GENERAL AGREEMENT ON

TARIFFS AND TRADE

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MINUTES OF MEETING

Held in the Centre William Rappard
on 6 February 1991

Chairman: Mr. Lars E.R. Anell (Sweden)

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Prior to adoption of the Agenda, the Chairman, on behalf of contracting parties, welcomed Macau as the 101st contracting party[1], recalling that Macau had succeeded to the General Agreement on 11 January 1991 in accordance with the procedures under Article XXVI:5(c).

He then welcomed Costa Rica and Macau as Council members, following their respective requests for membership.

1. Accession of Guatemala
- Report of the Working Party (L/6770 and Corr.1[2] and Add.1)

The Chairman recalled that in April 1990 the Council had established a working party to examine Guatemala's application to accede to the General Agreement. He drew attention to the report of the Working Party and to the Schedule LXXXVIII - Guatemala in documents L/6770, Corr.1[2], and Add.1[3].

Mr. Artacho (Spain), Chairman of the Working Party, said that pursuant to its mandate, the Working Party had carried out an examination of Guatemala's foreign trade régime and its compatibility with the General Agreement. During the examination Guatemala had supplied additional information and clarification regarding the different points raised. The main points brought out in the Working Party discussion were set out in

[1] See also Item 16.

[2] Spanish only.

[3] A Corrigendum 1 to L/6770/Add.1 correcting minor technical inaccuracies has since been circulated.

paragraphs 9 to 46 of L/6770. Matters taken up by the members had related to Guatemala's economic policies and strategies, tariff and customs system, import regulations, export policy, State-trading and government procurement, integration agreements and MTN Agreements.

Having carried out an examination of Guatemala's foreign trade régime and in light of the explanations and assurances given by its representatives, the Working Party had reached the conclusion that, subject to the satisfactory conclusion of the relevant tariff negotiations, Guatemala should be invited to accede to the General Agreement under the provisions of Article XXXIII. For this purpose the Working Party had prepared a draft Decision and Protocol of Accession which had been annexed to the report. Concessions resulting from the tariff negotiations between Guatemala and contracting parties in connection with its accession had been circulated as L/6770/Add.1 and would be annexed to the Protocol of Accession.

The representative of Guatemala, speaking as an observer, affirmed his Government's conviction that the trading system promoted by the GATT offered many advantages, permitting as it did the orderly and more equitable development of world trade and generating greater wealth and a better distribution thereof amongst various countries. Guatemala's decision to accede to the General Agreement was to be framed in the context of its structural reforms aimed at promoting economic and social development. He cited several autonomous measures recently taken in this regard, such as the reduction of tariffs, reduction or elimination of non-tariff measures, privatization of state enterprises, and the elimination of distortions in the economy. Guatemala expected recognition for its efforts as a contribution to international trade liberalization and the full support of contracting parties for the realization of its legitimate aspirations to be integrated adequately into the world economic system. Guatemala hoped that as a contracting party the international cooperation granted to it as a developing country would be strengthened, and that the GATT principle of differential and more favourable treatment for developing countries would objectively be applied to it.

The representative of Nicaragua recalled that until recently his country had been the only contracting party among the member countries of the Central American Common Market (CACM). Costa Rica, El Salvador and Guatemala had since completed their accession processes, and Honduras would shortly be initiating the steps that would conclude with its full accession. All had embarked on a process of economic reform and trade liberalization aimed at making their economies more open and efficient and at promoting economic development. They were making great efforts in this field, with all the accompanying social costs. As could be observed from the commitments undertaken by these countries upon their accession to the General Agreement, trade liberalization was a very important component of their policies. Their accession was also a clear demonstration of political will, which should be recognized. Guatemala's accession would be a positive contribution to that country's progress, to the CACM, and to the multilateral trading system in general.

The representative of Costa Rica welcomed the results of the Working Party's work and Guatemala's efforts in paving the way for its accession. Guatemala's accession would represent a further vote of confidence in the multilateral trading system, and a further step in the common will of the CACM member countries to join the GATT. He trusted that all those countries would soon have become contracting parties thereby strengthening the basis of the CACM.

The representative of Mexico expressed satisfaction at the progressive accession to the General Agreement of Central American countries which, together with many others in Latin America, had made enormous efforts to modernise their economic and trade policies. Guatemala's Protocol of Accession affirmed its confidence in the multilateral trading system.

The representative of Morocco indicated his delegation's strong support for adoption of the Working Party report.

The representatives of Argentina, the European Communities, Australia, Austria, Bolivia, Brazil, Canada, Chile, Colombia, Costa Rica, Hong Kong, Korea, Malaysia, Japan, Jamaica, Peru, Romania, Sri Lanka, Thailand, Senegal, Zimbabwe, Yugoslavia, Venezuela, Uruguay, the United States, Turkey, Norway, Sweden, Finland, Iceland, and Switzerland, among others, wished to be placed on record as supporting and welcoming the accession of Guatemala.

The Council approved the text of the draft Decision and the text of the draft Protocol of Accession, agreed that the Decision should be submitted to a vote by postal ballot, adopted the Working Party's report (L/6770, Corr.1, and Add.1) and took note of the statements.

2. Trade in textiles
   (a) Report of the Textiles Committee (COM.TEX/67)
   (b) Report of the Textiles Surveillance Body (COM.TEX/SB/1550 and Add.1)

The Director-General, Chairman of the Textiles Committee, introduced the Committee's report on its fourth annual review of the operation of the Multifibre Arrangement[4] (MFA) as extended by the 1986 Protocol (BISD 33S/7). Article 10:4 of the MFA required the Committee to conduct a review of the operation of the Arrangement once a year and to report thereon to the Council. In conducting this review in December 1990, the Committee had had before it: (a) reports by the Secretariat on textiles and clothing trade statistics (COM.TEX/W/230), and on demand, production and trade in textiles and clothing (COM.TEX/W/231); and (b) a report by the Textiles Surveillance Body (TSB) which was also before the Council (COM.TEX/SB/1550 and Add.1).

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

The report of the TSB covered the period from 1 July 1989 to 31 July 1990 and set out details of notifications reviewed by the TSB during this period along with its observations and recommendations thereon. With respect to membership for the period beginning 1 January 1991, the Committee had decided that the TSB would be composed of members designated by Canada, EEC, Finland, Hungary (for the first 6 months, and thereafter an International Textiles Clothing Bureau (ITCB) member country), Japan, Korea, Peru, Thailand, Turkey and the United States.

The Textiles Committee had also met in July 1990 (COM.TEX/66), pursuant to the requirement of Article 10:5 of the MFA that such a meeting should be held not later than one year before the expiry of the Arrangement to consider whether it should be extended, modified or discontinued. In view of the ongoing negotiations in the Uruguay Round, no attempt had been made to reach a conclusion at that meeting; rather, it had been accepted that these discussions would be continued at an appropriate time. He added that with the Uruguay Round not being concluded on schedule, governments would have to consider how to handle textiles trade following the expiration of the MFA on 31 July 1991. The textiles business community would need to know the basis on which to plan its future activities.

The Council took note of the statement and of the report of the Textiles Surveillance Body (COM.TEX/SB/1550 and Add.1), and adopted the report of the Textiles Committee (COM.TEX/67).

