CONTRACTING PARTIES
Forty-Seventh Session

SUMMARY RECORD OF THE THIRD MEETING
Held at the International Conference Centre, Geneva on Wednesday, 4 December 1991 at 3.15 p.m.
Chairman: Mr. Rubens Ricupero (Brazil)

Subjects discussed:
- Activities of GATT (continued)  
- Trade measures against Yugoslavia for non-economic reasons  
- Philippines - Rates of certain sales and specific taxes  
- Dates of the Forty-Eighth Session  
- Election of Officers  
- Closure of the Session

Activities of GATT (continued)

The following statement was made:

Mr. José Francisco Rezek
Minister of External Relations for Brazil

- Action on reports submitted to the CONTRACTING PARTIES

The CONTRACTING PARTIES adopted the report of the Committee on Trade and Development (L/6929) and took note of the reports of the MTN Committees and Councils (L/6937, L/6935, L/6932, L/6934, L/6926, L/6940 and Corr.1, L/6938, L/6936 and L/6941).

Trade measures against Yugoslavia for non-economic reasons

The Chairman drew attention to a communication from Yugoslavia regarding this matter (L/6145).

Mr. Karadzole (Yugoslavia) drew attention to recent trade measures invoked against Yugoslavia for non-economic reasons by the European Communities, Canada, Japan, Sweden, Switzerland, Norway, Austria, Finland, Australia and New Zealand, which constituted part of a larger package of economic sanctions. Although the major components of these sanctions were known, all were not transparent thus far. Consequently, Yugoslavia wished...
to initiate a discussion on this matter against the background of basic GATT objectives and to express its concern, which it deemed relevant, for the implementation of the General Agreement. Depending on the evolution of this issue, his Government would present more details at a later stage.

On 15 November 1991, the Community, among other measures, had suspended the implementation of the Agreement on Trade and Cooperation with Yugoslavia, reintroduced quantitative limits for Yugoslav exports of textile products, excluded Yugoslavia from its list of GSP beneficiaries and suspended the application of concessions and GSP treatment on products covered by the Treaty creating the European Coal and Steel Community. The Community had also undertaken actions to denounce or suspend the application of bilateral trade agreements between the Community and its member States and Yugoslavia. On 2 December, the Community's Council of Ministers had decided on discriminatory application of economic sanctions within the territory of Yugoslavia. Possible additional economic measures were under consideration as well, as provided for by the Community's Ministerial Declaration on Yugoslavia adopted in Rome on 8 November.

Yugoslavia did not intend to involve the CONTRACTING PARTIES in passing judgement on the political matters that lay behind the measures in question, but only to raise the issues it believed deserved the consideration of the CONTRACTING PARTIES because of their relation to the functioning of the General Agreement and the rights and obligations thereunder. Yugoslavia also considered it important that all countries participating in the Uruguay Round, which was entering its final stage, act in a manner that would strengthen mutual confidence and avoid making trade hostage to political problems.

In Yugoslavia's view, the measures that had been referred to above should be examined and their implementation followed in the light of paragraph 7(iii) of the Ministerial Declaration of 29 November 1982 (BISD 29S/9), under which the contracting parties undertook, individually and jointly, "to abstain from taking restrictive trade measures, for reasons of a non-economic character, not consistent with the General Agreement."

In light of the latest evolution of the matter, the GATT consistency of the measures in question was seriously undermined. For example, the measures violated the provisions of the General Agreement providing for mfn treatment and non-discrimination in respect of the entire territory within a contracting party's borders. He pointed out that a number of countries were faced with serious political and social unrest which, under certain circumstances, could develop into a situation of conflict. There was an obvious need, therefore, to prevent the abusive invocation of Article XXI in the case of such internal problems. Otherwise, one could easily witness a proliferation of trade measures aimed at exercising political pressure, with unforeseeable damaging consequences on the international trading system. In this context, Yugoslavia wished to pose the question as to whether there were limits beyond which measures taken for non-economic reasons would represent an obstacle to the fulfilment of basic GATT objectives and to the functioning of the General Agreement. How was one to weigh political aims against the need to contribute to non-discriminatory
and open trade policies, to further development of the less developed contracting parties and to increase the predictability and certainty of trade relations? These questions were pertinent, irrespective of whether or not trade sanctions for political reasons violated GATT provisions.

