compatibility with the General Agreement and, in particular, with the Council's understanding of December 1981 (L/5271) when the Council had adopted the Panel report (L/4422). His delegation reserved its GATT rights and would revert to this matter at a future Council meeting.

The representatives of Canada and Australia continued to have reservations over certain aspects of the new Act in terms of compatibility with GATT, and therefore reserved their rights to revert to this matter.

The representative of Jamaica trusted that this matter would continue to be dealt with in the Council and not in the Committee on Subsidies and Countervailing Measures.

The Director-General said that the first step would be for the United States to notify the new legislation to GATT once it had been signed by the President, after which the CONTRACTING PARTIES could decide on any appropriate follow-up.

The representative of Brazil said his delegation looked forward to receiving the text of the new US legislation, which was of great interest to his country.

The Council took note of the statements.

At the Council meeting on 6-8 and 20 November 1984, the representative of the European Communities recalled his statement at the July 1984 meeting of the Council in which he had raised two issues of concern regarding the FSCA: the taxes which had been deferred under the DISC legislation and which the FSCA had now forgiven, and the compatibility of the FSCA with the General Agreement and with the understanding of December 1981 (L/5271). Since that time nothing had been done by the United States to address the problems raised. The Community wanted the opportunity to discuss the follow-up to the Panel report, and suggested that plurilateral consultations be set up to examine the question of the deferred taxes which now were forgiven and the GATT compatibility of the new legislation. This was within the scope of paragraph 22 of the 1979 Understanding Regarding Notification, Consultation, Dispute Settlement and Surveillance (BISD 265/210). His delegation was open-minded as to how the consultations should proceed, but wanted to move rapidly towards them.
Many representatives supported the Community's proposal in L/5716 for plurilateral consultations on the question of the deferred taxes and the GATT compatibility of the new US legislation, and asked to be included in any consultations held on this matter.

The representative of New Zealand said that his authorities were concerned by the US intention to continue the DISC scheme for exporters with annual export sales of up to US$10,000,000; roughly 90 per cent of New Zealand exporters would fit this category. Thus, the United States was asking for endorsement of subsidies for firms which were in direct competition with New Zealand firms.

The representative of Spain said that the persistence of this problem was not only injurious to the parties concerned but prejudiced the entire GATT system. Spain was ready to support any procedure which might solve this problem.

The representative of the United States said that the Community's failure to respond to the US standing offer to consult bilaterally on the FSCA cast doubt on the sincerity of the Community's request. The United States had duly notified the CONTRACTING PARTIES of the enactment of the FSCA in conformity with paragraphs 3 and 22 of the 1979 Understanding. This legislation had removed the offending trade practice; thus, the matter had been resolved and there was no basis for further surveillance. Any allegations with regard to the FSCA's conformity to US obligations under the General Agreement would raise new issues which could be pursued under Articles XXII and XXIII procedures. The United States objected strenuously to the establishment of a plurilateral "follow-up" review pursuant to paragraph 22 of the 1979 Understanding, but if that were to be decided, the United States would insist that the review include a determination as to the GATT conformity of the tax practices of Belgium, France and the Netherlands. Any contracting party was free to seek information on the FSCA on a bilateral basis from the United States pursuant to paragraph 3 of the 1979 Understanding.

While the representative of the European Communities could understand the US opposition to discussion of the new legislation under paragraph 22, he could not understand the US refusal to discuss what remained of the DISC, i.e., the deferred taxes which had now been forgiven. His delegation had requested informal consultations in order to avoid a dispute over the legal foundation for formal consultations. If the United States insisted on treating the FSCA and the DISC as separate matters, the Community was nevertheless entitled to formal consultations on the deferred tax issue. It was up to the United States to choose. Informal consultations would allow for clarification of both aspects and thus might avoid Article XXIII consultations on the FSCA in the future.

The representative of the United States said that the Community was suggesting that Article XXIII somehow required payment of some kind of back damages, and pointed out that this Article promoted prospective remedies. The FSCA was the response to the DISC Panel report.
The representative of Australia said that the FSCA's forgiveness of taxes deferred under DISC had not responded to the Panel's recommendations. As the Community had stated, the contracting parties were entitled, under the surveillance procedure, to ask the United States certain questions; it was not proper for the United States to include, as a condition for the proposed consultations, examination of other matters which had not come before the CONTRACTING PARTIES.

The representative of the European Communities said that it would not be acceptable for this matter to be kept on the agenda and taken up at the next Council meeting. The United States should agree, at least, to begin informal discussions so as to see what should be discussed with regard to the former DISC legislation in terms of the Panel's report.

The Chairman suggested that he consult with the delegations concerned regarding the best way to proceed with this matter at the next Council meeting.

The representative of the United States agreed that further time should be allowed for informal consultations without any decision taken as to what future steps might be; the best approach would seem to be bilateral consultations with any and all interested parties.

The representative of the European Communities said he had wanted to avoid this legal battle, but reiterated that the Community was fully within its rights, under paragraph 22 of the 1979 Agreement, in asking for consultations which were not to be bilateral.

The Chairman explained that the consultations he had suggested were to be for the sole purpose of clarifying the scope of the discussion on this item at the next Council meeting, and would not constitute the informal consultations requested by the Community.

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

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

(a) Biennial reports

(i) Caribbean Common Market (C/M/181)

At its meeting on 2 October 1984, the Council considered document L/5671 containing information given by the member States of the Caribbean Common Market.

The Council took note of the report.
At its meeting on 2 October 1984, the Council considered document L/5668 containing information given by the parties to the Association Agreement between the European Economic Community and Cyprus.

The Council took note of the report.

At its meeting on 2 October 1984, the Council considered document L/5667 containing information given by the parties to the Association Agreement between the European Economic Community and Malta.

The Council took note of the report.

At its meeting on 7 February 1984, the Council considered document L/5604 containing information given by the parties to the Agreement between the European Economic Community and Yugoslavia.

The Council took note of the report.

At its meeting on 28 February 1984, the Council considered documents L/5611 through L/5617, containing information given by the parties to the Agreements between the European Economic Community and the member States of EFTA and FINEFTA.

The representative of Chile said that his delegation wanted further information on the seven Agreements, and asked that consideration of this item be deferred until the necessary background information was available.

The representative of Sweden said that the information requested by the representative of Chile would be available at the next Council meeting.

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

At the Council meeting on 13 March 1984, the Chairman said it had not been possible to obtain the information in time for the present meeting. He understood that the Community and EFTA member-State
delegations would soon deliver the information directly to the delegation of Chile and also to the Secretariat so that it could be made available to other contracting parties.

The Council took note of the statement and agreed to revert to this matter in due course.

(vi) Co-operation Agreement between the European Economic Community and Algeria, Morocco, Tunisia, Egypt, Jordan, Lebanon and Syria (C/M/181)

At its meeting on 2 October 1984, the Council considered document L/5674, containing information given by the parties to the Co-operation Agreements between the European Economic Community and Algeria, Morocco, Tunisia, Egypt, Jordan, Lebanon and Syria.

The Council took note of the report.

(b) Australia/New Zealand Closer Economic Relations Trade Agreement (ANZCERT) (C/M/175, 181)

In April 1983, the Council had established a working party to examine this Agreement and had authorized the Chairman of the Council to designate the Chairman of the Working Party in consultation with the delegations principally concerned.

At the Council meeting on 28 February 1984, the Chairman informed the Council that following such consultation, Mr. Nogueira Batista (Brazil) had been designated Chairman of the Working Party.

At its meeting on 2 October 1984, the Council considered the report of the Working Party (L/5664). The report noted that the central trade objective of the Agreement was the elimination of remaining barriers to all goods traded between Australia and New Zealand. The parties to the Agreement had submitted that it would create a free-trade area fully compatible with the requirements of Article XXIV. Some contracting parties had reserved their GATT rights with respect to the GATT conformity of the Agreement, and concern had also been expressed as to the GATT rights of third parties in connexion with the Agreement.

The representative of Australia, speaking on behalf of both parties to the Agreement, considered that ANZCERT fully met the requirements of the General Agreement, in particular Article XXIV. Total free trade between Australia and New Zealand would be achieved no later than 1995 without raising barriers to the trade of other contracting parties. Both parties were prepared to furnish reports biennially on the Agreement's operations, but saw no need to continue such reporting once full free trade was reached.
The Council took note of the statements, adopted the report and agreed that the Australia/New Zealand Closer Economic Relations Trade Agreement (ANZCERT) be added to the calendar for examination, every two years, of reports on developments under regional agreements.

17. Waivers under Article XXV:5

(a) **India — Auxiliary duty of customs (C/M/176)**

By their Decision of 15 November 1973 (BISD 20S/26), as extended until 31 March 1984 (BISD 30S/9), the CONTRACTING PARTIES had waived application of the provisions of Article II of the General Agreement to the extent necessary to enable the Government of India to apply the temporary auxiliary duty of customs on certain items included in its Schedule XII.

At its meeting on 13 March 1984, the Council considered a request by India for a further extension of the waiver until 31 March 1985 (L/5624 and Add.1).

