SUMMARY RECORD OF THE SEVENTH MEETING

Held at the Palais des Nations, Geneva, on Friday, 24 November, at 2.30 p.m.

Chairman: Mr. BARBOSA DA SILVA (Brazil)

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1. European Economic Community - common tariff (L/1479) (cont'd)

The CHAIRMAN recalled that when discussions had closed on the previous day, there were still delegates who wished to speak on this subject.

Mr. LACARTE (Uruguay) referred to part 9 of Annex C to document L/1479, which consisted of tables prepared by his delegation on the principal Uruguayan exports to the EEC. In the opinion of his delegation the effect of the common external tariff was equivalent to a 12 per cent rise in duties. This was, however, not the full picture. Negotiations under Article XXIV:6 had revealed a fundamental imbalance. This was specifically recognized by the EEC, as shown in the document prepared at the end of these negotiations. The EEC had hoped that action could be taken before the expiry of the period laid down in their agreement on Article XXIV:6. This agreement had been signed in June, but since then there had been no further offer from the EEC. Products affected accounted for some 40 per cent of Uruguayan exports to the member countries of the EEC. The commitments which had been assumed by the EEC affected only a small part of the relevant trade. His delegation had no guarantees on imports by the EEC above the quota which was under discussion. He drew attention to the large difference between the amount of the tariff quota and the normal volume of trade, and said that his delegation could not fail to note and to share the fears of self-sufficiency, mentioned by other delegations.
As far as his delegation was concerned he must go on record as saying that the EEC external tariff did not conform to Article XXIV:5(a), no matter which of the interpretations of this article contained in document L/1479 was used.

Mr. CORKERY (Australia) recalled that the examination so far undertaken had only covered a part of the examination necessary under Article XXIV. The Working Party of the Tariff Negotiations Committee in its report, pointed out that it had not been concerned with the other regulations of commerce mentioned in paragraph 5(a), and said that, even with regard to the common external tariff, more information on agricultural products was also necessary. He wished to refer to the statement which his delegation had made at the last Council meeting, which was contained in document C/M/8. The required information on these aspects of Article XXIV was not yet available. He wished merely to state that the exercise remained incomplete and that at some future time contracting parties might wish to revert to this question.

Mr. TENNEKOON (Ceylon) said that the Working Party had considered the arguments for and against an arithmetic as opposed to a weighted average, and those over legal and applied rates in document L/1479. His delegation considered that a weighted average should be used in this context and regretted that the EEC had not supplied information on applied rates. With the information before them, other contracting parties had come to the conclusion that the external tariff was in general higher in its effect than those duties in force in individual member countries on 1 January 1957. Contracting parties who had raised legal issues were prepared to lay them aside and adopt a pragmatic approach, and the EEC should adopt a similar attitude. The General Agreement was based on rules of non-discrimination and most-favoured-nation treatment. Customs unions and free trade areas were departures from these rules. The onus was on those who departed from the rule to satisfy the CONTRACTING PARTIES that they followed the procedures and rules of GATT. The basic aims of the GATT should be in the forefront of the considerations which animate the Community. There was a fear, however, that the EEC would be inward-looking. Mr. Tennekoon said that in particular the tea producing countries had been adversely affected by the common external tariff. The Netherlands, which was the largest market for tea in the EEC, had had a duty of 10 per cent. Under a common external tariff it was now to be 18 per cent, but this was not the whole picture, as internal fiscal levies were also applied to imports of tea. The Haberler report had referred to these as "disguised reinforcement of customs duties". The Federal Republic of Germany, the second largest market in the EEC, had reduced its tariff from 52 per cent to 18 per cent, but the difference between these two rates had been added to internal taxation. He proposed that the negotiation procedure for revenue duties contained in the Havana Charter, should be taken over by the GATT. The second part of the Tariff Conference had not brought satisfactory results. His delegation hoped that results could be obtained by a more realistic attitude to the common external tariff. He concluded by recommending that the EEC should produce the statistics required by the Working Party, and that the matter should be taken up again at the twentieth session.
Mr. SVEC (Czechoslovakia) associated himself with the previous speakers who had regretted that no satisfactory solution had yet been found. He believed that this question was very important, particularly if one took into account the fact that other contracting parties might join the EEC. There was a certain danger, he said, that while discussing the legal and statistical questions, sight would be lost of the main economic question which was that barriers should not be raised to the trade of third countries. He felt that the member countries of the Community would have greatly facilitated the task of the CONTRACTING PARTIES in this matter if they had shown greater understanding for the trade interests of other contracting parties, especially on the most important items of traditional trade. Much had been left to the Dillon round, but little had been heard of its progress. He expressed the hope that the EEC member countries would demonstrate an interest by the expansion of their trade with third countries which would contribute to diminishing the legal problem of the examination of the common tariff under Article XXIV:5(a).