3. Committee on Balance-of-Payments Restrictions
- Programme of consultations for 1991

Presenting the programme of consultations for 1991, Mr. Boittin (France), Chairman of the Committee, noted that Argentina and Peru had notified their removal of all import restrictions maintained under Article XVIII:B (L/6811 and L/6813). There would therefore be no need to hold consultations with these two contracting parties. He then recalled that the Czech and Slovak Federal Republic had notified (L/6812) that on 17 December 1990 it had introduced a 20 per cent import surcharge on imports of consumer goods and foodstuffs. This action had been taken under Article XII:2 in the context of its economic reform programme to prevent a sharp deterioration in its balance of payments. The measure was a short-term supplementary element, within the framework of its reform policy. The Committee planned to hold consultations with the Czech and Slovak Federal Republic during the first half of July 1991.

In March 1991, the Committee would hold five consultations which had been postponed from the previous autumn for technical reasons largely connected with the demands of the Uruguay Round. These consisted of a full consultation with Yugoslavia and simplified consultations with Nigeria, the Philippines, Tunisia and Turkey; all of these consultations would be held under Article XVIII:12(b).

At the latest consultation with Brazil, the Committee had welcomed the fact that Brazil was prepared to hold a full consultation. An appropriate date would have to be established in consultation with the delegations

concerned and the International Monetary Fund, and it was now proposed that this consultation be held during the first half of July 1991, at the same time as the consultation with the Czech and Slovak Federal Republic. A meeting of the Committee was also planned for autumn 1991, probably in November, to hold a full consultation with Israel and simplified consultations with Colombia, Pakistan and Sri Lanka. A consultation would also be held with India.

He said that this programme had been prepared on an indicative basis and might be modified to take account of changes that might occur in the level of restrictions maintained by any of the countries concerned or other relevant developments.

He then emphasized two general points. First, he recalled the obligation of every contracting party under the provisions of paragraph 3 of the 1979 Declaration[5] to notify promptly the introduction or intensification of all restrictive import measures taken for balance-of-payment purposes. Second, he underlined that the purpose of the consultations as stated in the procedures established in 1970 (BISD 18S/48) was to contribute "to a better understanding of the problems facing the consulting countries, of the various measures taken by them to deal with the problems, and of the possibilities of further progress in the direction of freer, multilateral trade". It was in this spirit that he intended to continue conducting the consultations.

The Council took note of the statement.[6]

4. Switzerland - Review under paragraph 4 of the Protocol of Accession (L/6454, L/6632, L/6802)

The representative of Switzerland introduced the twenty-second, twenty-third and twenty-fourth annual reports (L/6454, L/6632 and L/6802, respectively) submitted by Switzerland in conformity with paragraph 4 of its Protocol of Accession (BISD 14S/6). The three reports provided contracting parties with detailed information on the concrete measures Switzerland maintained in applying its internal legislation.

The representative of Australia said that his Government took considerable interest in all derogations from the GATT, and that enjoyed by Switzerland was no exception. He noted that with three annual reports having been submitted, the basis for the eighth triennial review of Switzerland's partial reservation now existed. He recalled that during the seventh triennial review, certain serious questions had arisen, related in

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

[6] The 1991 Programme of consultations was subsequently circulated in L/6815.

particular to the trade impact of measures implemented under paragraph 4 of the Protocol, as well as to possible changes in the basis on which Switzerland's partial reservation had been granted. These matters had been raised in the Working Party's report (L/6658) and at the time of its consideration by the Council in April 1990. Nothing had occurred in the intervening period to lessen Australia's concerns on these issues, and it requested the immediate establishment of a working party to conduct the eighth triennial review required under paragraph 4 of Switzerland's Protocol, and expected work to commence on this in the near future.

The representative of New Zealand recalled that his country had maintained a close interest in previous triennial reviews. Switzerland's twenty-fourth annual report stated that its import policies and mechanisms had remained unchanged since the previous review. New Zealand had indicated at the time of that review that it was seeking clarification of the import régime as it affected a number of commodities and that such clarification was necessary to make an assessment of the extent to which provisions of the Protocol were being applied so as to cause minimum harm to the interests of contracting parties. The point had been reached where it was time to conduct a further review under Switzerland's Protocol. At the same time, the Uruguay Round negotiations on agriculture hung in the balance. New Zealand's concerns about the continuation of all derogations and exceptions to the GATT rules for agriculture had not changed. Given that both of these issues remained unresolved, New Zealand supported the establishment of a working party as proposed.

The representative of Argentina said that his country was also concerned at the impact that derogations and exceptions to GATT rules had on the interests of contracting parties. His delegation, too, supported the immediate establishment of a working party.

The representative of Switzerland said that he did not oppose the establishment of a working party, the mandate for which should be the same as for those previously established on this subject. His delegation would provide all the relevant information to enable contracting parties to conduct their examination. He underlined that the review of the application of the provisions of paragraph 4 of Switzerland's Protocol of Accession were part of that country's GATT contractual obligations, and independent of the Uruguay Round agricultural negotiations. Switzerland, however, regarded the latter as having paramount importance, also in terms of the conduct of internal reform of agricultural policies.

The Council took note of the statements and of the three reports (L/6454, L/6632, L/6802), and agreed to establish a working party with the following terms of reference:

> "To conduct the eighth 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 Council authorized the Chairman to designate the Chairman of the Working Party in consultation with delegations.

5. United States - Countervailing duties on fresh, chilled and frozen pork from Canada
- Panel report (DS7/R)

The Chairman recalled that at their Forty-Sixth Session, the CONTRACTING PARTIES had referred this matter back to the Council for further consideration.

The representative of Canada recalled that the Panel report had been available to the United States for five months. At the November 1990 Council meeting, the United States had requested and received more time to analyse further the report and its implications. At the Session, the United States had said that the Panel recommendations were not ripe for consideration at that time because "the case that gave rise to this dispute is not yet completed under domestic law".

He said that the outcome of two dispute settlement panels pursued under the United States-Canada Free Trade Agreement (FTA) would have no bearing on Canada's position with respect to the adoption of the report in DS7/R. The FTA panels were examining whether US law was applied correctly, whereas the GATT Panel had re-examined whether this law was consistent with the United States' GATT obligations. Resolution of the issue under the FTA would not remove Canada's grievance in the GATT, as the United States had argued at the Session. The GATT Panel report dealt with an action taken under Section 771B of the US Tariff Act of 1930, as amended, and that legislation remained in effect. The report made clear that a countervailing duty could not be levied in excess of an amount equal to the estimated subsidy determined to have been granted, directly or indirectly, to a product. Canada considered that the report provided an important interpretation of Article VI, which contracting parties would want adopted. His delegation saw no basis for delaying any further the adoption of a report the recommendations of which were very clear and straightforward, and requested the United States to agree to adoption at the present meeting.

The representative of the United States recalled that at the Session, his delegation had requested deferral of discussion of the report because its recommendations were not ripe for consideration. Both the determination of subsidization and the determination of threat of material injury in this case were then under challenge pursuant to the dispute settlement mechanism established under the FTA for anti-dumping and countervailing duty cases. At that time, both those determinations had already been remanded once to their respective administrative agencies for reconsideration. The United States had indicated at the Session that the reviews of those revised determinations were due to be concluded shortly, with a decision on the threat of injury determination due on 22 January 1991 and a decision on the subsidy determination due on 7 March.