In addition to affecting Yugoslav trade, the punitive measures that he had referred to would also affect Yugoslavia's economic and trade partners. The Trade and Cooperation Agreement between Yugoslavia and the Community was, inter alia and to a certain degree, based on Part IV. Depriving Yugoslavia of the benefits of this Agreement, and excluding it from the list of GSP beneficiaries was not, in Yugoslavia's view, in conformity with the spirit of Part IV and the principle of non-discrimination upon which the GSP was based. On the contrary, contracting parties should exercise utmost prudence in using trade measures which implied discrimination for purposes outside the trade area, especially when developing countries were involved.

Referring to certain selective "positive compensatory measures" decided upon two days earlier by the Community, and announced by some other contracting parties to be applied to certain parts of Yugoslavia, he said that these raised a number of important issues which needed to be addressed by the CONTRACTING PARTIES. If these were trade measures, he asked if they would not create a serious precedent by way of discriminatory treatment of different parts within the territory of a single contracting party -- a notion that was totally alien to the General Agreement. It was extremely important that such measures be fully transparent and duly notified so as to enable the CONTRACTING PARTIES to assess them from the point of view of the functioning of and consistency with the General Agreement. In addition, for reasons of transparency, the CONTRACTING PARTIES should be kept informed on all the measures already undertaken as well as those which would follow, particularly in pursuance of the notification provision in paragraph 4 of the Enabling Clause1 relating to the introduction, modification or withdrawal of GSP treatment. He noted that the CONTRACTING PARTIES' Decision of 30 November 1982 concerning Article XXI (BISD 29S/23), also required that "contracting parties should be informed to the fullest extent possible of trade measures taken under Article XXI". Owing to Yugoslavia's concerns over the discriminatory application of certain measures to different parts of its territory, it was indispensable that the CONTRACTING PARTIES recommend that this information also contain elements relevant in assessing the manner of implementation of these measures. Due to the nature of the measures in question there was a need for contracting parties to receive relevant and pertinent information on the necessity test upon which decisions on the scope of the measures had been taken. There was a further need for information on the envisaged duration and the criteria for its determination or, in other words, the conditions under which the measures would be abolished, as well as on mechanisms and the administrative procedures put in place for their operation.

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1Differential and More Favourable Treatment, Reciprocity and Fuller Participation of Developing Countries (BISD 26S/203).
His authorities were considering the implications of the trade measures taken against Yugoslavia and also the already declared possibility of diversifying the sanctions. Depending on their nature, his authorities would assess the consistency of the various measures and would act accordingly. Yugoslavia therefore reserved its GATT rights, including the right to propose that the CONTRACTING PARTIES, taking into account their Decision of 30 November 1982 concerning Article XXI, "decide to make a formal interpretation of Article XXI". The necessity of such a decision should be assessed against the open-ended exceptions to GATT provisions contained in Article XXI, and in the context of the important objectives of the Uruguay Round to strengthen and clarify GATT rules and disciplines. He recalled that one was negotiating, in the Uruguay Round, improved rules and strengthened disciplines in respect of a number of Articles which were already more stringent than Article XXI. In this sense, the re-evaluation of problems posed by trade measures taken for non-economic reasons and the interpretation of Article XXI would complement the expected results of the Uruguay Round.

He stressed that the crisis in Yugoslavia was undergoing a very delicate and grave phase and that the worst thing would be to act in a manner that would aggravate the already serious situation. He recalled his Government's statement of 14 November 1991 -- i.e., before the adoption of the latest discriminatory package of measures against Yugoslavia -- which stated, inter alia, that "...the adopted economic sanctions will to a great extent have counter-productive effects and will be primarily a most serious blow to the Yugoslav economy and hence to the majority of innocent civilians who have already been exposed to grave suffering caused by the war and to economic hardships". Consequently, the Yugoslav authorities had already appealed to the contracting parties that had undertaken economic sanctions against Yugoslavia to reconsider and withdraw their decisions.