Mr. GAUHAR (Pakistan) said that paragraph 16 of document L/1479 stated the present position which was a deadlock. The Working Party had noted that the general incidence of the common tariff on imports into the EEC from third countries was lower than the general incidence of legal or bound tariff rates in the member States on 1 January 1957, but members of the Working Party, other than the representatives of the Commission of the EEC and its member States, noted that the general incidence of the common tariff seemed to be higher than the general incidence of the tariff rates actually encountered by exporters to the EEC from third countries on 1 January 1957. The available material had been carefully examined, and his delegation felt that to postpone the item and to hope for developments would not be an acceptable course of action. He regretted to note the position of the Commission of the EEC, as stated in paragraph 13 of document L/1479 that it did not consider that duties actually charged were relevant and did not accordingly think it necessary or desirable to supply information on them. It was, he said, for the Working Party and later for the CONTRACTING PARTIES to decide on the relevance of these duties and not for a party to the dispute. He submitted that it was both necessary and desirable for the full facts to be placed before the CONTRACTING PARTIES; he reminded the Community that the type of information requested was not covered by the security exceptions contained in Article XXI of the GATT. The Commission, however, had taken up a definite stand, and it must be accepted that the information would not be supplied. A judgement must be made on the basis of the available facts. He submitted that the Working Party had taken a decision and that the finding should be adopted even though the Commission of the EEC and the member States had not agreed to it.

Mr. MARTINS (Austria) said that his delegation still felt that a comparison of the common tariff with the individual tariffs of the EEC member countries must be carried out in accordance with Article XXIV:5(a). His delegation was fully aware of all the questions involved, but pointed out that the tariff negotiations were still going on and that the results of these negotiations were not yet available. He hoped that these results would be encouraging. The CONTRACTING PARTIES should continue their examination of the problem when the results were known, and discussion should be deferred until the next session.
Mr. LEGENA (Argentina) recalled that since the eighteenth session there had been a fundamental difference of opinion on Article XXIV:5(a). At the recent Council meeting it had been pointed out that the problem was of a legal nature and that statistical exercises were irrelevant. The facts were that the exports of the less-developed countries were suffering; their exports continued to meet tariff barriers. Agricultural policies were also restrictive, and non-tariff measures distorted the questions examined under Article XXIV:5(a). The agricultural exports of his country to the EEC were of great importance to Argentina, and he expressed concern that the incidence of the common external tariff was much higher than had been the tariffs of the individual member countries which were their main markets. As a result of protectionist policy, surpluses might grow in Europe which would bring about a further imbalance in the markets, which would lead to further restriction in the volume of all trade. He hoped that the ministerial meeting would lead to more effective measures in accordance with the principles of GATT.

Mr. EVANS (United States) said that the situation which had existed at the time of previous discussions had not altered in one respect. There would be no profit in taking the legal issues further in a working party, nor was further statistical study likely to be fruitful. The position on the common external tariff and on the other regulations of commerce was not yet known. His delegation felt, therefore, that the question should be kept open, and that when the relevant facts became available the CONTRACTING PARTIES should examine the height of the common external tariff and the other regulations of commerce.

Mr. GARCIA OLDINI (Chile) said that the crux of the matter was whether legal or effective duties should be used in an examination under Article XXIV:5(a). The Working Party had unfortunately stated that it was incompetent to come to a conclusion on this question.

The immediate problem, he said, was a different one. He had frequently referred to Article XXIV:4; most contracting parties had agreed that the key to the solution was to be found there. It was not conceivable to have a common market or free trade area which would not take into account the harm which could result for third countries. The vital interests of a sizeable number of countries, in particular under-developed countries, had been affected by the way in which the EEC had set up its tariffs. The EEC had not done enough on this crucial economic and political problem although many countries had made complaints. The EEC should abandon statistical calculations and at the ministerial meeting should give proof that it was able to adopt a political point of view and should take into account the vulnerable position of other contracting parties.

Mr. CAMPBELL-SMITH (Canada) said that in the view of his delegation it did not yet appear possible to make a judgment on the report of the Working Party, as the results of the Tariff Conference were not yet finally determined. He associated himself with other delegations in proposing that the item should be retained on the agenda until those results were known, as they could affect the assessment to be made.

Mr. HIJZEN (Commission of the EEC) said that he did not wish to repeat legal arguments. The EEC was still of the opinion that it could comply with all the provisions of the General Agreement, and that the common external
Paragraph 5 must not, however, be confused with paragraph 6. An argument founded on Article XXIV:6 could not be taken to confirm an argument based on XXIV:5. Some contracting parties had said that the common tariff had caused much harm; to say that the common tariff was too high could be accepted as a starting point. The Community had offered to make a linear reduction, with certain exceptions, of 20 per cent in the common tariff. Other contracting parties should also make reductions in their tariffs. The observer for Senegal had given some figures; increased imports of primary products into the EEC, he had said, were in fact higher from non-associated countries than from the associated overseas territories. In conclusion he said that not only the EEC but all contracting parties must adopt a pragmatic point of view in dealing with these problems.