The representative of India explained that the special circumstances which had obliged it to maintain its auxiliary duty on customs the previous year continued to exist. The auxiliary duty was not intended to be a measure of protection designed to restrict imports. India stood ready to consult with any contracting party which might consider that serious damage to its interests was caused or imminently threatened by the application of auxiliary duties.

The Council approved the text of a draft decision (C/W/436) extending the waiver until 31 March 1985, and recommended its adoption by the CONTRACTING PARTIES by postal ballot.

The Decision was adopted on 16 April 1984 (L/5638).

(b) **Pakistan — Renegotiation of schedule (C/M/183)**

By their decision of 29 November 1977 (BISD 24S/15), as extended until 31 December 1984 (3OS/10), the CONTRACTING PARTIES had waived the application of the provisions of Article II of the General Agreement to enable Pakistan to maintain in force the rates of duty provided in its revised Customs Tariff, pending the completion of negotiations for the modifications or withdrawal of concessions in its Schedule.

At its meeting on 6-8 and 20 November 1984, the Council considered a request by Pakistan for a further extension of the waiver until 31 December 1985 (L/5694).

The representative of Pakistan said that the reasons for revision of the bound tariff rates were primarily fiscal. The budgetary difficulties which had led to these revisions had continued. He
reported that Pakistan had completed negotiations with one country and had received proposals from others. More time was needed to complete these negotiations, so Pakistan was requesting that the time limit for the waiver be extended.

The representative of the United States supported the request by the representative of Pakistan.

The Council took note of the statements, approved the text of the draft decision (see Annex I), and recommended its adoption by the CONTRACTING PARTIES by a vote at their fortieth session.

(c) Uruguay - Import surcharges (C/M/179)

By their Decision of 24 October 1972 (BISD 19S/9), as extended until 30 June 1984 (BISD 30S/13) the CONTRACTING PARTIES had waived application of the provisions of Article II of the General Agreement to the extent necessary to allow the Government of Uruguay to maintain certain import surcharges in excess of bound duties.

At its meeting on 14 June 1984, the Council considered a request by Uruguay for a further extension of the waiver until 30 June 1985 (L/5655).

The representative of Uruguay said that his country was engaged in a process of reducing, simplifying and harmonizing its import tariff through the application of a single customs tax, but world economic difficulties had necessitated some adjustments in this process. It was in order to have time to finalize the alignment of concessions in Schedule XXXI with the new tariff structure now in force that Uruguay was asking for a further extension of the waiver.

The Council approved the text of the draft decision extending the waiver until 30 June 1985, and recommended its adoption by the CONTRACTING PARTIES by postal ballot.

The Decision was adopted on 16 July 1984 (L/5663).

(d) United States - Caribbean Basin Economic Recovery Act (C/M/175, 178, 183)

At their thirty-ninth session in November 1983, the CONTRACTING PARTIES had established a working party to examine the United States request for a waiver under Article XXV:5 (SR.39/1, page 10) concerning this Act, and had agreed that the Chairman of the Council should designate the Chairman of the Working Party in consultation with delegations.

At the Council meeting on 28 February 1984, the Chairman informed the Council that following such consultation, Mr. Chiba (Japan) had been designated Chairman of the Working Party.
At the Council meeting on 15/16 May 1984, the Council agreed to invite to meetings of the Working Party as observers those beneficiary countries which did not have observer status in the Council.

At its meeting on 6–8 and 20 November 1984, the Council considered the Working Party’s report (L/5708).

The Working Party had made an in-depth examination of the CBERA and the implication of its implementation for the General Agreement. The Working Party’s conclusions in paragraphs 58 to 65 reflected, in a carefully balanced manner, the views expressed by members. There had been a large measure of support and understanding in the Working Party with respect to the objectives and purposes of the CBERA which, it had been noted, were consistent with the objectives of the General Agreement. At the same time a number of questions had been raised concerning the relationship of the CBERA to GATT principles and provisions. The Working Party had recognized that there were a number of different approaches within the GATT framework to the establishment of preferential schemes, and that each case had to be analyzed on the basis of all the circumstances peculiar to it. It had been acknowledged that a decision on whether to ask for a waiver could only be made by the United States, which had requested that the draft waiver annexed to L/5708 (reproduced as Annex II of this report) be submitted to the CONTRACTING PARTIES for a vote. The Working Party had prepared the draft waiver bearing in mind the assurance given by the United States that the Act would be administered in a manner which did not damage the trade of non-beneficiary suppliers. The Working Party had noted the understanding that the waiver would in no way affect the legal rights of contracting parties under the General Agreement. According to paragraph 1 of the draft waiver, the provisions of Article I:1 of the General Agreement would be waived until 30 September 1995, to the extent necessary to permit the United States to provide duty-free treatment to eligible imports of Caribbean Basin countries benefiting from the Act’s provisions. The provisions of the draft waiver concerning notification of trade-related measures taken under the Act, reporting requirements, review, consultations, and treatment of sugar were intended to provide full transparency with regard to the Act’s implementation and to ensure that the GATT rights of contracting parties were not unduly impaired.

The representative of the United States said that his delegation had attempted to address in a satisfactory manner the concerns of other contracting parties which had been raised in the Working Party. His delegation urged the Council to adopt the report and forward the draft waiver to the CONTRACTING PARTIES for favourable consideration at their fortieth session.

The representative of Cuba said that the Act’s provisions were detrimental to the universal development of the region, because various Caribbean States had been excluded. Concessions for entry into the US market had been designed on the basis of bilateral relationships through
country-by-country negotiations, another discriminatory feature implicit in the Act. Cuba considered that this kind of arrangement was incompatible with certain Articles of the General Agreement, and with paragraph 7(ii) of the 1982 Ministerial Declaration (BISD 29S/11).

The representative of Australia supported adoption of the report and approval of the draft waiver. The Working Party had achieved the twin aims of trying to ensure that the benefits conferred on the developing country beneficiaries would not be impaired by the terms of the waiver, and also that the GATT rights of non-beneficiaries, developing and developed, were not unduly impaired. The discussions on alternative approaches for handling this case would provide a valuable basis for considering similar arrangements in the future.

The representative of Nicaragua noted that Title II of the Act, concerning duty-free treatment, had entered into force on 1 January 1984, meaning that the United States had not considered it necessary to secure approval from the CONTRACTING PARTIES before implementing provisions falling specifically within GATT's purview. Such action was in breach of paragraph 7(i) of the Ministerial Declaration. The United States had presented the CBERA as being a regional program of limited duration designed to promote economic and political stability of the Central American and Caribbean region. It was therefore essential that any waiver granted by the CONTRACTING PARTIES be designed, unequivocally, to achieve that objective, which would be the only objective that could legitimately justify such a waiver. It would not have been difficult for the United States to find an appropriate provision in GATT allowing preferences at regional level; existing GATT provisions, together with the existence of the GSP as a permanent independent mechanism, seemed to offer the necessary guarantees. Nicaragua believed that the conditions of the draft waiver would oblige the United States to take due account of this concern. Her delegation was convinced, however, that the economic recovery of this region — which was the Act's stated aim — could not be achieved so long as some countries in the region were excluded from its benefits. Furthermore, the Act could not be consistent with GATT principles if applied in a discriminatory manner; such discrimination was also inconsistent with GATT's principles. She said that the exceptional circumstances that the United States had put forward to justify its request for a waiver affected all countries in the region. In these circumstances GATT's consultation and nullification or impairment mechanisms would be ineffective. Nicaragua considered that the Council could adopt the Working Party's report with the following two conditions: (1) it should be clearly understood that the waiver from Article I of the General Agreement did not invalidate the commitments in paragraph 7(iii) of the Ministerial Declaration; Nicaragua sought the Director-General's opinion in that respect; and (2) the word "beneficiary" should be deleted from the third paragraph of the preambular part of the draft waiver. This amendment would adjust the text of the draft to what had been stated by the US Government, as reflected in L/5573 and in paragraph 4 of the Working Party's report. She added that if the United States were to apply the Act in a non-discriminatory manner, this would be consistent with other programs of multilateral assistance for that region. She concluded by saying that the CONTRACTING PARTIES' decision on this matter could have grave consequences.
The Director-General said that it was not for the Secretariat but for the CONTRACTING PARTIES to decide how the provisions of the Ministerial Declaration were to be interpreted and implemented. The language of paragraph 7(iii) required that contracting parties abstain from taking restrictive trade measures for reasons of a non-economic character not consistent with the General Agreement. In this case, the United States was asking for a waiver that would permit it to grant certain benefits to a group of developing countries without extending those benefits to all contracting parties. It was not for the Director-General to say why these benefits might be granted to some contracting parties without being extended to others which might consider themselves in a similar situation. It was clear, however, that the waiver would not authorize the application of restrictive measures to the trade of any contracting party.

The representative of Finland, on behalf of the Nordic countries, said they did not oppose granting the waiver but saw a need in GATT for a discussion on preferential arrangements between industrialized and developing countries. In principle, it should not be excluded that preferential agreements in favour of developing countries be based on GATT provisions instead of on waivers from those provisions.