On 22 January, the binational panel reviewing the determination of threat of injury in this case had again rejected the administering agency's

affirmative finding and had given it until 12 February to conduct yet another determination consistent with the binational panel's instructions on remand. If either the finding of threat of injury or the finding of subsidization did not survive the challenges in the binational forum, it would be unnecessary for the Council to take action on the Panel's recommendations, because there would be no countervailing duty finding by the United States on imports of pork from Canada. The case would become moot.

The GATT Panel in this case had recommended that the CONTRACTING PARTIES request the United States to do one of two things: either (1) reimburse now the duties on pork levied to offset subsidies to the production of live swine; or (2) make a new subsidy determination consistent with the requirements of Article VI:3, and reimburse duties found to have been improperly levied. He pointed out that no duties had yet been collected by the United States on imports of pork from Canada and that if the case was terminated by the binational panel, all cash deposits required on imports would be returned with interest. In light of the possible imminent removal of Canada's grievance in the GATT, the United States believed that the matter should be deferred pending the outcome of the FTA review process. Deferring to the binational mechanism established by the parties to this dispute was appropriate in this instance since it served to accomplish the same results as would be achieved under the GATT dispute settlement process. Accordingly, the United States could not agree to adoption of the report at the present meeting. The United States believed that the dispute was not ripe for consideration and would not address any substantive issues raised by the report at the present meeting; it reserved the right to return to any substantive concerns at the appropriate time.

The representative of the European Communities said that the Community continued to support adoption of this report and regretted that the United States was not prepared to agree thereto at the present meeting. The Community did not consider that a bilateral procedure turning on a different legal basis could be invoked as a justification for delaying the multilateral GATT procedure. He called on contracting parties to be coherent in their positions irrespective of whether they were on the winning or the losing side in the dispute settlement process.

The representative of Canada said it was disturbing to see that the United States would not agree to adoption of the report without any sound argument from the GATT perspective as to why this should not be done. The report was clear and well reasoned. For the second time in a row, the United States had argued that it could not move until the conclusion of the two FTA panels. The FTA and the GATT panels were distinct issues which should be dealt with separately. The GATT panel stood on its own, and it was time that its recommendations were adopted. Canada did not accept the US contention that the Panel's findings could become moot depending upon the interpretations arising from the FTA panel's consideration of the matter. The United States could not continue to refuse adoption of panel reports which it found inconvenient and still expect the GATT dispute settlement system to work effectively.

The representative of Finland, on behalf of the Nordic countries, said that they had noted the US statement that the material aspects of this case might be evolving. However, certain issues of principle needed to be raised. The report in DS7/R clearly demonstrated the importance of well founded and carefully executed investigations in countervailing duty cases. It also showed the implications of investigations undertaken and conclusions drawn on the basis of unilateral interpretations and practices. The Nordic countries continued to believe that GATT rules should be strictly followed in order to ensure that internal practices and interpretations did not enable governments to use countervailing duties and other measures in a protectionist manner and as a harassment to trade. While underlining the strict observance of multilateral rules, they would welcome adoption of this report, which would strengthen the important principles to which he had just referred.

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

6. Canada - Import restrictions on ice cream and yoghurt - Follow-up on the Panel report (L/6694, L/6698)

The Chairman recalled that at their Forty-Sixth Session, the CONTRACTING PARTIES had referred this matter back to the Council for further consideration.

The representative of the United States said that his authorities were increasingly concerned about Canada's refusal to comply with the findings of the Panel, and its reluctance even to indicate how it would comply in future. As it had indicated at the Session, the United States had completed preparation of a preliminary list of items for retaliatory withdrawal. It would defer further action on that list until the course of the Uruguay Round became clearer. The United States could not, however, wait indefinitely because its producers suffered significant additional economic harm each day; a further delay in implementation by Canada on the premise of awaiting the conclusion of the Round was unacceptable. He urged Canada to take steps to comply so that US action would be unnecessary. The United States would continue to watch the situation carefully and unless it saw tangible signs of intent to implement promptly, would be compelled to return to the Council in the not too distant future to seek authorization to withdraw equivalent concessions.

The representative of Canada reiterated Canada's intention to implement the Panel's recommendations in light of the outcome of the Uruguay Round.

The representative of Argentina noted that for some time certain delegations had been making a link between adoption and implementation of panel reports and the outcome of the Uruguay Round. This had been the case

with the panels on oils and oilseeds[7], on Section 337[8] and the panel report presently under discussion. He reiterated his Government's concern at this attitude, which weakened the very basis of the multilateral system. The Uruguay Round contained numerous negotiating areas in which different countries had differing interests; if all contracting parties were to proceed in the manner he had described, it would not be possible to adopt any panel report whatsoever. Moreover, the dispute settlement mechanism was intended to ensure compliance with obligations already undertaken by contracting parties. If non-compliance was determined, no party had the right to maintain such a situation or to link compliance to the results of a round of negotiations, the duration of which could not be foreseen. Strictly speaking, such an attitude prevented the restoration of a balance between rights and obligations that had been affected by a particular contracting party's action. If this situation continued, contracting parties would soon become accustomed to seeking different excuses for not implementing panel recommendations and thereby endanger the credibility of GATT.

The Chairman thanked Argentina for having drawn attention to the very important fact that there were a number of panel reports the implementation of which had been linked in one way or another to the outcome of the Uruguay Round. This might become an important problem very soon.

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

7. Canada - Import, distribution and sale of certain alcoholic drinks by provincial marketing agencies
- Recourse to Article XXIII:2 by the United States (DS17/2, DS17/3)

The Chairman recalled that at their Forty-Sixth Session, the CONTRACTING PARTIES had considered a request by the United States for the establishment of a panel (DS17/2), and had referred this matter to the Council for further consideration.

The representative of the United States recalled that at the Session, his delegation had set out in detail the basis of its request for a panel on this matter, and made reference to a text, later circulated as DS17/3, in which his authorities outlined the background and justification for the request. He asked whether Canada was prepared to agree to the establishment of a panel at the present meeting.

The representative of Canada reiterated his Government's position that the provincial measures with respect to listing of beer for sale were in full compliance with Canada's GATT obligations. Virtually the same

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[7] EEC - Payments and subsidies paid to processors and producers of oilseeds and related animal-feed proteins (L/6627).

[8] United States - Section 337 of the Tariff Act of 1930 (BISD 36S/345).

situation prevailed with respect to the pricing of beer for sale in a province. As previously stated, Canada was currently engaged in consultations with the European Community on the outstanding matters on beer with respect to the 1988 Panel report[9]. A further round of negotiations had been held the day before in Ottawa. Canada's stated intention had been to implement any agreement reached with the Community on an MFN basis. Nonetheless, Canada would agree to the establishment of the panel requested by the United States. The panel process would be an opportunity to clarify outstanding questions and to provide guidance on the implementation of the 1988 Panel report with respect to beer. Canada agreed with the United States that the new panel's task would be facilitated if it were composed of the same individuals who had served on the 1988 Panel. He hoped that every effort would be made to secure their agreement to serve.