Mr. VALLADAO (Brazil) noted that some speakers had proposed to defer their examination to a future session. This course of action had serious inconveniences for the problem had already been in existence for a long time. The report of the Working Party had shown that, for Brazil, the incidence of the common tariff on four products which accounted for 75 per cent of Brazil's exports to the EEC and for 80 per cent of negotiated concessions was higher by some $7 million than the incidence of the tariffs of the individual member countries. The representative of the EEC had spoken of the legal aspects of Article XXIV, and had said that the EEC had adopted a pragmatic point of view on problems raised by the Rome Treaty. The representative of the EEC should recall certain facts. When the Brazilian delegation had negotiated under Article XXIV:6, it had told the EEC that its difficulties were twofold. This constituted a threat to Brazil's exports to its traditional markets in the EEC which had been recognized by the Chairman of the Commission in a speech made on 17 May 1961. Secondly, difficulties would be caused by the rate fixed for EEC imports from the associated overseas territories. The CONTRACTING PARTIES had decided to examine the Rome Treaty under several different headings. The problem of the associated overseas territories was to be set aside until later. The problem of the associated overseas territories was not inconsiderable. It seemed that the pragmatic approach worked in favour of one party. He appealed to the EEC to recognize these problems. The representative of the EEC had spoken of the advantages which would accrue from the 20 per cent linear cut. This cut, however, did not cover agricultural products, which were of primary importance to his country. He hoped that certain contracting parties would gain something from the 20 per cent reduction.

He supported the proposal that during the ministerial meeting the question of the EEC common tariff should be examined in detail so that possible courses of action could be explored. He urged the EEC to consider this. It would be for the wellbeing of contracting parties placed in a similar position to that of Brazil, and would be of utility to the EEC because it would increase the confidence placed in the Community.
The CHAIRMAN said that the CONTRACTING PARTIES had had the opportunity at the eighteenth session and again at this session of hearing a full debate on the report L/1479 submitted by the Tariff Negotiations Committee. The questions considered were of such a nature that neither the Committee nor the CONTRACTING PARTIES had been able to settle the issues involved, but some contracting parties considered that it was inopportune at this session to attempt to come to any final decisions and had suggested that the item be retained on the agenda for further discussion. Further, it would be noted that some contracting parties might wish to take up on a future occasion the matter of "other regulations of commerce".

Mr. FARINDE (Nigeria) recalled that at the previous meeting he had mentioned that the report indicated a deadlock on the legal problem and he had asked the Executive Secretary whether any similar situation had been encountered previously in an international organization and, if so, how the matter had been dealt with.

The EXECUTIVE SECRETARY said that he was not certain whether situations exactly parallel to the present one had arisen in other international organizations where there had been a basic disagreement between parties to an international agreement as to the interpretation of one of its basic provisions. It was clear, however, that in circumstances of that kind it would be appropriate for the organization to refer the matter to the International Court of Justice for an advisory opinion, but this faculty was only available to certain international organizations, specifically those which directly depended upon the United Nations. However, this sort of problem had been envisaged in the past, specifically in the context of the General Agreement, and the decision of the CONTRACTING PARTIES on this point, which he thought had not been challenged, was that it was within the functions of the CONTRACTING PARTIES, acting jointly under Article XXV, to interpret the Agreement whenever they saw fit. It would be open for any government which disagreed with an interpretation to take the dispute which had given rise to the interpretation to the International Court of Justice, although neither a government nor the CONTRACTING PARTIES acting jointly could take a ruling of the CONTRACTING PARTIES to the Court.

Mr. FARINDE (Nigeria) said that, while agreeing that an examination of the common external tariff under Article XXIV:5(a) should be postponed, his delegation was concerned as to the terms on which this matter would be examined in the future. The delegate of Pakistan had already drawn attention to the Community's unilateral decision as to what could be examined by the CONTRACTING PARTIES. Mr. Farinde said that he wished to know how the CONTRACTING PARTIES should interpret the word "applicable" as appearing in paragraph 5(a) of Article XXIV. It was the view of his delegation that the CONTRACTING PARTIES could tackle this problem during the present session although the results of the tariff negotiations had not yet been known. Further, they could decide whether any contracting party could unilaterally make a decision as to the type of information that should be made available to the CONTRACTING PARTIES.
The EXECUTIVE SECRETARY said that he was not as optimistic as some with regard to the usefulness of discussion on matters of interpretation. He felt that the situation as it now existed was not one that was in the minds of the drafters of Article XXIV and for that reason he was doubtful whether a strictly legal approach would carry the matter any further. He wished to repeat an opinion he had expressed previously that a more practical approach rather than a juridical one would be more fruitful. Paragraph 5(a) of Article XXIV related only to the general incidence of the common tariff and not to the incidence of the tariff on particular products. Much of the discussion had been concentrated on problems arising for contracting parties which had a limited range of products for export and where the incidence of the common tariff duties on those products was higher than the average incidence of the tariff on those products of the individual members of the EEC. This, of course, was not a problem to be dealt with under paragraph 5(a) of Article XXIV, which referred to the general incidence of the tariff and not the incidence of the tariff on particular products. The Executive Secretary said that if it was so desired he would be prepared to place an opinion before the CONTRACTING PARTIES on the legal implications of Article XXIV which would be directed solely to questions under paragraph 5(a) relating to the general incidence of the common tariff. If it were desired this opinion could be discussed during the remaining meetings of the present session or at the twentieth session.

Mr. FARINDE (Nigeria) thanked the Executive Secretary and said that it was now before the CONTRACTING PARTIES to decide whether they wished to discuss the matter in this light during the present session or at the twentieth session.

Mr. VALLADAO (Brazil) said that he had followed with interest the remarks made by the Nigerian delegate and had shared some of his apprehensions as to the future examination of this problem by the CONTRACTING PARTIES. In his view it would seem that it was not possible to go into a close examination of all the juridical aspects of this problem at the present session. This did not mean, however, that his delegation was not aware of the serious issues raised by Nigeria. The Brazilian delegate then suggested that an item be included in the agenda for the next session relating to the interpretation of Article XXIV for the purpose of the examination of the common tariff.