Mr. Trân (European Communities)² said that nothing justified violence. Nothing justified intolerance, which bred violence. While there was no problem that did not have a solution, no solution was made viable by means of weapons and violence. Violence provoked violence, with bitterness besides. Violence was contagious, destabilizing and created insecurity. The Community's response to this violence, intolerance and irrationality was a peaceful one: recourse to trade measures based on Article XXI, as notified in document L/6948. The Community hoped that these peaceful measures would act as a deterrent. He emphasized that these trade measures, accompanied by humanitarian actions, were being and would continue to be adjusted in the light of developments in the situation. In invoking Article XXI, the Community had remained faithful to the principle it had advocated and observed, namely that discretionary action should not mean arbitrary action. In the present case, the objective of the Community's action was peace.

²The text of the statement was subsequently circulated in document L/6950.
Mr. Stoler (United States) said that continued efforts by third parties to resolve the conflict in Yugoslavia had not brought lasting results. This continuing crisis had devastated the lives of the people of Yugoslavia and threatened to destabilize the entire Balkan region. The United States strongly supported the Community's efforts to achieve a genuine cease fire and to encourage a political settlement to the conflict through the Hague Peace Conference. In support of these goals, the Community had announced economic sanctions and trade measures against Yugoslavia, and his country's President had announced that the United States would strongly back these sanctions by implementing comparable measures. This announcement had underscored the United States' determination to use all available means to persuade parties to the conflict in Yugoslavia to cease hostilities and resolve their differences through peaceful means.

Mr. Shannon (Canada) said that Canada's policies, as those of the United States and the Community, were motivated by the need to see an end to the violence in Yugoslavia. To that end, Canada's Secretary of State for Foreign Affairs had announced that Canada was taking immediate action, which included trade sanctions and emergency humanitarian relief, to support the peace process and to compel the parties to end the civil war in Yugoslavia. Canada welcomed the measures and the sanctions announced by the Community and supported by others. The measures announced by Canada included taking immediate steps to withdraw application of GSP treatment to Yugoslavia, and to control the export of arms to that country. Canada had also announced that an additional CAN$1 million of funds would be made available for humanitarian relief for the victims of the civil strife in Yugoslavia. These measures were consistent with Canadian law and, in his judgement, were consistent with Canada's GATT obligations.

Mr. Ukawa (Japan) emphasized that Japan had not taken any trade measures against Yugoslavia. He quoted from a 12 November 1991 statement by the Director-General for Public Information and Cultural Affairs of the Foreign Ministry of Japan as follows: "Japan has decided to take the following measures in the spirit of cooperating with the international community: (i) suspension of technical cooperation with Yugoslavia; and (ii) suspension of studies on the extension of official loans to Yugoslavia. Japan strongly urges all the parties concerned in Yugoslavia to recognize that the international community is gravely concerned about the situation in Yugoslavia and to make efforts towards a peaceful solution of the conflicts".

Mr. Zutshi (India) said that he had listened with great attention to the previous statements. India did not favour the use of trade measures for non-economic reasons. Such measures should only be taken within the framework of a decision by the United Nations Security Council. In the absence of such a decision or resolution, there was a serious risk that such measures might be unilateral and arbitrary and would undermine the multilateral trading system. India hoped that there would be an early and amicable settlement of the matter to the satisfaction of all parties involved without any serious detrimental effect to the trade and economy of the affected party, and without causing any hardship to the ordinary people involved.
Mr. Selmer (Norway) said that Norway and the other Nordic countries had taken a number of measures aimed at contributing to the restoration of peaceful conditions in Yugoslavia, and that they considered these measures to be consistent with their GATT obligations.

Mr. Hernández Pérez (Cuba) said that the situation that had arisen in Yugoslavia was indeed sad, and called on all peaceful forces to bring about a solution to the problem. Nothing justified intolerance in dealing with this problem, nor could it be solved through violence. Cuba could not share in the decisions by some countries to take measures against Yugoslavia in an attempt to bring an end to the hostilities, all the more so since these measures created even further difficulties and problems for the people involved.