He noted that in its request (DS17/2), the United States had referred to practices maintained by Canadian marketing agencies with respect to the import, distribution and sale of beer, including, but not limited to, those practices (relating to pricing, listing and points of sale) identified in the 1988 Panel report. In consultations on this matter, the United States had not clarified sufficiently what other practices it had in mind which had not been dealt with by the earlier Panel. In response to a Canadian request for clarification, the United States had subsequently identified and enumerated these practices as follows: (a) non-discriminatory reference price on beer in Ontario; (b) method of calculation and manner of application of cost-of-service audits on beer in Saskatchewan, Alberta, and British Columbia; (c) mark-ups on draught beer in British Columbia, and (d) minimum sales volume required for listing beer in Quebec. Canada therefore understood that the additional matters which the United States wished the panel to examine were limited to these specific measures, and that in using the standard terms of reference for this panel, it would be understood that the other practices being raised by the United States would be confined to the practices enumerated above.

The complexity of the matters at issue before the panel would involve examination of a great deal of detailed information. The panel would be asked to review the practices of Canada's provinces -- each with its distinct body of laws, regulations and practices, many of which had been changed in order to bring provincial practices into GATT conformity. Canada had the right to have these practices thoroughly reviewed, and it was unrealistic to expect that any panel could do so in a short time. Canada could not, therefore, agree to the US request for an expedited panel procedure.

In conclusion, he said that there was equally a need to ensure that the conditions prevailing with respect to the sale of alcoholic beverages in the United States were fully GATT-consistent so that Canadian industry

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[9] Canada - Import, distribution and sale of alcoholic drinks by provincial marketing agencies (BISD 35S/37).

would have a fair opportunity to compete within the North American market, as well as beyond. In this light, he informed the Council that Canada had the same day requested consultations under Article XXIII:1 with the United States with respect to a range of US Federal and State measures affecting taxation, availability for sale, labelling and distribution practices which discriminated against Canadian products. These measures included the recently-enacted federal legislation -- Part I, Section 11201 of the US Omnibus Budget Reconciliation Act of 1990 -- which provided exclusive excise-tax advantages to small US producers of beer, wine and cider. In Canada's view, these measures were inconsistent with the United States' GATT obligations. Canada would keep the Council informed of the results of these consultations.

The representatives of the European Communities, New Zealand, Japan and Switzerland indicated that they had an interest in this matter and reserved the right to intervene at an appropriate time in the panel proceedings.

The representative of the European Communities recalled that the Community had been the complaining party in the 1988 Panel. The Community had been involved in consultations on the implementation of that report, but these discussions were quite far from a successful conclusion. The Community continued to be concerned about the way that report was being implemented.

The representative of the United States said that his delegation could not agree with Canada's strict limitation of the scope of practices to be reviewed by the panel. It considered the scope of the proceeding to be as set forth in document DS17/2, namely that the panel should "determine whether benefits accruing to the United States under the General Agreement are nullified or impaired as a result of practices maintained by Canadian marketing agencies with respect to the import, distribution and sale of beer, including, but not limited to, those practices (relating to pricing, listing and points of sale) identified in the 1988 Liquor Boards panel report". The practices which had been discussed in consultation with Canada were illustrative of the types of practices maintained by the Canadian Liquor Boards, but were by no means the exclusive practices which the United States believed should be considered and scrutinized by the panel in determining their GATT consistency.

The representative of Canada expressed disappointment that there had not been a meeting of minds at the present meeting on the scope of the panel's mandate. His delegation intended to continue discussions on this matter with the United States with a view to trying to clarify and facilitate the panel's task. Bearing in mind the April 1989 Decision on dispute settlement rules and procedures (BISD 36S/61), he left open the possibility of requesting the Council Chairman or the Secretariat to assist in the consultative process in the immediate future.

The Council took note of the statements and agreed to establish a panel with the following terms of reference, unless as provided for in the Decision of 12 April 1989 (BISD 36S/61), the parties agreed on other terms within the following twenty days: "To examine, in the light of the

relevant GATT provisions, the matter referred to the CONTRACTING PARTIES by the United States in document DS17/2 and to make such findings as will assist the CONTRACTING PARTIES in making the recommendations or in giving the rulings provided for in Article XXIII:2."

The Council authorized the Chairman to designate the Chairman and members of the Panel in consultation with the parties concerned.

8. Japan - Restrictions on imports of certain agricultural products - Follow-up on the Panel report (BISD 35S/163, L/6370, L/6389, L/6810)

The representative of the United States recalled that the Council had adopted this Panel's report in 1988 (BISD 35S/163) and that Japan had subsequently notified contracting parties of the measures it intended to undertake to meet its obligations (L/6389). He asked Japan to report on the actions it had in fact undertaken to implement the report fully. His Government was particularly concerned about Japan's intention with regard to two of the agricultural import categories covered by the report, namely, certain dairy products and starch. Japan had indicated in 1988 that it was not in a position to make its policies GATT-consistent in this regard and had, instead, provided minimum annual access until 31 March 1991. As was explicitly stated in the Annex to the 1979 Understanding on Dispute Settlement[10], however, compensation was only a temporary measure pending withdrawal of GATT-inconsistent measures and was not a substitute for withdrawal thereof. There had been sufficient time for Japan to bring its policies into GATT compliance, and he asked if Japan would in fact do so by 1 April 1991.

The representative of Australia recalled that his country's interest in this matter had been made clear on a number of occasions, and supported the US request for information from Japan regarding implementation of the report. Australia considered that Japan had a continuing obligation to implement fully the Panel's findings, and could neither accept selective implementation thereof nor the linking of further liberalization to the outcome of the Uruguay Round. Japan's obligations were to the existing GATT, under which its import quotas had been found illegal. Australia appreciated the sensitive status of the dairy industry in Japan and the political difficulties involved in bringing about liberalization of its dairy régime. However, together with other interested contracting parties, Australia had already demonstrated considerable patience in this matter, and was disappointed by the lack of movement by Japan on dairy products and starch. It did not believe that its rights had been satisfied and was accordingly interested in hearing from Japan as to its intentions regarding the remaining import restrictions.

The representative of New Zealand said that his country retained a strong interest in this matter and that the United States' request for information was timely and appropriate. He recalled that New Zealand had

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

commended Japan's decision in February 1988 to accept adoption of the panel report, but had also expressed concern about some aspects of Japan's accompanying statement covering certain dairy and starch products. While appreciating the difficulties that Japan's dairy industry faced, New Zealand could not accept Japan's continued failure to implement all of the Panel's recommendations. This issue would continue to be raised until Japan had brought into GATT conformity all the measures found inconsistent by the Panel. New Zealand would continue to maintain a close interest in this process, and reserved all its GATT rights with respect to this report.

The representative of Thailand said his Government strongly believed that an effective dispute settlement mechanism was a key to the preservation and strength of the multilateral trading system. The effectiveness of this mechanism would be realized only when panel recommendations were implemented in full. Most affected countries, large or small, developed or underdeveloped, would certainly have to face considerable domestic difficulties in implementing these recommendations. To fulfil their obligations, the political will of the contracting parties concerned was required. Thailand recognized Japan's efforts in the past three years to comply fully with the Panel's recommendations, and placed a high expectation on Japan as a major economic power to assume a leading rôle in resisting unilateral actions that were becoming more and more common. The withdrawal of GATT-inconsistent measures by Japan would clearly demonstrate that only multilateral and not bilateral measures were meaningful.