The EXECUTIVE SECRETARY said that in his opinion there would be advantage in the further discussion of this problem only if the problem itself were defined more precisely. The first question was the interpretation and application of Article XXIV:5(a). He had already offered to place before the CONTRACTING PARTIES an objective juridical opinion. In that case he suggested that the item should appear on the agenda specifically as the interpretation and application of Article XXIV:5(a). The other serious problems which were raised concerning the impact of the common tariff on particular products had nothing to do with Article XXIV:5(a); this question should be kept clearly distinct from the first. The conclusion of the CONTRACTING PARTIES when they considered the Rome Treaty clearly indicated that all the procedures of the General Agreement, such as those of Article XXIII, were available to contracting parties to deal with any damage resulting from the application of the Rome Treaty. It was also indicated in the same reference that it was open to the six members of the
EEC in any matters brought forward under these procedures to advance, if they wished to do so, their rights under Article XXIV to justify actions which were complained of as causing damage. The Executive Secretary said that there would be serious difficulties unless these matters were handled in accordance with strict procedures and unless issues which were clearly separable were dealt with independently. Summarizing the situation, the Executive Secretary suggested that in response to the request of Brazil, either later in the session or at the next session, an item should be included in the agenda, in two parts. The first would relate strictly to the juridical question of the interpretation and application of Article XXIV:5(a) and the second would give an opportunity to those contracting parties, which felt that they were suffering through the application of the Treaty of Rome, or were damaged or were being seriously threatened with damage to their exporting interests, to bring points for discussion in accordance with the accepted procedures of the CONTRACTING PARTIES.

Mr. LACARTE (Uruguay) said that he completely shared the view expressed by the Executive Secretary. In his opinion it was a most logical and sensible approach and the suggestions required serious consideration by the CONTRACTING PARTIES.

Mr. HIJZEN (Commission of the EEC) said that he agreed with the view expressed by the Executive Secretary that the problem should be clearly defined. He had been of the understanding that the first point referred to by the Executive Secretary pertaining to Article XXIV:5(a), was the only point under discussion as an item on the agenda for the present session. He wished to point out that while contracting parties who felt that their interests were being damaged might be quite free to request the inclusion of another item on the agenda of the CONTRACTING PARTIES, this did not mean that the item would be automatically included.

The EXECUTIVE SECRETARY said that it would be open to any contracting party to invoke paragraph (f) of the conclusions of the CONTRACTING PARTIES which were approved at the thirteenth session when the Treaty of Rome was considered (BISD Seventh Supplement, page 71). It followed that such a request would be included if any contracting party alleged damage or threat of damage arising from action taken by member States of the EEC.

The CHAIRMAN said that it was recognized that this item should be retained on the agenda for the next meeting in order to deal with the interpretation of Article XXIV:5(a). It would be possible for any contracting party who wished to do so to request the inclusion in the agenda of a subsequent meeting, points of the kind just discussed or any other in which they might feel that they had a certain right.

This was agreed.
2. **Application of Article XXXV to Japan (L/1545)**

The CHAIRMAN said that at the eighteenth session the CONTRACTING PARTIES had appointed a working party to conduct a review under paragraph 2 of Article XXXV of the operation of that Article with respect to Japan. The Working Party had met during the intersessional period and its report had been distributed in document L/1545. The Chairman then called on the Executive Secretary who had presided at the meetings of the Working Party to present the report.

The EXECUTIVE SECRETARY said that the Working Party had been seriously conscious of the great importance of the task entrusted to it because of the importance of this subject which, in one form or another, had been before the CONTRACTING PARTIES for many years. The Working Party was aware that its report would form the basis of the review by the CONTRACTING PARTIES and also strongly influence such recommendations as the CONTRACTING PARTIES saw fit to make in accordance with the provisions of paragraph 2 of Article XXXV. Thus the first act of the Working Party was to conduct a searching and careful examination of the facts and the situation. A paper on the origin of Article XXXV and a factual account of its application in the case of Japan had been prepared by the secretariat for the Working Party. In another secretariat paper information was made available on the trading relationships between Japan and the contracting parties which had invoked Article XXXV against that country. These documents were subjected to a searching analysis and the Working Party had the advantage of further facts and information furnished in the course of the discussion by the countries concerned and by Japan. The availability of such detailed information had enabled the Working Party to include in its report a review of the facts.

The Executive Secretary said that the significant points which had emerged from a consideration of the facts were that, of the fourteen countries which had invoked Article XXXV against Japan, only two withheld most-favoured-nation customs treatment from that country. Secondly, the Working Party observed that with respect to import restrictions and controls there were great variations in the regimes applied to Japanese exports by the different countries invoking the Article; these various regimes were described in some detail in the review of the facts. Another important fact brought out in the discussion was that in no case had arrangements between Japan and the country invoking Article XXXV resulted in Japan giving more favourable treatment to such a country than to any other contracting party to the General Agreement. In the report the Working Party had set out its conclusions on the examination of the effects of Article XXXV on the trade of Japan, and noted that the invocation of this Article as such did not necessarily constitute an inhibition to the expansion of trade between the countries concerned; however, where Japanese exports were faced with such restrictions not applicable to other countries, imports from Japan would tend to stay at a relatively lower level or to increase at a slower rate compared to imports from other sources. The Working Party had also thought it
appropriate not to confine its attention entirely to countries which were invoking Article XXXV. It was noted that in some cases countries not invoking Article XXXV did not in fact extend to Japanese goods equality of import licensing treatment; even where no such restrictions were applied, in some cases Japan had undertaken to exercise voluntary restraint on its exports of a limited number of products to markets of contracting parties not invoking Article XXXV.