Mr. Barnett (Jamaica) said that one could not help but note an increasing tendency to use trade and economic measures in pursuit of selected and preferred political objectives. Jamaica found such a tendency worrisome, and encouraged all to be wary of it. In the particular matter at hand, Jamaica wished the people and Government of Yugoslavia well in their attempts to deal with a difficult situation. While he was sure that the international community was concerned about the developments in Yugoslavia, he was also sure that it would not wish to be embroiled increasingly in the sorts of tendencies to which he had referred earlier.

The CONTRACTING PARTIES took note of the statements.

Philippines - Rates of certain sales and specific taxes

Mrs. Escaler (Philippines) said that, as indicated in document W.47/23, her Government was requesting an extension by one year of the time-limit provided for in the CONTRACTING PARTIES' Decision of 4 December 1989 (BISD 36S/44), to bring into line with Article III the rates of sales taxes in respect of cigarettes which varied according to whether the items were manufactured locally or imported. While her Government had attempted to pass legislation in 1990 to modify the tax structure for cigarettes to bring it into GATT conformity, it had not proved possible to address this issue fully at that time. Since then, two new alternative Bills had been proposed to the Philippine Congress concerning this matter. However, because of the need to address more urgent issues, including those related to the four major natural disasters in the Philippines in the past seventeen months, the Congressional agenda had been too full to allow more time for consideration of this issue. Therefore, in view of the fact that it would not be possible for the necessary legislative processes to be completed before the expiry of the time-limit provided for in the 1989 Decision, the Philippines requested an extension thereof.

Mr. Plasa (European Communities) expressed his delegation's concern that the Philippines was seeking yet another extension of this time-limit. His delegation had not been given sufficient notice to consider this request and to hold consultations thereon. Accordingly, he proposed that consideration of this request be deferred until the first meeting of the Council in the new year.
Mr. Stoler (United States) said that the United States was deeply concerned by the Philippines' request for yet another extension of the time-limit in its Protocol of Accession (BISD 26S/192) and its continued discriminatory taxation of cigarettes. He recalled that when the Philippines had acceded to the GATT in 1979, it had sought and had been granted a five-year period to eliminate such practices. In 1984, a five-year extension to this time-limit had been granted (BISD 315/7). In 1989, the Philippines had requested yet another extension, at which time the United States had expressed serious misgivings thereon, given general concerns about continued extensions of temporary derogations and particular commercial interests in the product in question. Despite its concerns, however, the United States had agreed to this further extension based on assurances by the Philippines that it would undertake all efforts to secure passage of the necessary legislation within the prescribed period or sooner. The United States had also made clear at that time that it viewed the extension as the last one. The record would show that the United States had shown flexibility and understanding to the Philippines on this issue. However, flexibility had its limits. The United States believed it was high time for the Philippines to take the necessary measures to bring its practices into GATT conformity. With these views in mind, and without prejudice to its position, the United States could accept the Community's proposal that consideration of this item be deferred until the next meeting of the Council. The United States sincerely hoped that in the meantime the Philippines would take appropriate action so that further discussion of this issue would be unnecessary.

The CONTRACTING PARTIES took note of the statements and agreed to refer the matter to the Council for further consideration.

Dates of the Forty-Eighth Session

The CONTRACTING PARTIES agreed that the Forty-Eighth Session would be held in the week starting Monday, 7 December 1992, bearing in mind the possibility for the Chairman of the CONTRACTING PARTIES, in consultation with delegations, to fix the dates and the duration of the Session with greater precision in the course of 1992 in light of the Uruguay Round negotiations, and even to modify the dates if circumstances made this desirable.

Election of Officers

The following nominations were made:

Chairman of the CONTRACTING PARTIES: Mr. Lars E.R. Anell (Sweden)
Vice-Chairmen of the CONTRACTING PARTIES:  
Mr. Emeka A. Azikiwe  
(Nigeria)  
Mr. J.F. Boddens-Hosang  
(Netherlands)  
Mr. Gerald E. Shannon  
(Canada)  
Mr. B.K. Zutshi  
(India)  
Mr. Jesús Seade  
(Mexico)  

The CONTRACTING PARTIES elected the officers nominated.

Closure of the Session  
The Session closed at 5.15 p.m.