The representative of Japan said he believed that the Council recognized that the Panel's interpretation of GATT provisions had posed many serious problems. Yet, in spite of its shortcomings, and although it would entail domestic problems, Japan had agreed to adoption of the report in February 1988 with a view to ensuring the effective functioning of the dispute settlement process. He recalled that Japan had notified contracting parties in July and September 1988 of the measures to implement the Panel's recommendations (L/6370, L/6389) with a view to ensuring transparency and in accordance with the relevant provisions of the 1979 Understanding. He emphasized that all of these measures had been implemented in totality, in good faith and on schedule; a paper detailing all the measures taken by Japan in this regard had been prepared and was available from the Secretariat. He noted that a number of major trading partners had expressed reservations about panel reports containing findings and recommendations unfavourable to them, and had suspended implementation thereof until the end of the Uruguay Round. Japan, on the other hand, had implemented the vast majority of this Panel's recommendations.

With regard to dairy products and starch, Japan had made a reservation about the implementation of the Panel's recommendations because it objected to the Panel's interpretation of Article XI:2 and its findings on the requirement for imposing import-restrictive measures thereunder. This position remained unchanged. Given that the question of the interpretation of Article XI:2 was being discussed in the context of the Uruguay Round negotiations on agriculture, Japan hoped that a clear agreement would be reached on this issue among the participants therein. Japan would decide on measures regarding dairy products and starch following the outcome of

these negotiations. It also hoped that agreement would be reached in the course of the negotiations on the future treatment of other restrictive measures such as waivers and variable levies so as to establish a fair and equitable trade régime in agriculture.

The representative of the United States recalled that while Japan had expressed its views on dairy products and starch in the Council discussion on this matter in 1988, it had made no formal reservation thereon. There was no basis, therefore, for Japan to assert that it had no obligation to bring these measures into GATT conformity. In the light of Japan's statement at the present meeting, the United States intended to pursue this matter further. While consultations with Japan would be useful in the first instance, this matter might be brought to the Council's attention again at a subsequent meeting.

The representative of Argentina reiterated his delegation's position, previously stated under agenda item 6, on the general question of linking implementation of panel recommendations to the outcome of the Uruguay Round. The rights of all contracting parties should be respected and panel recommendations implemented fully.

The representative of Japan, responding to the last statement by the United States, said that the record of the February 1988 Council meeting at which the Panel report had been adopted clearly indicated Japan's views. He quoted therefrom as follows: "Japan did not agree with the Panel's interpretation of Article XI:2(c)(i) with respect to those items, and reserved its position as to the use in future of that interpretation" (C/M/217, page 18). It would be extremely difficult, in view of Japan's domestic situation, to implement measures in accordance with the Panel's conclusions that were based on questionable interpretations. He reiterated his Government's position that the measures it would take would necessarily have to take account of the ongoing Uruguay Round negotiations on Article XI:2(c). Having said that, his Government would be prepared to enter into consultations with the United States on this matter.

The representatives of Australia and New Zealand indicated the desire of their respective Governments to be associated with any such consultations.

The representative of Chile echoed Argentina's concerns regarding the linkages made by certain delegations to the outcome of the Uruguay Round. The GATT's dispute settlement mechanism was one of its main pillars, and he called on all to comply fully with its provisions. He hoped that the proposed consultations on the issue at hand would lead to the implementation of the Panel's recommendations.

The Council took note of the statements.

9. United States - Restrictions on imports of tuna
- Recourse to Article XXIII:2 by Mexico (DS21/1)

The Chairman recalled that at the November 1990 Council meeting, Mexico had raised its Article XXIII:1 consultations with the United States

concerning US restrictions on imports of tuna, and drew attention to a recent communication from Mexico on this matter (DS21/1).

The representative of Mexico said that the United States had decided to ban imports of yellowfin tuna and products thereof from Mexico as from 10 October 1990. At the consultations in December 1990, the United States had expressed its concern for dolphin protection, while at the same time spelling out the main aspects of its legislation. For its part, Mexico shared the United States' concern and had achieved significant progress in this area. Nevertheless, the various trade restrictions against Mexico's exports of certain tuna products were a very different matter from dolphin protection. The action taken by the United States under its Marine Mammal Protection Act, the basis of the ban, as well as action under its Dolphin Protection Consumer Information Act, the basis for a "Dolphin Safe" label granted to tuna products imported from certain regions, was inconsistent with, at least, Articles XI, XIII, III and IX of the General Agreement. The United States had said that in its view, the ban was justified under Article XX, and in particular paragraph (g) thereof concerning the conservation of exhaustible natural resources.

Mexico was prepared to hold whatever consultations might be required to find a mutually satisfactory solution that would allow this case to be settled promptly. Nevertheless, since the prohibition had already been applied -- it was currently under temporary suspension -- and might be resumed at any time, extended to other Mexican products, or even extended to other "intermediary countries" as provided for in the Act, Mexico preferred to proceed with the establishment of a panel to determine the consistency of such measures with the United States' GATT rights and obligations. As the sixty-day period for consultations had expired without a mutually satisfactory adjustment having been reached (BISD 36S/62), Mexico had decided to request the establishment of a panel at the present meeting. Document DS21/1 set out a brief summary of the factual and legal basis to present the problem clearly.

The representative of the United States regretted that Mexico had found it necessary to seek recourse to Article XXIII:2 in this matter. Mexico, the United States and other countries had long recognized that conservation measures were necessary to limit the threat of dolphin mortality resulting from the harvesting of yellowfin tuna in the eastern tropical Pacific Ocean by purse-seine fishing. To address this threat, the Marine Mammal Protection Act prohibited importation into the United States of tuna caught by purse-seine fishing unless the fishing practices met certain standards, which were less rigorous that those applied to the US fleet. The Act was designed to conserve exhaustible natural resources in a manner that was fully consistent with the United States' GATT obligations. The consumer information statute cited by Mexico merely prohibited the false labelling of tuna as "Dolphin Safe"; it did not require the use of labelling in any event and did not involve origin markings of the type subject to Article IX.

The United States firmly believed that efforts to deal with the threat to marine mammals were better left to the intergovernmental process begun in Costa Rica in September 1990, rather than to the CONTRACTING PARTIES. Multilateral meetings had been held recently. The United States would

continue to seek a mutually satisfactory resolution in that forum. Nonetheless, the United States did not object to the establishment of a panel as requested by Mexico.

The representatives of Thailand, New Zealand, Canada, the European Communities, Australia, Japan, Singapore, the Philippines, India, Costa Rica, Chile, Korea, Norway, Senegal, Venezuela, Peru, Tunisia, Indonesia, Colombia, Tanzania, and Nicaragua supported the establishment of a panel and reserved their respective rights in this matter. The representatives of the European Communities, Japan, Singapore, Korea, Senegal, Venezuela and Indonesia also referred to their respective trade interests.

The representative of Thailand was concerned at the possible adverse consequences for Thailand's tuna products exports of the increasing use of environmental issues as a justification for trade restrictions.

The representative of Canada said that Mexico's request for a panel was focused on the United States' specific trade measures in response to an equally specific environmental objective. The terms of reference should accordingly limit a panel's examination to these specific measures. The issue raised was but one aspect of a much larger consideration of the appropriate linkages between trade policy and trade measures in response to environmental objectives. A panel's findings and recommendations, while confined to the specific issues at hand, might have an important influence on the ongoing discussions in this larger picture. While Canada did not have a specific trade interest in the issue being brought before the panel, given the importance of the relationship between GATT rules and environmental objectives, Canada reserved its right to make a presentation to the panel.