The Executive Secretary drew attention to the observations of some members of the Working Party that the apparent severity of such an extreme measure as the invocation of Article XXXV was out of proportion to the fears which in some cases were at the basis of the decision to invoke that Article. The Working Party had also observed that in the case of some countries the decision to disinvoke Article XXXV would involve these countries satisfying themselves, having regard to the trading system operated by Japan, that the application of provisions of the General Agreement would in practice afford non-discriminatory access to the exports of the disinvoking country. The Executive Secretary said that it could be noted that some members of the Working Party had laid emphasis on the fact that whilst the right of countries to use Article XXXV could not be questioned, nevertheless it was a fact that restrictions maintained under cover of the invocation of Article XXXV not only affected the trade of the two countries directly concerned, but also created problems for third countries. The Working Party's general considerations echoed the view that the atmosphere of uncertainty created by the lack of contractual GATT relations between Japan and a number of important countries had had inhibiting effects on Japan's exports to some markets.

The Executive Secretary drew attention to the remarks made by the Working Party regarding the relevance of Article XXXV to the efforts being made by Japan to proceed towards a rapid dismantling of its import restrictions consistent with its obligations under the General Agreement as its balance-of-payments position improved. The Working Party, basing itself on these various considerations, came to the view that there would be advantage not only from the point of view of Japan but for contracting parties generally if the possibility of disinvoking Article XXXV with respect to Japan was further explored by the contracting parties concerned. It had been recognized that because the problems arising in different cases were somewhat different in character, the solutions might have to be sought in bilateral negotiations, but that in turn the results of these bilateral negotiations might be such as to require action by the CONTRACTING PARTIES acting jointly. The Working Party felt it appropriate to refer in this connexion to the fact that the CONTRACTING PARTIES would review the whole question in the light of the report of the Working Party.
The Executive Secretary then turned to the views expressed by the Working Party on the invocation of Article XXXV by countries acceding to the General Agreement, and recalled that the Committee had considered this matter with respect to different types of cases. First, in the case of a former dependent territory of a contracting party which had become a contracting party in its own right through the automatic procedures of paragraph 5(c) of Article XXVI, it appeared to the Working Party that many countries in this situation had felt that the invocation of Article XXXV against Japan was automatic. Such countries had apparently felt themselves compelled to come to a hasty decision and had confirmed the application of Article XXXV in cases where it had been previously invoked by the metropolitan territory on their behalf. The Working Party pointed out that from a legal point of view and in their view it did not seem necessary for countries thus acceding to make an immediate decision of that kind. The Working Party had found it necessary to point out to such a country that such decisions should only be made after a careful examination of the situation in the light of its own circumstances as an independent country. This was an important consideration since the application of Article XXXV by the metropolitan country might have been occasioned by circumstances arising in the metropolitan territory itself and might not relate to economic considerations in the dependent territory.

As regards those countries acceding under Article XXXIII, the Working Party had recorded that there would of course be no question as to the right of any acceding country under Article XXXIII, exercising the right to invoke Article XXXV, but nevertheless as the Japanese representative had pointed out in the discussions, the very fact that Article XXXV was so widely used gave rise to the feeling that the invocation of this Article on accession was an accepted practice, and that it was appropriate to carry out special negotiations with Japan intended to obtain considerations or advantages which went beyond the normal rights and obligations under the General Agreement. It was to be hoped that before an acceding country came to a final decision on this matter opportunity would be afforded to the Japanese Government for an exchange of views.

The Executive Secretary referred the CONTRACTING PARTIES to an insertion in the report by certain countries in which they stated that for juridical and constitutional reasons they found it necessary to state that when the Working Party report was discussed at the nineteenth session their delegations might wish to comment further on certain recommendations.

The Executive Secretary expressed the hope that the Working Party's report would provide a suitable basis for discussion and that the CONTRACTING PARTIES during the review of this matter would give serious consideration to the formulation of appropriate recommendations.

Mr. HAGUIWARA (Japan) referred to the statement made by the Chairman at the commencement of the present session on the application of Article XXXV to Japan. The Japanese delegate said that this problem was one of the major issues facing the CONTRACTING PARTIES at the nineteenth session.
He recalled that at the seventeenth session he had requested that the problem be reviewed by the CONTRACTING PARTIES and was happy to note from document 1/1545 that the Working Party had conducted its task to such a purpose. He said that he had found a great number of constructive suggestions in the Working Party's report and would not claim that something more should be added. It was objective and comprehensive, but his delegation still entertained a certain apprehension that some of the contracting parties would tend to think of the problem as having been disposed of solely by the submission of the Working Party's report to the CONTRACTING PARTIES. Mr. Haguiwara said that it was admitted that this problem involved not only Japan but all Members of the GATT who were pledged to the promotion of world trade on a multilateral and non-discriminatory basis; it was quite clear that mere submission of the report to the CONTRACTING PARTIES would not put an end to this problem. His delegation supported the report and hoped that this problem would be thoroughly examined at the present session of the CONTRACTING PARTIES and, if possible, at the ministerial meeting as well. It was his most sincere and earnest hope that this problem would find a way forward at the present session and that concrete results would be achieved.