The representative of the Philippines said that his delegation supported adoption of the report, on the understanding that the draft waiver had to be interpreted in the light of the discussions reflected in that report's Annex II.

The representative of the European Communities noted that the Working Party had recognized that there were varying approaches within GATT concerning establishment of preferential arrangements, and that each case should be analyzed on its own merits. The Community supported adoption of the report and would vote in favour of a decision granting a waiver at the fortieth session of the CONTRACTING PARTIES.

The representative of the United States said that his delegation wanted to see the report, and the draft waiver, go to the CONTRACTING PARTIES as they stood. Furthermore, he wanted it to be clear that no statements made for the record at this Council meeting could be construed as conditions for adoption of the report or of the draft waiver.

Following an exchange of views and questions about procedure, the Chairman noted that the draft waiver would be voted upon at the fortieth session. The Council's report to the CONTRACTING PARTIES would reflect the views put forward by representatives at the present meeting.

The representative of Jamaica said that since it was not the intention of the CBERA to provide access to the US market for all developing countries in the region, it was appropriate to be specific and refer to the beneficiary developing countries. He added that the
waiver would apply exclusively to duty-free treatment for imports of eligible articles into the United States from beneficiary Caribbean countries and territories, and drew attention to the first paragraph in the draft waiver’s preamble.

The representative of Nicaragua said her delegation would agree to the report being adopted, on the understanding that Nicaragua's comments at the present meeting would be reflected in the Council's report to the CONTRACTING PARTIES. The conditions for the waiver were the concern of all contracting parties.

The Chairman noted that none of the statements made at the present meeting constituted conditions either on the report or on the draft waiver.

The representative of the Netherlands, speaking on behalf of the Netherlands Antilles, one of the Act's beneficiary territories, drew attention to paragraph 62 of the report which made clear that it had been acknowledged in the Working Party that only the United States could decide whether to request a waiver for the CBERA.

The Council took note of the statements, adopted the report of the Working Party (L/5708), and agreed to send the draft waiver (see Annex II of this report) to the CONTRACTING PARTIES for their consideration.

(e) Reports under waivers

- United States - Agricultural Adjustment Act (C/M/174, 183)

Under the Decision of 5 March 1955 (BISD 38/32), the CONTRACTING PARTIES are required to make an annual review of any action taken by the United States under the Decision, on the basis of a report to be furnished by the United States.

At its meeting on 7 February 1984, the Council considered the twenty-sixth annual report (L/5595) submitted by the United States.

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

The representative of Australia said the latest report showed that the United States had failed to balance dairy product supply and demand in recent years. Australia recognized that the United States was not the only country unable to control surplus dairy production; however, the waiver had been granted nearly 30 years ago as a temporary measure.
His delegation could make similar comments on US non-market oriented practices concerning sugar and other products and measures covered by the waiver. Australia proposed that a working party be established to examine these matters in the context of the twenty-sixth annual report.

The representatives of Chile, New Zealand, Canada, Argentina, Pakistan, Brazil and Nicaragua supported the proposal to establish a working party.

The representative of the European Communities said that his delegation shared the concerns expressed by representatives, but questioned whether another working party would change anything. Perhaps it would be better to refer the whole matter for examination by the Committee on Trade in Agriculture, where there might be a chance to have the waiver terminated.

The representative of Pakistan said that his country was affected by the build-up of US cotton surpluses and their disposal abroad. He suggested that the Working Party have terms of reference which focussed on finding an alternative to a situation which had lasted so many years.

The representative of Brazil said that the new Working Party might propose a "sunset" clause or that the US measures be totally or partially phased out.

The representative of Australia emphasized that under the 1955 Decision, the CONTRACTING PARTIES were required to make an annual review of any action taken by the United States under that Decision. Australia could not agree with the Community's proposal to transfer responsibility for examining the US waiver entirely to the Committee on Trade in Agriculture.

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

The representative of the European Communities said that the Community would not oppose a decision to set up a working party, on the understanding that the waiver would also be discussed in the Committee on Trade in Agriculture.

The Council agreed to establish a working party and authorized the Chairman of the Council to designate the Chairman of the Working Party in consultation with the delegations principally concerned.

At the Council meeting on 13 March 1984, the Chairman informed the Council that Mr. Grunwaldt Ramasso (Uruguay) had been designated Chairman of the Working Party.
At its meeting on 6-8 and 20 November 1984, the Council considered the report of the Working Party (L/5707).

The representative of Australia said there was no indication in the report that the United States was taking adequate measures to remedy the situation which had given rise to the waiver request, nor that efforts in this direction could be expected. His delegation had proposed in the Working Party that it examine what, if any, modifications might be made in the waiver, but had agreed to pursue this issue at a later stage and possibly in a working party set up for that specific purpose. Australia considered that the CONTRACTING PARTIES had the right under Article XXV to review the terms of the waiver, and if appropriate, to propose its termination or modification. His authorities did not accept that the waiver was a matter for negotiation, since the United States had not paid for it by way of commensurate trade concessions; nor did they see any legal link between review of the waiver and the work of the Committee on Trade in Agriculture. Australia reserved its GATT rights to raise this issue again, possibly at the time when the CONTRACTING PARTIES examined the next annual report, which hopefully would provide a critical evaluation of the reasons why measures consistent with the provisions of the General Agreement were not a feasible alternative to those maintained under the waiver. His delegation supported adoption of the Working Party's report.

The representative of the European Communities reiterated his delegation's view that a working party established to examine annual reports under the waiver was no longer the 'best way to address this problem, since it was unrealistic to imagine that the United States would relinquish such a long-enjoyed privilege without some gestures in return. He supported the objectives of the suggestion made by the representative of Australia, but saw no chance of its success. The Committee on Trade in Agriculture was the place to take up the elimination of this privilege. The best gesture that the United States could make with regard to strengthening the multilateral system would be to consider eliminating this privilege and its negative effects on the balance of rights and obligations of contracting parties in agricultural trade.

The representative of New Zealand said the Working Party's report reflected US intransigence, and the United States did not have the right to continued recourse to this waiver ad infinitum. He drew attention to paragraph 37 of L/5707 and supported the views expressed by the representative of Australia on this point. He welcomed the positive moves taken by the United States to implement structural adjustment in the dairy sector, but said that recent moves on honey had raised the possibility that this product would be included under Section 22 protection. It was not enough for the United States to contend that the Committee on Trade in Agriculture might eventually take up this problem. New Zealand did not propose to offer any concessions for removing the waiver.
The representative of Argentina supported the statements by the representatives of Australia and New Zealand.

The representative of the United States said that the Working Party's report faithfully reflected the views of its members. His delegation hoped that the work of the Committee on Trade in Agriculture could bring some positive results on this matter.

The Council took note of the statements and adopted the report (L/5707).

18. Accession, provisional accession

- Tunisia (C/M/133)

At its meeting on 6-8 and 20 November 1984, the Council considered a request by Tunisia for a further extension of the period of validity of the Declaration of 12 November 1959 on its Provisional Accession (BISD 30S/3) and of the Decision of 12 November 1959 (BISD 30S/8) inviting Tunisia to participate in the work of the CONTRACTING PARTIES.

The representative of Tunisia said his authorities were continuing preparations for Tunisia's full accession to the General Agreement, and he hoped he would soon be in a position to come before the Council with instructions to complete this process.

The representative of Austria said that if it was not Tunisia's intention to accede fully in the forthcoming year, the Declaration might be extended for two years.

The representatives of Senegal, India and Egypt supported Tunisia's request.

The representative of Tunisia said it was not certain that the procedures for full accession would be completed within the next year, but his authorities would make every effort to complete the process as soon as possible.

The representative of the United States encouraged all due haste on this matter.

The Council took note of the statements, approved the text of the Sixteenth Procès-Verbal Extending the Declaration to 31 December 1985 (C/W/452, Annex I), and agreed that the Procès-Verbal be opened for acceptance by the parties to the Declaration.

The Council also approved the text of the Draft Decision (see Annex III) extending the invitation to Tunisia to participate in the work of the CONTRACTING PARTIES to 31 December 1985, and recommended its adoption by the CONTRACTING PARTIES at their fortieth session.
19. **Philippines - Rates of certain sales and specific taxes (C/M/183)**

At the Council meeting on 6-8 and 20 November 1984, the Chairman drew attention to a request (L/5710) by the Philippines for a five-year extension of the period allowed to the Philippines in the context of paragraph 3 of its Protocol of Accession (BISD 26S/192) to bring the application of its sales taxes on imported and domestic goods into line with Article III of the General Agreement.

The representative of the Philippines said that his Government had made maximum efforts towards aligning rates of internal taxes on domestically produced goods vis-à-vis their imported counterparts. However, it recognized that further action had to be taken to fully comply with its GATT obligations. Economic difficulties confronting the Philippines, in particular the acute imbalance of payments problems, had prevented it from completely aligning the remaining differential internal taxes.