The representative of the European Communities said this case seemed to raise important questions of principle which would come up in a broader context in Item 10 of the agenda.

The representative of Australia supported the request on the basis of doubts that US law was consistent with the General Agreement when applied to third countries. Moreover, the case at hand might have implications for Australian measures aimed at dolphin and fish conservation.

The representative of the Philippines said that while the Philippines believed that the protection of the environment and animal species was important, there had to be a clear line between this concern and trade policy. The unenlightened "greening" of trade policy would make everyone a loser in the final analysis.

The representative of Costa Rica indicated that his country had itself held negotiations with the United States in the matter before the Council.

The representative of Chile said that on other occasions, Chile had expressed its support for the protection of the environment and animal species, which should not, however, be used as a disguised method of

restricting trade or as an additional burden on the development of developing countries.

The representative of Peru expressed her country's serious concern for the introduction of environmental considerations in trade policy matters, which represented a negative precedent. This matter should be analysed in the appropriate forum.

The representative of Tanzania said that, as a matter of principle, one should look at whether national legislation interpreting environment as it suited a particular point of view was the best way of handling the matter.

The Council took note of the statements and agreed to establish a panel with the following terms of reference:

> "To examine, in the light of the relevant GATT provisions, the matter referred to the CONTRACTING PARTIES by Mexico in document DS21/1 and to make such findings as will assist the CONTRACTING PARTIES in making the recommendations or in giving the rulings provided for in Article XXIII:2."

The Council authorized the Chairman to designate the Chairman and members of the Panel in consultation with the parties concerned.

10. Trade and environment
- Communication from Austria (L/6809)

The Chairman recalled that this matter had been discussed at the Forty-Sixth Session of the CONTRACTING PARTIES. He drew attention to the recent communication from Austria on behalf of the EFTA countries in document L/6809.

The representative of Austria, on behalf of the EFTA countries, recalled that at the Uruguay Round Ministerial meeting in Brussels in December 1990, the EFTA countries had circulated a proposal for a statement on trade and environment (MTN.TNC/W/47). Their aim had been to solicit Ministerial support for work on an issue which had important trade policy implications and which would increasingly occupy trade policy makers. It had been considered inappropriate to press the issue at that meeting. He noted that there had been widespread recognition in GATT on earlier occasions of the importance of the inter-relationship between trade and the environment. Varying approaches had been suggested to deal with the issue, which reflected both the technical difficulty of the subject and the existing differences of opinion.

The approach to environmental policy making varied considerably from country to country due to differing geographical settings, economic conditions, stages of development and environmental problems. Accordingly, governments' priorities on these problems differed as well. The important point here was that the resulting differences in actual policies could set the stage for trade disputes. The EFTA countries' prime concern was to

ensure that GATT's framework of rules worked, provided clear guidance to both trade and environment policy makers and that its dispute settlement system was not faced with issues it was not equipped to tackle. Any discussion of rules should be based on a thorough understanding of the impact both of environmental policies on trade and of trade policies on the environment.

The rising tide of environmental measures and international environmental agreements underlined the urgency of exploring these questions, not least because many of these agreements also used trade measures to realize their objectives. He drew attention to the forthcoming 1992 UN Conference on Environment and Development at which further environmental instruments having trade implications would be adopted. Many international bodies were contributing to this Conference and it might be appropriate to consider whether GATT had a contribution to make, taking into account work already undertaken in other fora.

He recalled that GATT had been active in this field in the past. It had published a study on industrial pollution control and international trade at the time of the 1972 UN Conference on Human Environment (L/3538). It had also established in November 1971 a Working Group on Environmental Measures and International Trade to examine "upon request any specific matters relevant to the trade policy aspects of measures to control pollution and protect human environment, especially with regard to the application of the provisions of the General Agreement, taking into account the particular problems of developing countries" (C/M/74, item 3). Since this language had been drafted, there had been a remarkable increase in awareness of the inter-relationship between trade and the environment, so that all aspects of this inter-relationship would have to be addressed in due course, including the impact on the environment of various trade policy measures.

He noted also that environmental issues had not lost their topicality in the Uruguay Round and had surfaced in negotiating groups dealing with subsidies, technical barriers to trade, sanitary and phytosanitary measures and services. The GATT Working Group on the Export of Domestically Prohibited Goods and Other Hazardous Substances had also highlighted the interlinkage between international trade and environment, as well as the necessity of GATT's involvement.

The EFTA countries were aware that one could not say with certainty exactly what the interlinkages between environmental and trade policies were. A great deal of technical work was therefore needed before drawing conclusions and beginning to strike a balance between different interests in this area. They believed that it was important to start studying the complex issues in this field soon, and had accordingly requested the Director-General to convene the 1972 Working Group at the earliest appropriate date.

They considered this Group to be the appropriate forum to tackle the issues that had arisen, and would arise, in the context of environmental policies, so that the GATT could be maintained as a relevant body of rules in all respects. A careful study of the Group's mandate had led the EFTA

countries to believe that it was sufficient in scope. In line with well-established GATT practice, membership therein should be open to all interested contracting parties.

The representatives of Brazil, Chile, India, New Zealand, the European Communities, Australia, Poland, Egypt, Bolivia, Costa Rica, Peru, Mexico, the Czech and Slovak Federal Republic, Argentina and Yugoslavia thanked Austria for its statement on behalf of the EFTA countries. Several of the representatives also welcomed and supported the EFTA countries' initiative.

The representative of Brazil said that the forthcoming 1992 UN Conference in Brazil would be an international event of far-reaching implications in terms of its sheer dimension and, above all, in terms of the scope and depth of its subject matter. He noted that a new dimension -- development -- had been added to the environment question, which presented the challenge of defining the equation between the two. The issue before the Council was therefore as important as it was difficult. One could not say with any certainty what the linkages between environmental policies and trade were. It was certainly meaningful at this juncture, therefore, to begin a collective reflection on the research and study required to achieve a better understanding of this matter. This would enable GATT to be in tune with the comprehensive conceptual framework that was being moulded internationally. Such a study should be based on the fundamental understanding that the environment could not serve as a pretext for additional trade barriers and it should serve as a stepping stone for the identification of the precise ways through which trade flows could be intensified. His delegation was confident that the GATT could provide the 1992 Conference with significant inputs for a better understanding of the complex phenomena involved, and that this could be done in an adequate mechanism to be decided upon through the necessary consultations.

The representative of Canada said that his Government supported the EFTA countries' proposal because the appropriate relationship between environmental objectives and trade policy had become a major issue. He referred to the GATT's past activity in this area and recalled that the 1972 UN Conference had resulted in a Declaration on the Human Environment. Clearly, the term "human environment" used in that Declaration, and specifically in its principles, encompassed the broad spectrum of environmental issues. In this respect, he noted that one of its principles stated that "the natural resources of the earth including the air, water, land, flora and fauna and, especially, representative samples of natural ecosystems, were to be safeguarded for the benefit of present and future generations through careful planning or management, as appropriate".