He said he had been, first of all, impressed to find in the report of the Working Party that there hardly existed any longer sufficient reason for the total refusal of GATT relations with Japan through the invocation of Article XXXV. In this connexion the Japanese delegate referred to the statement by the Working Party that where the original motive to invoke Article XXXV against Japan was the fear that some Japanese goods might be imported under such conditions as to result in serious damage or threat to domestic industries in the countries concerned, the apparent severity inherent in its invocation was disproportionate to the problems which had arisen in practice. He also noted that the application of the Article by a number of important countries exerted an adverse effect not only on the trade of Japan, but on the trade of third countries as well.

Referring to the problem of the invocation of the Article by governments newly acceding to the General Agreement, Mr. Haguiwara said that this problem was particularly urgent, because he had noted in the agenda for the session the question of the accession of several countries to the GATT. The report of the Working Party stated that a full exchange of views should be made before a new member country decided whether to invoke the Article and, in fact, the Government of Japan was at present conducting bilateral talks with some of the countries in question. The Japanese Government hoped that these negotiations would bear satisfactory results very soon, and if desirable results could be achieved, one of the most important points of the report would be said to have already borne fruit.
The problem of the invocation of Article XXXV against Japan had always been the greatest concern to his Government in their appraisal of the General Agreement and, as the Chairman pointed out in his opening address, the problem was a delicate one. The coming ministerial meeting, which would surely mark a turning point in the history of GATT would provide his delegation with as good a chance as could be expected to settle this long-standing problem. He was sure that this hope was cherished not only by Japan but also by those who were seriously concerned about world economic problems as a whole.

Mr. VALLADAO (Brazil) recalled that his Government had disinvoked Article XXXV against Japan and stated that his delegation supported the Recommendations contained in the Working Party report.

Mr. ARKAH (Ghana) said that his delegation had participated in the Working Party on the Article XXXV review. He noted that the report of the Working Party contained specific Recommendations in relation to the invocation of this Article by countries acceding to the General Agreement. In relation to the earlier remarks by the Executive Secretary to the effect that for some acceding countries the tendency had been to reach hasty decisions to confirm the application of Article XXXV in cases where it had been previously invoked by the metropolitan territory, the Ghana delegation had explained in the Working Party that their decision to invoke Article XXXV had not been a hasty decision, but rather the only appropriate one under the conditions that existed at the time of their application for accession. His delegation would have liked to see some more definite recommendations contained in the report of the Working Party; for example, a recommendation for the establishment of a standing committee which might meet annually to discuss the question. While the report of the last Working Party provided a Recommendation with respect to procedures under which bilateral consultations might be carried out, these Recommendations did not go far enough; in the view of his delegation concerted action was needed by the CONTRACTING PARTIES. Mr. Arkaah stated that at the present time his Government was in the process of conducting bilateral consultations with the Government of Japan; it was expected that these consultations would be concluded shortly and that in the very near future the Government of Ghana would be in a position to disinvoke Article XXXV.

Mr. TOWNLEY (Federation of Rhodesia and Nyasaland) stated that the Federation was at present engaged in a comprehensive trade agreement negotiation with Japan, the results of which could not be forecast. The negotiations were being conducted against the background of an existing formal arrangement which had as one of its stated objectives eventual full most-favoured-nation treatment. His Government was approaching this problem with a sympathetic attitude and considered that a strictly bilateral method of negotiation was the only one which held any prospect for a progressive movement by any particular country towards the disinvocation of Article XXXV. His Government could and would move only as quickly as it was able to resolve the detailed and specific trade problems directly between the Federation and Japan. The particular reasons for the invocation of Article XXXV varied; therefore his delegation saw little merit in the suggestion made by the Working Party in paragraph 17 of its report that a collective approach was desirable; there appeared to be no reason why the exercise by one contracting party of its rights under Article XXXV should be formally related to the exercise of similar rights by any other contracting party. His delegation was not convinced that the CONTRACTING PARTIES acting jointly needed to recommend to countries acceding under one or other of the
provisions of the Agreement that they should afford an opportunity for an exchange of views to the governments against which Article XXXV might be invoked. Such opportunities for consultation existed both inside and outside the GATT. Such action could be construed as savouring interference or might suggest that countries acceding in the future would be subject to certain pressures. It was the opinion of his delegation that the Working Party in paragraph 20 of its report had taken a much too cynical view of the motives which might lie behind future invocations of Article XXXV. There were certainly not the motives of his Government. His delegation would not be in favour of the creation of a standing working party to consult annually with the countries who might still be invoking Article XXXV.