The Council took note of the statement by the representative of the Philippines, approved the text of a decision (see Annex IV) extending the period until 31 December 1989 and recommended its adoption by the CONTRACTING PARTIES at their fortieth session.

20. **Switzerland - Review under Paragraph 4 of the Protocol of Accession (C/M/181)**

Under paragraph 4 of its Protocol of Accession, Switzerland reserved its position with regard to the application of the provisions of Article XI of the General Agreement to permit the application of certain import restrictions pursuant to existing national legislation. The Protocol calls for an annual report by Switzerland on the measures maintained consistently with this reservation, and it requires the CONTRACTING PARTIES to conduct a thorough review of the application of the provisions of paragraph 4 every three years.

At the Council meeting on 2 October 1984, the Chairman drew attention to documents L/5423, L/5596 and L/5673 containing the three most recent annual reports submitted by Switzerland.

The representative of Switzerland said it was clear from the reports that during the period 1981-83 there had been no change in the Swiss system of import restrictions and the products covered. The main feature of Switzerland's agricultural policy remained unchanged: it sought to safeguard a small core of domestic production for strategic and security reasons, while at the same time leaving wide access to its market for foreign produce.
The representative of Australia said that an in-depth examination of the Protocol's operation was necessary to ensure that the terms and conditions of Swiss accession were being adhered to. He proposed that the examination be carried out by a working party, and outlined his delegation's view of what the objectives of such a working party should be. With these objectives in mind, Australia could agree to terms of reference similar to those adopted by the Working Party established in 1981.

The representative of New Zealand endorsed the statement by the representative of Australia and supported the request for a working party. He noted that when the text of the Swiss Protocol had been submitted to the CONTRACTING PARTIES for approval, the Chairman had stated that the reservation could be considered analogous to a waiver granted under Article XXV:5 (SR 23/7, page 104).

The representative of Switzerland suggested that the review be conducted on the same basis as that carried out in 1981, as there had been no changes since then.

The Council took note of the statements and agreed to establish the Working Party to conduct the sixth triennial review of the application of the provisions of paragraph 4 of the Protocol for the Accession of Switzerland, and to report to the Council. Membership would be open to all contracting parties indicating their wish to serve on the Working Party. The Chairman of the Council was authorized to designate the Chairman of the Working Party in consultation with delegations.

21. Poland - Suspension of most-favoured-nation treatment by the United States (C/M/183)

At the Council meeting on 6-8 and 20 November 1984, the representative of Poland recalled that m.f.n. treatment of Polish exports to the United States had been suspended for more than two years, seriously damaging his country's legitimate trading interests. The explanation offered by the United States for this action was Poland's performance with respect to its import commitments under its Protocol of Accession; but there was no doubt that the US action was political. It was regrettable that political considerations were being increasingly offered in the Council and in other GATT fora as legitimate reasons for trade related discriminatory measures. He noted that Poland was the only contracting party which was formally required by the terms of its accession to increase total imports from other contracting parties at a predetermined rate. Since the United States had suspended m.f.n. treatment, total Polish imports from sources other than the Eastern trading area had increased significantly, and similar growth could be assumed for the future, certainly exceeding the 7 per cent commitment. He asked the US delegation what, if any, trade related criteria should be met in order to terminate this situation.
The representative of the United States said that his delegation had taken note of the Polish statement and would refer it to his authorities. He reiterated that the United States believed it had acted within its rights under paragraph 7 of Poland's Protocol of Accession.

The Council took note of the statements.

22. Consultations on trade

(a) Hungary (C/M/178)

The Protocol for the Accession of Hungary provides for consultations to be held between Hungary 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 Hungary and the contracting parties. In July 1983, the Council had established a working party to carry out the fifth consultation with the Government of Hungary.

At its meeting on 16 May 1984, the Council considered the report of the Working Party (L/5635). The Working Party had discussed the desirability of removing discriminatory quantitative restrictions still maintained against Hungarian exports by the European Economic Community and Norway, and had expressed concern at the slow progress made over recent years. It had then examined Hungarian imports in general and had noted that while total imports had increased, imports from contracting parties had declined. The Working Party had welcomed the statement by Hungary that it intended to continue to trade with contracting parties on the basis of non-discrimination.

The representative of Hungary said that any agreement sought by the Community bilaterally with Hungary could be based only on the most-favoured-nation principle and non-discrimination, and could not call for a counterpart to be paid for the fulfilment of obligations under Hungary's Protocol of Accession, nor could it legalize discriminatory practices. There would be no justification for any new safeguard measures. Hungary also considered it indispensable that the conclusion of a bilateral agreement be justified by substantial improvement in the conditions affecting Hungarian exports of agricultural and industrial products to the Community market.

The representative of the European Communities said his delegation subscribed fully to the Community position as set out in the report, and he did not agree with the statement by the representative of Hungary.

The representative of Australia supported adoption of the report and expressed his delegation's concern that a number of quantitative restrictions continued to be maintained against Hungary despite paragraph 4(a) of the Protocol of Accession.

The Council took note of the statements and adopted the report.
(b) Romania (C/M/183)

The Protocol for the Accession of Romania provides for biennial consultations to be held between Romania and the CONTRACTING PARTIES in a working party to be established for this purpose, in order to review the development of reciprocal trade and the measures taken under the terms of the Protocol.

At its meeting on 6-8 and 20 November 1984, the Council agreed to establish a working party to conduct the fifth consultations with the Government of Romania.

23. Discussions related to certain US measures affecting trade (C/M/174, 175, 178)

At the Council meeting on 7 February 1984, the representative of the European Communities urged the United States to lead the struggle against protectionism so as to ensure maintenance of economic recovery. There had been a worrying tendency evident in the United States over recent months, in parallel with the recovery, for the initiation of all sorts of actions aimed at restricting imports. The tendency was increasing both in volume and coverage and its cumulative effect was devastating. By way of illustration, he mentioned the Community's wine exports which were coming under attack both in the US Congress, through the proposed Wine Equity Bill, and through anti-dumping and countervailing duty complaints. He then quoted a series of statements by the US Deputy Secretary of the Treasury, including the view that it was within the industrialized countries' power to avoid protectionism; that protectionism only succeeded in shifting the burden of adjustment to consumers and to non-protected industries; and that there were reasons to be optimistic about the future of the international economic system if countries followed policies designed to foster their long-term economic interests and if they avoided short-term political expedients.

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

The representative of Jamaica said it did not appear from the preceding statements that either the Community or the United States intended to honour commitments on a standstill and rollback of protective measures. He called upon the major trading partners to see the relationship between protectionism, structural adjustment, recovery and debt servicing, and to try to find a program of action in this respect.

The Council took note of the statements.
At the Council meeting on 28 February 1984, the representative of the United States said that his authorities considered recent comments on alleged protectionist forces in the United States to be exaggerated. In 1983, the United States had a trade deficit of US$69.4 billion, and by all estimates this would rise in 1984 to more than US$100 billion, which would be the largest imbalance in the history of international trade. Also, US imports were growing at nearly double the rate of growth of gross domestic product; if that ratio was sustained for the rest of 1984, which seemed likely, it was difficult to see how the United States could be accused of being protectionist. His Government had decided in 1983 to encourage import growth, and this policy remained in force. Any country should feel free to criticise the United States once it sustained the same level of trade imbalance, but until then, he suggested that commentators look to criticise elsewhere.

The representative of the European Communities said that if the United States had to confront such large deficits, maybe remedies other than trade restrictive measures could be sought to correct the imbalance. He recalled that in his remarks on this point to the Council on 7 February, he had said that the United States was a great trading power and should therefore lead a crusade against protectionism, helping others to follow suit. This had been an appeal and not a criticism.

The representative of Jamaica reiterated his delegation’s concerns over the relationship between structural adjustment, trade liberalization and the recourse to safeguard measures. The CONTRACTING PARTIES were fortunate that the Community and the United States had not started a trade war, because in any such escalation the trading system as a whole, and the developing countries, would be among the first victims. Jamaica was concerned that GATT, by talking about retaliation and the varying nature of safeguard measures, rather than tackling their underlying causes, was appearing not to take its responsibility for dealing with major problems in the trading system.

The representative of Pakistan said his delegation felt that assurances from the United States that it was resisting protectionism were ceasing to have the value they had two years ago. He understood that sixty calls for consultations under the Arrangement Regarding International Trade in Textiles (BISD 21S/3) had been issued by the United States; a development of that magnitude was serious and called for remedial action.

The Council took note of the statements.

At the Council meeting on 15/16 May 1984, the representative of Peru said his delegation saw with deep concern that protectionist tendencies were proliferating, notwithstanding the commitments contained in the 1982 Ministerial Declaration (BISD 29S/9). He gave details of recent protectionist measures which he said had been taken by the United
States against two important sectors of Peru's economy — textiles and copper — and called for proliferation of such measures to be avoided, and for full account to be taken of the special situation of developing countries in accordance with Part IV of the General Agreement. Peru did not oppose the adoption of measures that defended an industry from unfair competition, but it rejected those aimed at covertly protecting obsolete industries, thereby penalizing efficiency. Peru called on the United States to resist protectionist pressures and to lead an international crusade against this tendency.