Given the obvious relationship between the formation of the 1971 GATT Working Group and the conclusion in 1972 of the UN Conference, Canada believed that the Group's original mandate would have been understood to cover the broad scope of the term "human environment" as expressed in the principles of the UN Declaration. On this understanding, and with the agreement of contracting parties that the Group's mandate reflected the broad scope of the term "human environment" in keeping with the UN

Declaration, his delegation could agree that the Group's mandate offered sufficient scope to examine issues needing to be addressed with respect to environment and trade. This was particularly significant in relation to current environmental issues of interest to Canada. His delegation supported Austria's suggestion that the Group be open to all interested contracting parties.

The representative of Chile said that as an Antarctic country with age-old forests and more than 10,000 kilometres of coastline, and as an important producer of natural-resource-based products, Chile was no stranger to the issue under consideration. His delegation considered it appropriate to increase awareness of this matter in GATT, but was concerned that an abusive interpretation of this might erode the strict meaning of the provisions of Article XX, which was an exception, and as such, had to be interpreted restrictively. One could not use this Article as a general rule and legitimize trade restrictions prohibited under other GATT provisions. Chile therefore wished to be associated with the Working Group's work and agreed with Canada that its terms of reference should be broad.

The representative of Thailand, on behalf of the ASEAN contracting parties, said that in sharing fully the views on the need to protect and preserve the global environment, these countries had misgivings about injecting environmental issues into the GATT. The ASEAN countries were conscious that environment issues and policies could impinge on trade policies, and that differences in approaches to environmental policy could lead to trade disputes. A clear example was the matter before the Council in agenda item 9. They also recognized that when there was legitimate concern and clear evidence of trade practices that could endanger health, safety and the environment, the GATT could devise rules and disciplines as preventive measures. An example of this was the work of the Working Group on the Export of Domestically Prohibited Goods and Other Hazardous Substances. However, for GATT to address environmental problems as a general trade policy issue was inappropriate. The primary responsibility of evolving a multilateral solution to environmental problems should rest with the international agencies concerned with environmental issues, and not with the GATT. At best, GATT's rôle was to assess trade implications arising from international measures on environmental protection and their impact on the principles of the General Agreement. The ASEAN contracting parties considered that the proposal to reactivate the Working Group on environmental measures was premature at this stage, and that it was appropriate to await the outcome of the 1992 UN Conference.

The representative of India reaffirmed his country's deep and abiding interest in environmental protection, which he said was rooted in its history, literature and culture. India would cooperate and participate actively, as it had hitherto been doing, in all international efforts to preserve and protect the environment. Because of the importance of the subject matter and its implications for the regulation and conduct of international relations in several diverse areas, his delegation would give the EFTA countries' statement careful consideration before commenting on it. He reiterated India's position that it would study any specific proposals on the trade and environment issue before concluding as to the

GATT's competence to handle it. India had serious reservations about involving GATT in the examination of environmental issues and their impact on trade, and of trade issues impacting on the environment. While a link or relationship could be established between trade and any other activity, this could not justify bringing that activity or policies thereof under GATT's purview, even for the purpose of studying such linkages. The implications of such an approach would make GATT the arbiter of international relations in all fields; the GATT system would certainly not be able to sustain the resultant strain. He noted that very specific issues had been entrusted to the various specialized agencies in the UN system, and that in the field of environment a conference had been scheduled for 1992.

India had noted the CONTRACTING PARTIES' decision in 1971 establishing the Working Group on environmental measures, and also that no specific issue had been referred to the Group, which had never met. Clearly, this Group was in the nature of a standby machinery which could examine the GATT consistency, on a case-by-basis, of pollution control measures to ensure that such measures did not create new trade barriers. The EFTA countries' proposal was not consistent with the letter and spirit of this Group's mandate, which was to examine specific measures in relation to GATT provisions and their impact on access in terms of trade barriers. Its mandate was not to undertake an examination of the general interrelationship between trade and environment as had now been proposed. It was essential to examine the specific issues that had arisen and which the sponsors of the proposal believed were not adequately covered by GATT. To begin formulating rules within the GATT's framework to provide "clear guidance to policy-makers in both the environmental field and the trade policy field" would be to go far beyond the GATT's mandate and charter.

The representative of New Zealand said that the EFTA countries had taken a timely initiative in bringing this matter to the GATT. His delegation endorsed Austria's statement, which was a helpful elaboration of the interrelationships between trade and environmental policies. By looking at these interlinkages, one would better be able to judge how best to ensure that these policies were mutually supportive. Environmental measures would unavoidably have trade effects; GATT's rôle was to see how its present framework could accommodate these measures and prevent their use as a disguised form of protectionism. His delegation believed that by keeping to a rules perspective, the GATT could make a useful contribution to present multilateral work on the environment without duplicating it. Indeed, it would seem somewhat anomalous were the GATT to stand aside from the current global focus on this area. New Zealand shared the EFTA countries' view that this issue needed discussion, and supported the proposal to convene the 1971 Working Group. New Zealand had no immediate difficulty with its mandate and would participate in the work thereof.

The representative of Tanzania fully shared all the concerns expressed in regard to the environment. Indeed, his Government was constantly examining in every aspect of its policy-making how best to take account of the vital, life-giving and life-supporting environment. His delegation doubted, however, whether the GATT had the capacity to handle this matter. He noted that even though a UN conference on the environment had been held

almost twenty years earlier, one was only just beginning to grasp the enormous dimensions of the issue. Even as recently as four years earlier when the Uruguay Round had been launched, no one had heard so much as a whisper on the subject. Having said this, his delegation had listened with attention to the previous statements, and would study carefully the EFTA countries' suggestion. His Government would also certainly take as much interest as possible within the limits of its resources; but, from what he could see at the present stage, and without prejudging the decisions of policymakers in capitals, his delegation believed that this would be a difficult task.

He noted that a number of developing contracting parties were mainly dependent upon primary commodity production with the barest and most elementary technology. As yet these countries had not heard even the remotest suggestion that the international commodity pricing system would remunerate them for the conservation measures which they would undoubtedly have to undertake. He expressed concern that with this issue the GATT would be oriented even more decisively and definitively by the interests of those that had the technology and the resources to regulate the terms on which trade would be conducted, with perhaps very little concern for those at the margin.

In any event, his delegation believed that the issues at hand were complex and touched upon so many different aspects that one would have to be more humble about GATT's capacity to handle them. He would have liked to see a comprehensive Secretariat paper on the subject analysing the various issues relevant to the production of tradeable goods and services, including the effects on the very large number of contracting parties that were not large traders in terms of value and volume. He suggested that a great deal more time and study was needed in order to ensure that the environment was not made hostage purely to trade considerations.

The representative of the European Communities said that on the question of the relationship, the conformity as it were, between international environmental conventions and the GATT, the Commission's legal service held the following opinion: "trade provisions of international environmental conventions [cf. Convention on International Trade in Endangered Species] have to be regarded as *lex specialis* vis-à-vis the GATT. Therefore they may probably derogate from GATT as between the parties to such conventions. It might be desirable, however, to establish a clearer relationship between such conventions and the GATT by providing for a GATT waiver in relation to them." There could well be other views on the matter, which was why the Community hoped that this question could be dealt within GATT.