Mr. DE SMET (Belgium) speaking on behalf of Belgium, Luxemburg and the Netherlands recalled that the Benelux countries had signed a new trade agreement with Japan in 1960 which was still in force. It provided safeguards with respect to actual or threatened market disruption; at the same time the right to appeal to Article XXXV of the General Agreement had been held in reserve. No important or especially difficult problems had arisen with respect to the implementation of the provisions of the new bilateral trade agreement; therefore, it was hoped that it would not be necessary to continue to invoke Article XXXV for the length of time originally envisaged. With reference to the Recommendations of the Working Party, at the time their report was released the representatives of Belgium and the Netherlands had felt it necessary to maintain certain reservations; these reservations no longer existed. As regards the right of newly independent territories such as the Congo (Leopoldville), which were considering accession to the General Agreement, there was no question of the automatic invocation of Article XXXV; these countries were aware of their rights and interests and would make an independent decision on the matter.

BARON VON PLATEN (Sweden) noted that there were three particular facets to the problem of the invocation of Article XXXV against Japan; one was legal, one was practical and one was psychological. His delegation believed that there was good reason to support a concerted move towards the disinvocation of Article XXXV on all three counts. The legal aspect of the problem was clearly in Japan's favour. From the practical point of view, due to the application of Article XXXV against Japan, it had been necessary for that country to retain a complex system of import licensing, the operation of which had caused certain difficulties; the removal of barriers to trade with Japan could be facilitated by the disinvocation of Article XXXV. Referring to the psychological aspect of the matter Baron von Platen reminded the CONTRACTING PARTIES that in a very short time Japan had moved from the position of a less-developed to that of a highly-industrialized country. He felt that contracting parties should treat this country, which had emerged so successfully from the less-developed stage, in a just and generous way. His delegation strongly supported the views expressed by the representative of Japan and hoped that all contracting parties would shortly find themselves in a position to disinvoke Article XXXV.
Mr. LINDLEY (United Kingdom) stated that his delegation recognized the great importance to Japan of the problem of Article XXXV. His delegation was not in a position to comment further at this stage on reservations related to the Recommendations contained in the report of the Working Party. In 1955 his Government had published a white paper explaining the reasons for the United Kingdom's action in invoking Article XXXV. His Government believed that a practical solution could only be found in a bilateral approach to the problem. At present bilateral negotiations were in progress between the two governments. If these negotiations reached a satisfactory conclusion on certain aspects of importance to the two delegations, it would make a very valuable contribution to the solution of the United Kingdom's problem with regard to Article XXXV and Japan.

Mr. EVANS (United States) stated that while his delegation had supported the Working Party report, the adoption of this report did not by any means solve the problem with which the CONTRACTING PARTIES had been faced for a long time. His Government endorsed the conclusions contained in the report and hoped that these would assist the CONTRACTING PARTIES in their further study of the problem. His Government hoped that a maximum number of countries who now invoked Article XXXV would be in a position to disinvoke it in the near future and that acceding governments would give more serious consideration to alternative ways of solving any problem they had in mind before they decided to invoke Article XXXV. His Government felt that this course of action was desirable not only from the point of view of Japan and from the point of view of the general effectiveness of the Agreement, but also from the point of view of the trade interests of other contracting parties since it was difficult to see how Japan could be expected to maintain liberal trade policies itself unless it was accorded non-discriminatory treatment. It was encouraging that Ghana might soon be in a position to disinvoke Article XXXV and that a solution was in the offering as a result of negotiations between the United Kingdom and Japan. His delegation did not question the legal right of any contracting party under the circumstances specified in Article XXXV to invoke that Article. In their own immediate self-interest and in the interest of the success of the General Agreement, it was to be hoped that contracting parties would use the maximum restraint in invoking the Article and the maximum celerity in disinvoking it. In the view of his delegation, whatever the legal rights might be, it was never the intention of the CONTRACTING PARTIES in adopting Article XXXV to provide a bargaining device for the use of one contracting party against another. His Government deplored the invocation of Article XXXV for the purpose of obtaining a bargaining position from which special advantages might be obtained. His delegation would be interested to know at a later stage in the discussion whether the Japanese delegation had any proposal regarding appropriate procedures to be adopted to seek a final solution to the problem. His delegation would support any proposal whereby the CONTRACTING PARTIES would initiate during the present session the review contemplated under Article XXXV:2. His delegation would also be glad to cooperate in any move towards the establishment of multilateral procedures if
they should be found necessary in order to supplement or to make feasible the results of bilateral discussions between Japan and other countries. It would appear that a continuation of the Working Party would not accomplish a great deal; therefore the CONTRACTING PARTIES should at least begin the process of seeking a solution at the level of the CONTRACTING PARTIES.

Mr. TSHILUMBA-KABISHI (Congo-Leopoldville) stated that the question of the application of Article XXXV to Japan was of considerable interest to his Government. The matter was under examination and a decision would be announced in this regard at the appropriate time.

Mr. CORKERY (Australia) stated that his delegation had participated in the Working Party and had endorsed the report which recognized certain facts that had not been sufficiently emphasized in the past. His Government had supported in particular the views expressed in paragraphs 8, 11 and 17 of L/1545 and supported especially the Recommendations contained in the final two sections of the report.

Mr. CAMPBELL-SMITH (Canada) declared that the application of Article XXXV to Japan had constituted and continued to be a source of weakness in the effective implementation of the objectives of the General Agreement. In the opinion of his delegation Japan should be in a position to enjoy the same advantages under the General Agreement as those accruing to other contracting parties. His delegation welcomed and endorsed the findings and recommendations contained in the report of the Working Party. It was the experience of his Government that the continued application of the provisions of Article XXXV by some contracting parties had caused diversions in the normal pattern and free flow of trade and resulted in dislocations in the markets of countries which remained open to imports from Japan. His Government stood ready to support any proposal whose objective would be the disinvocation of Article XXXV by all contracting parties.