The representative of Chile supported the views expressed by the representative of Peru. Referring to the statement by his delegation at the Council meeting on 13 March 1984 concerning the case brought by US copper producers before the United States International Trade Commission (USITC), he said copper-producing countries hoped that the USITC's decision would be compatible with the commitments to free trade made so often by the United States.

The representative of the United States said he understood the concerns expressed by the representative of Peru, but he disagreed that the United States was protectionist, and referred to the statement by his delegation at that meeting concerning textiles. World economic growth and trade were beginning to improve, due largely to US growth and to the fact that the United States had maintained a liberal trade régime in the face of increasing trade and current account deficits. There might be differences of opinion over the causes for this imbalance, but it could hardly be said that the high US deficits reflected a protectionist policy. It was also incorrect to characterize individual industries pursuing their rights through transparent US processes as constituting increased protectionism on the part of the US Administration.

The Council took note of the statements.

24. Brazil — Treatment of electronic data processing equipment
   (C/M/183)

At the Council meeting on 6–8 and 20 November 1984, the representative of Sweden said that on 3 October 1984 the Congress of Brazil had adopted a new law concerning data processing equipment and informatics. This law contained a number of elements which had considerable potential trade effects and raised questions concerning its compatibility with the General Agreement. He identified and described the two main parts of the law, one concerning import protection for the domestic production of products and services, and the other concerning

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1 See page 31.
2 See page 16.
support for the domestic production and exports of products and services in the data processing field, and said these gave rise to concern. He asked the Brazilian delegation when the law would be notified to GATT, and reserved Sweden's right to revert to this issue.

The representative of the European Communities hoped that this and subsequent measures would be notified, so that they could be discussed with the Brazilian delegation. He reserved the Community's right to revert to it in the Council.

The representative of Brazil pointed out that the GATT obligation to notify clearly did not apply to legislation or regulations of a general nature enacted by competent national bodies. The law had not yet entered into force, and the request by Sweden for information was a matter to be handled through bilateral channels. Brazil would discuss this bilaterally with any interested contracting party.

The representative of the United States agreed that bilateral contacts would be appropriate in the present case, but said that his delegation might want to revert to this matter in GATT as well.

The Council took note of the statements.

25. European Economic Community - Sales of butter at below minimum prices (C/M/183)

At the Council meeting on 6-8 and 20 November 1984, the representative of Australia registered his Government's concern at the EEC action to permit sales of surplus butter at a price well below the IDA minimum price in breach of the EEC's obligation under that Arrangement. This action had been taken without consultation with other IDA members. Australia would continue to seek means by which to restore the IDA's credibility and viability. Revocation of the regulation in question would be the preferable course to take. His Government welcomed the Community's decision to defer implementation of the regulation, and hoped that further discussions would lead to a constructive result.

The representative of New Zealand drew the Council's attention to his statement on this matter in the special Council meeting on 6 November 1984 preceding the present meeting.

The representative of the European Communities recalled that this item had already been discussed in the IDA Council and in the relevant IDA Committee. Implementation of these measures had been deferred to allow for consultations to take place. He shared Australia's hope that

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1International Dairy Arrangement (BISD 26S/91).
the trilateral discussions between the Community, Australia and New Zealand would lead to a satisfactory solution. The Community had no intention of destabilizing the dairy market.

The Council took of the statements.

26. United States - Trade and Tariff Act of 1984 (C/M/183)

At the Council meeting on 6-8 and 20 November 1984, the representative of the European Communities referred to the recently enacted US Trade and Tariff Act of 1984. Although the US Administration had made admirable efforts to limit the negative and possibly damaging aspects of the Act, it nevertheless included some provisions which seriously concerned the Community. For example, section 612 introduced a new definition of the wine industry; this issue had already been raised in the Committee on Anti-Dumping Practices and in the Committee on Subsidies and Countervailing Measures. Another area of concern was section 207 regarding marks-of-origin requirements on steel pipes and tubes. The Community reserved its GATT rights regarding all aspects of the Act and appealed to the US Administration to show restraint when implementing this legislation.

The representative of Canada also expressed concern over certain of the Act's provisions, including sections 207 and 612. Canada had asked the US Administration to avoid application of the marking requirements which Canada considered to be a serious non-tariff barrier to trade. He said the requirements were inconsistent with US obligations under GATT, in particular Article IX:4, and impaired benefits accruing to Canada. Canada would request Article XXII consultations with the United States on this issue and would welcome the participation of other interested contracting parties. Canada shared the Community's view that section 612 was at variance with the GATT Codes on anti-dumping and subsidies and countervailing duties.

The representative of Australia said that his Government, too, was concerned at the implications of the proposed marking requirements, which put at risk a number of Australian future exports. Australia considered that an impediment of this nature was inconsistent with US obligations under Article IX:4, and asked that Australia be included in any Article XXII consultations. His delegation shared Canada's concerns regarding the extended definition of industry under the Act's section 612.

The representative of Brazil said that in some cases it was impossible to make the markings required in section 207 without damaging the product. Also, the requirements did not seem to apply to domestically produced tubes, and were contrary to the principles and spirit of the Agreement on Technical Barriers to Trade.
The representative of Spain said his authorities were also concerned at sections 612 and 207 of the Act. Spain reserved its rights to participate in any consultations on this issue.

The representative of the United States said that his authorities were aware of this situation and were looking into it. He assured the Council of his delegation's willingness to consult bilaterally with any interested contracting parts as soon as possible.

The Council took note of the statements.

27. Poland - Economic management system (C/M/L76, 179)

At the Council meeting on 13 March 1984, the representative of Poland said that his delegation intended to organize, later in 1984, an informal meeting, open to all contracting parties, so that a group of Polish economists and economic officials might present the essential features of the current reform in Poland's economic management system.

The Council took note of this information.

At the Council meeting on 14 June 1984, the representative of Poland said that the informal meeting was scheduled for 28 June 1984. To his knowledge, this would be the first comprehensive presentation of this subject outside Poland, particularly of its trade-related aspects.

The Council took note of this information.

28. Evolution of the GATT system - Suggestions by Jamaica (C/M/176)

At the Council meeting on 13 March 1984, the representative of Jamaica made several suggestions concerning the evolution of the GATT system: these included encouragement for the Director-General's efforts towards dealing in GATT with the tensions in the open trading system and towards activating work on structural adjustment; ensuring that the collective experience of those who had worked in GATT since its establishment in 1948 was continued and strengthened; improving the preparation and mailing system for GATT documents; further informal consultations on improving the Council's working methods; an early substantial review on how the MTN Agreements and Arrangements should be brought into line with the GATT framework; and a call for a Note by the Secretariat which might review the status of work in the action program resulting from the 1982 Ministerial meeting and on the completion of unfinished MTN business. Finally, concerning recent calls for a new round of multilateral trade negotiations, Jamaica hoped that any such round would be adequately prepared.
The representative of Argentina said that his delegation was also concerned at the brief period between meetings and circulation of documents.

The Director-General said that some of these points might be discussed at the next special Council meeting.

The Council took note of the statements.

29. Training activities (C/M/183)

At the Council meeting on 6-8 and 20 November 1984, the Director-General introduced the 1984 report (L/5701) on the Secretariat's activities in the field of training. He expressed gratitude to the Governments of France, Italy, Spain and Canada for having received the GATT trainees during study tours carried out in 1983 and 1984, and to the Swiss authorities, who continued each year to receive the trainees for a one-week study tour in Switzerland. He thanked the UNDP for its continued liaison between governments, candidates and the Secretariat, and expressed appreciation to those members of delegations and representatives of other international organizations who had given their time to discuss various questions with the participants in the courses.

The representatives of a number of developing countries expressed appreciation to the Director-General and the Secretariat for the courses and noted their value and importance. Sufficient funds should be made available for the courses, notwithstanding pressures on the GATT budget. Reference was made to the decision in the 1982 Ministerial Declaration (BISD 29S/23) to strengthen the courses and increase participation in them. Satisfaction was expressed that courses in Spanish were being held on a regular basis; these should be continued in spite of the budgetary constraints on the program as a whole.

The Director-General said that the Secretariat and contracting parties had shown sustained interest in the courses ever since their inception in 1955, as evidenced by the amounts budgeted for them and by voluntary contributions. He noted that in introducing the proposals on this item to the Committee on Budget, Finance and Administration (L/5699), he had clearly stated his intention to consult with delegations in Geneva on the possibilities of expanding the courses, from the standpoint of funding and staffing. He reported on the increase in the number of participants, the provision of a Spanish-language course, and the difficulties in finding suitable accommodation for the trainees within the limits of the subsistence allowance available to them. He hoped that host countries for study tours would follow Canada's recent example by covering the travel expenses as well as the normal subsistence expenses. He asked that the CONTRACTING PARTIES instruct him to conduct consultations on the future of these courses.
The representative of Spain expressed satisfaction at the availability of the courses in Spanish.