Mr. DATSON (New Zealand) stated that his delegation endorsed the remarks made by previous speakers concerning the report of the Working Party. The report indicated clearly some of the problems leading up to and resulting from the decision to invoke Article XXXV against Japan. The report laid stress on a number of aspects of the matter, all of which needed to be considered; these aspects varied in importance according to the type of economy, the degree of industrialization and the existence of domestic legislation in different countries to deal with the situation. Independent regulations on trading relationships between Japan and contracting parties had been made individually, bearing in mind these relevant factors. His delegation wished to draw particular attention to the section of the Working Party report that mentioned the fact that the invocation of Article XXXV as such did not necessarily constitute an inhibition to the expansion of trade between the countries concerned. In fact, it appeared from the discussion in the Working Party and from the examination of statistics provided by the Japanese
delegation that a greater degree of discrimination was practised by some countries not invoking Article XXXV than by some who were invoking it. The question of discrimination was a matter for consideration under the relevant articles of the Agreement. It appeared that the situation had not improved to any marked extent over the last few years. Trade between Japan and New Zealand, however, had steadily and substantially increased both absolutely and as a percentage of his country's total trade. His delegation was of the opinion that the time would come when some general solution to the problem could be found; such a solution would have to deal with the fear of difficulties that might arise from a sudden large influx of imports from Japan. A solution would need to embody safeguards which could be used by contracting parties under appropriate circumstances. There was a safeguard in the New Zealand Agreement with Japan, upon which a general solution might be based. In accordance with the provisions of the bilateral agreement his Government had accorded most-favoured-nation treatment to Japan both as regards tariffs and the administration of import controls. Consultations under this bilateral agreement were scheduled to take place shortly; the various points raised at the Working Party meeting and at the session would no doubt be fully discussed with a view to arriving at an eventual answer to the problem.

Mr. HAGUWARA (Japan) expressed the appreciation of his Government for the sympathy and understanding that had been expressed during the discussions in both the meetings of the Working Party and at the session. He called attention to the urgency of the problem in view of the aspects related to the programme for the progressive renewal of quantitative restrictions envisaged by his Government (L/1618). Despite the difficulties confronting the Japanese economy his Government was planning to achieve its objective of a 90 per cent liberalization of its trade by the end of September next. At the seventeenth session his delegation had expressed serious concern regarding the implications of the invocation of Article XXXV against Japan (L/1391). His Government now found itself faced with the dilemma foreseen at that session, i.e. whether it should extend liberalization measures to countries who persistently retained restrictions against Japanese exports. It had been the hope of his Government that solutions might be found through bilateral negotiations. The realization of a solution achieved through the concerted action of the CONTRACTING PARTIES would enable his Government to avoid the non-extension of liberalization measures to certain contracting parties. The report of the Working Party did not deal with these problems. It was the hope of his Government that the Article XXXV review would be continued until a solution was found; appropriate procedures to be followed in this regard might be discussed at the ministerial meeting and this item might be included on the agenda again later in the session in order to permit in the interim period further discussions of the matter between his delegation and various other delegations.
The CHAIRMAN stated that the suggestion for concerted action by the CONTRACTING PARTIES on the problems related to the application of Article XXXV to Japan appeared to offer an appropriate solution, although this did not preclude the possibility of progress through bilateral negotiations. In the light of the discussions it would be appropriate for the item to be placed on the agenda for further discussion after the ministerial meeting.

The procedure was agreed.
3. **Retirement of the Deputy Executive Secretary**

The EXECUTIVE SECRETARY recalled that earlier in the year he had indicated with profound regret the decision of the Deputy Executive Secretary to retire at the end of the year. Fortunately, Mr. Royer would be available after his retirement to undertake certain specific important functions as a consultant, but this would be the last session in which he would be sitting with the CONTRACTING PARTIES as Deputy Executive Secretary. Jean Royer had brought to the service of the CONTRACTING PARTIES a glittering display of qualities; he had an extraordinarily powerful intelligence, a long experience as an important official of the French Government and as a former servant of the League of Nations; he had an exceptional command of the diverse tongues in which the work of the CONTRACTING PARTIES had to be conducted. Mr. Royer also had an inexhaustible reserve of technical competent knowledge and experience, all of which he had placed at the disposal of the CONTRACTING PARTIES as a whole, and to each and every one of the contracting parties who, from time to time, had sought his assistance. The impact of these rare qualities on the work of the CONTRACTING PARTIES could not fail to be great, allied as they were to an unswerving faith in the basic importance of the great political and humanitarian aims which the General Agreement was serving. The Executive Secretary wished to be the first to thank Mr. Royer for his loyalty and to wish him the best of health and enjoyment in, what he hoped would be, the rather easier days which lay before him.

The CONTRACTING PARTIES supported with enthusiasm the statement of the Executive Secretary by a standing ovation.

Mr. ANDRE PHILIP (France) and many representatives of other contracting parties, and the representative of the International Monetary Fund, endorsed wholeheartedly the tribute paid to Mr. Royer by the Executive Secretary.

The meeting adjourned at 6.45 p.m.