The Council took note of the Director-General's report (L/5701) and of the statements.

30. International Trade Centre

- Joint Advisory Group (C/M/179)

At its meeting on 14 June 1984, the Council considered the report of the Joint Advisory Group on the International Trade Centre UNCTAD/GATT on its seventeenth session (ITC/AG(XVII)/93 and Add.1 and Corr.1). The Group had noted that as the Centre's activities had expanded over the past 20 years, it had faced a corresponding need for increased resources to carry out its program, but unfortunately the level of financing had not kept pace with the growing number of requests for the Centre's services. The Group had urged the Centre to continue its efforts to increase trust fund contributions and to diversify its sources of financing, so as to ensure an expanded program of technical co-operation. The Group had discussed follow-up action required in relation to UNCTAD resolution 158(VI) calling for strengthening the Centre, particularly in relation to commodities. A number of encouraging statements had been made in the Group regarding trust fund contributions to the Centre. These included some increases announced by traditional trust fund donors as well as contributions announced by some new donor countries, including several developing countries.

A number of representatives expressed their appreciation and support for the Centre's work, and for the main recommendations in pages 2-3 of the report. Donor countries were thanked for their contributions to the Centre, and appeals were made for additional resources to be made available.

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

31. Administrative and financial questions

(a) Committee on Budget, Finance and Administration

(i) Assessment of additional contributions on Belize to the 1983 and 1984 Budgets and advance to the Working Capital Fund (C/M/174)

At the Council meeting on 7 February 1984, the Chairman drew attention to document L/5594 proposing that contributions to the 1983 and 1984 Budgets as well as an advance to the Working Capital Fund be assessed on Belize.

The Council adopted the assessment proposed.
At its meeting on 16 May 1984, the Council considered document L/5633. The Chairman noted that there had been an increase in the level of outstanding contributions, which had amounted to nearly 8 million Swiss francs at the end of 1983. The situation continued to be a matter of great concern, and, once again, he urged governments to assume their financial responsibilities as promptly as possible.

The representative of Jamaica noted that the increase in contributions assessed on contracting parties was partly due to outstanding contributions, which meant that individual contracting parties were being assessed at a higher figure.

The Director-General said that outstanding contributions which were being carried over from one year to the next were a serious problem, and that the CONTRACTING PARTIES might one day have to depart from orthodoxy and take an appropriate decision in this respect. He emphasized that the Secretariat would continue to follow a very strict budgetary policy.

The Council authorized the increase in appropriations, approved the proposed financing as reflected in document L/5633 and took note of the statements.

At the Council meeting on 6-8 and 20 November 1984, the Council considered the Committee's report (L/5699).

The Chairman of the Committee noted that the outturn figures indicated anticipated over-expenditure of some Sw F 360,000 by the end of 1984. This had resulted from the effects of exchange rate fluctuations, from the effects of decisions taken by the United Nations General Assembly after the establishment of the 1984 GATT budget, and from an increase in the contribution payable to the International Trade Centre (ITC). The impact of these factors would have been much greater had it not been for the strict economy measures that the Secretariat had taken and was continuing to apply. The problem of outstanding contributions continued to be a matter of great concern, and the Committee had agreed to examine this question again with a view to making an appropriate early recommendation to the Council. The Committee had also proposed that the Director-General be authorized to have recourse in 1984, if necessary, to a bank overdraft to cover the Secretariat's undeferrable cash commitments. Turning to the 1985 budget, he said that the Committee had been particularly concerned at the effects on expenditure of the great escalation in the volume of documentation produced by the Secretariat, and the large increase in the number of meetings resulting from the 1982 Ministerial Work Program and from requests from contracting parties. The Committee would examine
these questions, and would also review the financial implications of the commercial policy training courses which had been given special attention during its discussions. As a result of the concerns expressed by the Committee over the level of the increase proposed in the 1985 budget estimates, the Director-General had proposed reductions of Sw F 1,384,000 which were conditional upon a cut-back in the volume of documentation and the number of meetings. The Committee had consequently recommended the adoption of a revised expenditure budget totalling Sw F 57,549,000. Regarding the ITC, revised estimates for the biennium 1984-1985 had been presented at the Committee's recent meeting. This had the effect of increasing the approved Swiss franc contribution from GATT's 1984 budget by some Sw F 118,000, and GATT's 1985 contribution would be Sw F 995,000 greater than the level originally approved for 1984.

The representative of Egypt expressed concern at the possibility that any future reductions in the budget might affect the objectives and content of the GATT Training Program. There was probably a need to review the Program to see whether any basic modifications were necessary, taking into account the objectives and experience gained in operation of the courses and changes in international trade relations over the past three decades. The Budget Committee would not be the proper place to discuss these issues, which should be discussed at the level of trade policy experts. He proposed that the Chairman of the Council, in collaboration with the Chairman of the Budget Committee, hold informal consultations to determine how the Program could be reviewed before its financial implications were examined further by the Budget Committee.

The representative of Australia said that the authorization for a bank overdraft would be for 1984 only, and it should not become a permanent and inequitable solution to GATT's financial problems. It was necessary to find an equitable solution to a financial crisis which had been brought about by the non-receipt or the late payment of contributions and which imposed direct and indirect costs on other contracting parties. His delegation commended the Director-General for his efforts to collect arrears, and exhorted contracting parties which were in arrears to pay their contributions. He welcomed the Committee's agreement to meet at an early date to try to find a solution to these problems. Australia had been disturbed by suggestions in the Committee that the budget examination was an opportunity for negotiating priorities in the 1982 Ministerial Work Program. His delegation had disassociated itself from the implication that all elements of the budget were interlinked, so that if a cut was made under one item, then contracting parties should accept equal cuts under others. Australia would participate in the Committee's future discussions positively to ensure that any solutions maintained GATT's effective operation and status.
The representative of Malaysia, on behalf of the ASEAN countries, said that the increase in their total contribution as a group could be explained by their increased relative share in world trade, which was, however, due to increased imports rather than exports. They also faced the added burden of external debt. They viewed the increased GATT budget for 1985 with deep concern and expected sacrifices to be made similar to their own. They were convinced there were still certain areas where reductions were possible. They attached great importance to the commercial policy courses, and supported Egypt's proposal for consultations on the future policy of the Training Program. As for late payments and arrears in contributions, the ASEAN countries would welcome a long-term solution to that problem.

The representative of Jamaica said that the proposed increase in the budget had not been reduced enough and, in view of the high percentage of so-called unavoidable, non-discretionary expenses, Jamaica recommended that the Director-General and the Committee review the situation in which decisions by bodies over which GATT had no jurisdiction could have a significant impact on the budget. Her delegation encouraged the Committee to work expeditiously on suggestions for dealing with the long-standing problem of unpaid contributions and to study the question of increasing documentation, but considered that a review of the increasing number of meetings should be conducted by the Council itself. A distinction should be drawn in the budget between meetings of the Council and other regular GATT bodies on the one hand, and meetings of the MTN Committees and Councils on the other, and appropriations for official missions should be kept separate from technical co-operation missions. It was regrettable that dispute settlement panel expenditure had exceeded the appropriation in 1984. Efforts should be made in 1985 to keep expenditure to the 1984 appropriated level. Jamaica reiterated support for the commercial policy training courses, and noting the steady increase in costs, felt that countries hosting the study tours should follow Canada's recent example and offer to cover the costs involved. She welcomed the Director-General's proposal to conduct a comprehensive review of the courses. Finally, she noted that Jamaica participated only as an observer in the Committee, but was now interested in becoming a full member.

The representative of Sweden, on behalf of the Nordic countries, doubted that this was the time for cut-backs in budgets for multilateral trade efforts. 1985 would be an important year for the trading community, and the Secretariat would have to be able to answer positively to demands for substantially increased activity. The Nordic countries regretted that several contracting parties had made their payments very late in the financial year; furthermore, it would be appropriate for those contracting parties whose payments were in constant arrears and who had not made amortization plans for those arrears, to do so as soon as possible.
The representatives of Nigeria and Uruguay supported the proposal by the representative of Egypt.

The representative of Canada said his delegation believed that the proposed budget was the minimum necessary to carry out the tasks before GATT. Canada was also concerned at the arrears and late payment of contributions, and encouraged the contracting parties concerned to meet their financial obligations as soon as possible. His country strongly supported the commercial policy training courses and believed that the amount provided in the budget should be adequate if contracting parties did all they could to find appropriate accommodation for the participants, and if they supported the study tours abroad.

The representative of India supported the view that in future further economies might be possible, including some that would become apparent when the overall questions of meetings, documentation and the training courses had been examined in depth. His delegation supported establishment of a mechanism to review operation of the training courses and to make recommendations to the Council. The Budget Committee would not be the appropriate forum for discussing trade policy issues.

The representative of Yugoslavia supported the statement by the representative of India. Her delegation was also concerned about the income budget estimate for 1985, given the fact that some contracting parties were more than five years in arrears.

The representative of the United States said that his delegation had sent the Committee's report to his authorities, with the recommendation that it be accepted. He noted that final action on the report and the Committee's recommendations would be taken by the CONTRACTING PARTIES at their fortieth session. His delegation did not want to stand in the way of consensus on this matter; he hoped he would not have to raise this issue again.

The Director-General appreciated the fact that no delegation had opposed the Committee's report or recommendations. The need to have recourse to a bank overdraft would depend upon receipts of contributions. With regard to the need to distinguish between official and technical co-operation missions abroad, it often turned out that official missions were in fact technical co-operation missions as well. He had accepted reductions in his budget proposals in a spirit of co-operation, which had to be seen as a two-way street. He noted that in 1981 the Secretariat had produced 20 million pages of documents and for 1984 the 28 million figure had already been reached by October. The number of pages translated had increased from 19,000 in 1981 to 26,000 in 1984, inevitably meaning an increase in staff. If contracting parties wanted to reduce expenditure, this would imply a consequent reduction in documents, translation and number of meetings. He reiterated his previous appeals for fuller participation by all
contracting parties in all GATT's activities, including the MTN Agreements and Arrangements. In conclusion, he said that the proposed budget for 1985 was the basic minimum for the Secretariat to operate efficiently, and stressed that the compromise had also resulted from co-operation on the part of the Secretariat.

The Council took note of the statements, approved the Committee's recommendations in paragraphs 15, 17, 19, 23, 63 and 64, and agreed to submit the draft resolution in paragraph 57 to the CONTRACTING PARTIES for consideration and approval at their fortieth session.

With regard to paragraph 23, the Council made a special plea to governments to meet their financial obligations fully and promptly by paying their pending contributions immediately, and to pay each year's contribution as early as possible in the year in which it fell due, so as to avoid cash-availability problems.

The Council approved the report (L/5699) and recommended its adoption by the CONTRACTING PARTIES at their fortieth session, including the recommendations contained therein, and the Resolution on the Expenditure of the CONTRACTING PARTIES in 1985 and the ways and means to meet that expenditure.

(b) **Deputy Director-General post (C/M/180)**

At its meeting on 11 July 1984, the Council took note of the Director-General's decision to extend Mr. M.G. Mathur's term of appointment for a further period of three years, i.e. until 31 December 1987.

32. Observers

(a) **Observer status in GATT (C/M/178, 179, 180, 181, 183)**

At its meeting on 15/16 May 1984, following a proposal by the representative of the European Communities, the Council requested the Secretariat to prepare a note summarizing existing practice with respect to admission of non-contracting parties as observers at meetings of the Council and its subsidiary bodies.

At its meeting on 14 June 1984, the representative of the United States proposed that the Secretariat note should also address the question of application of the General Agreement on a **de facto** basis.  

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1 Secretariat Note on Observer Status in GATT (C/129 and Suppl.1)  
2 Secretariat Note on **De Facto** Application of the General Agreement (C/130).
At its meeting on 11 July 1984, the representative of the United States suggested that the Council review the procedures and conditions for considering requests for observer status, particularly those from governments which were not contracting parties, and the rôle played by observers in GATT meetings. He suggested that informal consultations be held on these questions.

The representatives of Israel and the European Communities supported the statement by the representative of the United States.

The Chairman said he would proceed with the informal consultations and proposed that the Council revert to the matter of observer status at its next meeting.

The Council took note of the statements and so agreed.

At its meeting on 2 October 1984, the Chairman reported on the informal consultations that had been held on this question. The process was not yet completed, and he intended to continue the consultations.

The Council took note of the progress report.

At the Council meeting on 6-8 and 20 November 1984, the Chairman made a further progress report on the consultations held so far. He listed a number of issues that had been raised in respect of requests by governments for observer status, and noted that a view appeared to be emerging that the aim of observer status should be to facilitate action by the government concerned towards eventual accession. A number of issues required further examination, such as: a possible time limit on observer status; the degree and form of participation by observers at meetings; observers' attendance at meetings of subsidiary bodies; transparency, i.e., whether observers should be asked to provide information on their trade policies and régimes; the possibility of a financial contribution by observers to covers costs of GATT facilities and services; and the benefits in general to the GATT system from the presence of observers. He added that it appeared to be generally accepted that any additional rules or guidelines which might eventually be established would apply to all observers, old and new.

Concerning requests from international organizations, questions had arisen as to whether the GATT had observer status in those organizations which had such status for GATT meetings; and whether international organizations should have the same type of observer status as countries.

The informal consultations on this matter would continue and the Council would be informed of developments.

The representative of Jamaica said that there should be a clear idea of where the process of accepting observers was heading, in the context of the evolution of the GATT system.
The representative of Mexico, speaking as an observer, explained why it would be difficult for his country to accept new criteria to be applied to its own observer status. His delegation considered that observers should be invited to participate in future informal consultations on observer status, since they were directly affected.

The representative of the United States said his delegation had always considered that observer status was designed to lead to joining GATT.

The representative of Mexico, speaking as an observer, said that it would be inappropriate to establish any link between observer status and eventual accession. Mexico was not now, and would not in the near future be, in a position to give any indication as to its accession to the General Agreement.

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

(b) Requests

(i) Governments

- **El Salvador (C/M/174)**

At its meeting on 7 February 1984, the Council agreed to grant El Salvador observer status for Council meetings.

- **Costa Rica (C/M/178)**

At its meeting on 15 May 1984, the Council agreed to grant Costa Rica observer status for Council meetings.

- **Algeria (C/M/179, 180)**

At its meeting on 14 June 1984, the Council considered a request by Algeria for permanent observer status in the deliberations and work of the principal GATT bodies.

The representative of Egypt supported acceptance of Algeria's request.

The representative of the United States said that Algeria's application of the General Agreement on a de facto basis put its request in a different category to those submitted by other non-contracting parties. He asked that a decision on Algeria's request be delayed until the Council had examined the question of observers generally and their role in GATT.

The Council took note of the statements and agreed to revert to this matter at its next meeting.
At its meeting on 11 July 1984, the Council agreed to grant Algeria observer status for Council meetings.

- People's Republic of China (C/M/183)

At its meeting on 6–8 and 20 November 1984, the Council considered a request by the People's Republic of China to attend meetings of the Council and its subordinate bodies.

The Council noted that China considered that such attendance would facilitate a decision by China on membership in GATT.

The Council also noted that a decision to grant China observer status would be without prejudice to the position of any government regarding the legal status of the People's Republic of China vis-à-vis the GATT.

The Council agreed to grant the People's Republic of China observer status for Council meetings.

The representative of the People's Republic of China, speaking as an observer, accepted and expressed appreciation for the Council's decision.

(iif) International Organizations

- World Bank (C/M/181)

At its meeting on 2 October 1984, the Council agreed to grant the World Bank observer status for Council meetings.

- Inter-American Development Bank (C/M/181)

At its meeting on 2 October 1984, the Council agreed to grant the Inter-American Development Bank observer status for Council meetings.

- Latin American Economic System (C/M/181)

At its meeting on 2 October 1984, the Council agreed to grant the Latin American Economic System (SELA) observer status for Council meetings.

33. Documents (C/M/183)

At the Council meeting on 6–8 and 20 November 1984, the representative of India, speaking on behalf of the Informal Group of Developing Countries, said that difficulties were being encountered by the members of those delegations because of documents for Council meetings were circulated too late; the resulting time allowed to
prepare for these meetings was insufficient, and was inadequate for proper consultations with authorities in capitals. He requested that efforts be made to rectify this situation.

The Council took note of the statement.

34. Conference rooms - Smoking (C/M/179, 183)

At the Council meeting on 14 June 1984, the representative of the European Communities suggested that consultations might be held on the question of smoking in GATT conference rooms.

The Director-General referred to efforts by the Director-General of the World Health Organization to discourage smoking, and said that it was necessary to proceed on this matter on the basis of a consensus.

It was suggested that GATT follow the practice adopted in the Palais des Nations, which was to prohibit smoking in small conference rooms and to discourage it in large ones.

The Council agreed that informal consultations be held so that a decision on this subject could be taken at a future Council meeting.

At the Council meeting on 6-8 and 20 November 1984, the Chairman reported that the views of a number of delegations had been sought, but that there did not yet seem to be any commonly held view among delegations on this matter. The consultations would continue, and the Council would be informed of the results.

The Council took note of the Chairman's report.

35. Arrangements for the fortieth session

- Dates for the session (C/M/180)

At its meeting on 11 July 1984, the Council agreed on the dates for the fortieth session.
ANNEX I

PAKISTAN - RENEGOTIATION OF SCHEDULE

Draft Decision on Extension of Time-Limit

An extension of the time-limit prescribed in the Decision of the CONTRACTING PARTIES of 29 November 1977 to waive the obligations under Article II of the General Agreement has been requested by the Government of Pakistan in a communication dated 28 September 1984 (L/5694). The following draft decision is circulated in order to facilitate the consideration by the Council of the request from Pakistan.

Considering that the CONTRACTING PARTIES, by Decision of 29 November 1977, suspended the application of the provisions of Article II of the General Agreement to the extent necessary to enable the Government of Pakistan to maintain in force the rates of duty provided in its revised Customs Tariff, subject to certain specified conditions;

Considering that among the conditions mentioned above was the obligation to conduct negotiations or consultations in conformity with paragraphs 1 to 3 of Article XXVIII and to terminate such negotiations or consultations before 31 December 1979;

Considering that the CONTRACTING PARTIES by Decisions of 27 November 1979, of 25 November 1980, of 24 November 1981, of 22 November 1982 and of 7 November 1983, extended the time-limit for the completion of the negotiations or consultations to be conducted by the Government of Pakistan until 31 December 1984;

Considering that the Government of Pakistan has notified that negotiations had been completed with one contracting party and had advanced with others but that it will not be possible to conclude these negotiations and consultations by the date specified;

Considering that the Government of Pakistan has therefore requested an extension of the time-limit for the conclusion of the negotiations by one year;

The CONTRACTING PARTIES, acting pursuant to the provisions of paragraph 5 of Article XXV of the General Agreement,

Decide that the time-limit provided for in paragraph 3 of the Decision of 29 November 1977 shall be extended until 31 December 1985.

1 BISD 24S/15
2 BISD 26S/227
3 BISD 27S/14
4 BISD 28S/21
5 BISD 29S/26
6 BISD 30S/10
ANNEX II

CARIBBEAN BASIN ECONOMIC RECOVERY ACT

DRAFT DECISION

Taking note of the request of the Government of the United States for a waiver from its obligations under paragraph 1 of Article I of the General Agreement, with respect to the establishment of duty-free treatment to imports of eligible articles into the United States from beneficiary Caribbean countries and territories, from 1 January 1984 until 30 September 1995, as provided in the Caribbean Basin Economic Recovery Act, P.L. No. 98-67 of 5 August 1983 (hereinafter referred to as "the Act");

Bearing in mind the 1979 Decision on Differential and More Favourable Treatment, Reciprocity and Fuller Participation of Developing Countries;

Considering that the stated objective of the Act is to assist the trade and economic development of beneficiary developing countries and territories situated in the Caribbean Basin by encouraging the expansion of productive capacity in response to more liberal access and to new trading opportunities for Caribbean countries;

Considering also that the duty-free treatment provided under the Act is designed to promote the expansion of trade and economic development of beneficiaries in a manner consistent with the objectives of the General Agreement and with the trade, financial and development needs of the beneficiary countries and not to raise barriers or to create difficulties for the trade of other contracting parties;

Considering, moreover, that the duty-free treatment provided under the Act should not prejudice the interests of other contracting parties not benefitting from such treatment and that it is expected that the extension of such duty-free treatment will not cause a significant diversion of United States imports of articles eligible under the Act originating in contracting parties who are not beneficiary countries;

Having regard to the assurances that the Government of the United States does not envisage any action in pursuance of the Act which might cause adverse effect on the sugar trade of contracting parties who are not beneficiary countries;

Considering that the duty-free treatment provided under the Act by the Government of the United States shall not constitute an impediment to the reduction or elimination of tariffs and other restrictions to trade on a most-favoured-nation basis;

Considering, furthermore, that the duty-free treatment provided under the Act by the Government of the United States shall not adversely affect the maintenance, operation and improvement of the Generalized System of Preferences of the United States;

Noting, furthermore, the assurances given by the Government of the United States that it will, upon request, promptly enter into consultations with any interested contracting party with respect to any difficulty or matter that may arise as a result of the implementation of the trade-related provisions of the Act;
Having regard to the Guiding Principles to be followed in considering applications for waivers adopted on 1 November 1956;

The CONTRACTING PARTIES, acting pursuant to the provisions of paragraph 5 of Article XXIV of the General Agreement,

Decide that:

1. Subject to the terms and conditions set out hereunder, the provisions of paragraph 1 of Article I of the General Agreement shall be waived, until 30 September 1995, to the extent necessary to permit the Government of the United States to provide duty-free treatment to eligible imports of Caribbean Basin countries benefitting from the provisions of the Act, without being required to extend the same duty-free treatment to like products of any other contracting party.

2. Such duty-free treatment shall be designed not to raise barriers or create undue difficulties for the trade of other contracting parties.

3. The Government of the United States shall promptly notify the CONTRACTING PARTIES of any trade-related measure taken under the Act, in particular any changes in the designation of beneficiary countries, as well as any modifications being considered in the list of eligible articles and the duty-free treatment thereof, and shall furnish them with all the information they may deem appropriate relating to such action. Pursuant to the provisions of paragraphs 5 and 6, the United States Government shall consult with regard to any modifications being considered in the list of eligible articles.

4. (i) The Government of the United States shall ensure that this waiver will not be used to contravene the principle of non-discriminatory allocation of sugar quotas.

(ii) The Government of the United States will promptly consult with any contracting party who believes that it would be adversely affected by any action concerning beneficiary country sugar imports which has been taken or is proposed to be taken pursuant to the CBERA. The purpose of these consultations will be to arrive at a mutually satisfactory resolution of the matter.

(iii) In the event the parties cannot reach an agreement during the consultations, the matter may be referred by either party to the CONTRACTING PARTIES for appropriate action including the termination of the waiver with respect to sugar imports of the beneficiary country or countries in question.

5. The Government of the United States will, upon request, promptly enter into consultations with any interested contracting party with respect to any difficulty or matter that may arise as a result of the implementation of the trade-related provisions of the Act; where a contracting party considers that any benefit accruing to it under the General Agreement may be or is being impaired unduly as a result of such implementation, such consultations shall examine the possibility of action for a satisfactory adjustment of the matter.
6. Any contracting party which considers that the trade-related provisions of the Act are being applied inconsistently with this waiver or that any benefit accruing to it under the General Agreement may be or is being impaired unduly as a result of the implementation of such trade-related provisions of the Act and that consultations have proved unsatisfactory, may bring the matter before the CONTRACTING PARTIES, which will examine it promptly and will formulate any recommendations that they judge appropriate.

7. The Government of the United States will submit to the CONTRACTING PARTIES an annual report on the implementation of the trade-related provisions of the Act. The CONTRACTING PARTIES will, two years from the date when this waiver comes into force and, biennially thereafter, review its operation and consider if in the circumstances then prevailing any modifications to or termination of the provisions of the present waiver are required.

8. This waiver shall not preclude the right of affected contracting parties to have recourse to Article XXIII of the General Agreement.
ANNEX III

Further Extension of the Decision of 12 November 1959 Inviting Tunisia to Participate in the Work of the CONTRACTING PARTIES

DRAFT

Considering that the parties to the Declaration of 12 November 1959 on the Provisional Accession of Tunisia to the General Agreement on Tariffs and Trade are taking steps, pursuant to paragraph 6 of that Declaration, to extend further the period of validity of the Declaration:

The CONTRACTING PARTIES

Decide to extend further the period of validity of the Decision of 12 November 1959, which provided for the participation of Tunisia in the work of the CONTRACTING PARTIES, until the Government of Tunisia accedes to the General Agreement under the provisions of Article XXXIII or until 31 December 1985, whichever date is earlier.
ANNEX IV

PHILIPPINES - RATES OF CERTAIN
SALES AND SPECIFIC TAXES

Draft Decision

A request by the Government of the Philippines for an extension of the period during which the differential rates of sales and specific taxes with respect to items listed in document L/4724/Add.1 can be brought into line with Article III of the General Agreement has been circulated in document L/5710. To facilitate the consideration by the Council of this request, the following draft decision has been prepared by the secretariat.

Noting that paragraph 3 of the Protocol of Accession of the Philippines to the General Agreement on Tariffs and Trade, dated 26 November 1979, states that the Philippines intends to bring into line with Article III of the General Agreement, the sales and specific taxes with respect to the items listed in document L/4724/Add.1 whose rates, in accordance with the relevant sections of Titles IV and V of the Philippines Internal Revenue Code in force on the date of the Protocol, vary according to whether the items are locally manufactured or imported and would endeavour to do so as soon as possible in the light of its development, financial and trade needs; and that if by 31 December 1984, the above mentioned taxes were still in effect with differential rates for imported items, the matter would be reviewed by the CONTRACTING PARTIES;

Noting that the Government of the Philippines has taken steps to align the rates of certain sales and specific taxes applied to a number of domestically produced goods with those rates applicable to like imported goods; and

Considering that the Government of the Philippines has requested a five-year extension of the period to bring into line with Article III of the General Agreement the rates of the aforesaid sales and specific taxes with respect to the remaining items;

The CONTRACTING PARTIES decide that the Government of the Philippines may take steps to bring into line with Article III of the General Agreement the sales and specific taxes with respect to the remaining items listed in document L/4724/Add.1 whose rates in accordance with the relevant sections of Titles IV and V of the Philippines Internal Revenue Code in force on the date of the Protocol of Accession, vary according to whether the items are locally manufactured or imported, until 31 December 1989, by which time if these taxes are still in effect with differential rates for imported items, the matter shall be reviewed by the CONTRACTING PARTIES.

BISD 26S/192.