He underlined that one could not prevent the GATT from exercising its deliberative competence, although its competence to act was limited. Several delegations at the present meeting had stated their concern on the trade and environment issue while at the same time wanting the GATT to stay out of it. He likened this to being the guardian of an empty and lifeless temple that took no notice of events beyond its doors. The reticence to establish a working group on this matter was bad for the GATT, and showed that it was incapable of dealing with the problems of the future.

Environmental issues were important in the GATT, as the dispute on tuna (agenda Item 9) had indicated. Not to consider them on the pretext that GATT rules strictly governed only trade in goods was to overlook the important manner in which the GATT had evolved over time. To do this would also certainly create bottlenecks in the GATT's dispute settlement process. The Community supported the EFTA countries' initiative, and formally proposed that the Chairman initiate informal consultations on this matter and report on the results thereof to the Council at its next meeting.

The representative of Australia said that his country had a strong interest in environmental matters and welcomed and supported the EFTA countries' initiative. He noted that there was an increasing number of international treaties or arrangements concerning environmental issues, many of which contained trade-related provisions and some that contained sanctions which appeared to be GATT inconsistent. Australia believed that it was appropriate for GATT to study the trade-related issues that resulted from the increasing response of countries to the objectives of environment protection and sustainable economic and social development. His delegation would participate in any working group established to study the issues, and also in any related consultations.

The representative of Morocco said that his country recognized the fundamental importance of this question, and supported all efforts at the international level thereon. In this context, he recalled that Morocco had submitted a resolution on international trade and the environment to the Second Committee of the UN General Assembly in December 1990, which had been adopted and endorsed. The Resolution emphasized that environmental considerations were crucial for the sustained development of all countries while cautioning that they should not be used to introduce unjustified trade barriers. His delegation shared the view that studies should be undertaken to define these problems clearly, and noted that the UN Resolution mentioned above had given such a mandate to the UNCTAD and to UNEP. His delegation had no definite views for the time being as to the question of GATT's competence to legislate on this subject.

The representative of Poland said that as a country where environmental concerns had acquired very real and substantial proportions, Poland welcomed and supported the EFTA countries' initiative. His delegation would participate in any process related to the implementation thereof.

The representative of the United States said that his country fully agreed that the issues raised in all of the EFTA countries' submissions were important and that the GATT needed to determine its rôle in the critical area of environmental policy. The United States had a keen interest in furthering multilateral efforts to address environmental issues that required such coordination, and these proposals were being reviewed carefully. Having only recently received the text of the latest EFTA proposal which asked to activate the 1971 Working Group, his delegation believed that contracting parties should have more time to consider the most appropriate and effective way to proceed.

The United States was not certain that the 1971 Group's mandate was sufficiently broad to address the full range of issues involved in the interrelationship between trade and the environment. Its membership was also not consistent with current GATT practice. Further Council consideration of these matters might, therefore, be warranted. The United States also believed that the issues raised in the EFTA proposals were sufficiently important to merit careful study before establishment or activation of such a group. Other contracting parties could also benefit from the work of the countries proposing GATT work in such a group, and his delegation looked forward to discussions with them that would lead to an approach acceptable to all. He supported the proposal that the Chairman conduct informal consultations and report on the results thereof to the Council at its next meeting.

The representative of Hungary said that his country was aware of the increasing importance of environmental issues and was taking an active part in the environment-related work of other international fora. Hungary also recognized that environmental objectives and measures implementing them might have an impact on international trade. Therefore, it appreciated the initiative taken by the EFTA countries and supported the proposal of taking up the eventual trade-related aspects of this broad issue in the GATT framework. His delegation would participate in the examination of these issues and believed that the appropriate framework, the terms of reference and the timing of this exercise would require careful consideration. Perhaps the best possible solution would be for the Chairman to undertake informal consultations on the subject in order to try to find solutions which might give satisfaction to all parties concerned. His delegation would of course be willing to participate in such a process.

The representative of Egypt said that Egypt fully shared the views concerning the increasing importance of environmental issues and the need for international efforts to protect the global environment. Although Egypt recognized that environment measures and policies might have negative trade effects, its preliminary view was that GATT was not the forum to deal with this matter. He noted that other international organizations dealt with environmental issues and that Egypt had taken an active part in their work as also in the preparation of the forthcoming UN conference on this matter. While the outcome of that conference might require the GATT to assess the trade implications of the measures taken for environmental protection and their impact on the General Agreement, his delegation believed it was premature at this stage to establish a working group as suggested. More consultations and careful study on this were needed.

The representative of Bolivia said that his country fully shared the concerns and motivations that had led to the EFTA countries' initiative. Bolivia's interest in the preservation of the environment went beyond a mere rhetorical statement since, despite its desperate development needs, it had recently declared an ecological pause in the country whereby forestry concessions and other uses of the land or soil with potential ecological dangers would be suspended for a five-year period. Bolivia

believed that the preservation of the environment was an obligation incumbent upon all nations without exception. For this reason it had given and would continue to give support to multilateral efforts in this area in various fora. In Bolivia's view, measures to protect the environment were the only "protectionist" measures justifiable under the General Agreement. This, of course, was a very thorny subject and could easily become an element that could be used in an erroneous and controversial manner to substantiate the imposition of unnecessary trade restrictive measures.

He added that Bolivia, like India, was also concerned at the trend to broaden the subject matters considered by the GATT which would lead to encroaching on areas that belonged in other fora. For this reason, the question of the environment should be dealt with cautiously and without undue haste. The Chairman should, therefore, submit this question to a prior process of reflection and consultation.

The representative of Costa Rica said that his country had a special interest in environment protection which went back many decades, and noted that it had recently pioneered the reconversion of external debt into resources for the protection of the environment. He recalled that at the Presidential Summit of the Central American countries in Puntarenas in December 1990, Costa Rica had committed itself to the joint protection of the environment while recognizing the shared responsibility of developed countries therefor. For these reasons, his delegation was interested in participating in any discussions on this subject, and hoped that the environment question would not be used as an excuse to apply undue trade restrictions.

The representative of Peru said her country believed that common measures aimed at preserving the environment should be adopted within an overall global approach in which the developed and the developing countries would undertake differentiated forms of responsibility. This concept should be based on principles which would take into consideration the developing countries' ability to cope with their environmental problems, as well as the developed countries' rôle and overwhelming responsibility in this matter, since it appeared that they were the main sources of damage to the environment. This issue required thoughtful and careful reflection in order to understand better the very complex nature of the different aspects involved. This quite obviously went beyond any partial approach that GATT would be in a position to adopt in the proposed working group. Peru, therefore, did not feel that the present circumstances justified setting up such a group, but did not object to holding informal consultations at several levels which would involve all interested contracting parties, and particularly those more directly involved in the organization and preparation of the 1992 UN Conference.

The representative of Mexico said that his delegation shared the concerns expressed by the EFTA countries and many others. Undeniably this issue was increasingly important to all countries and deserved close attention to ensure that environmental elements did not give rise to misinterpretations or unnecessary and unjustified trade restrictions. Having said this, however, he shared the views expressed by Peru, India and

others, that given the work being carried out by other fora at present, it was too early for the GATT to discuss the matter. While his authorities would study very carefully the documentation made available both earlier and at the present meeting by the EFTA countries, he believed that the most appropriate manner in which to proceed at present was to hold consultations, and expressed his delegation's interest in participating therein.

The representative of the Czech and Slovak Federal Republic said that his country had had considerable experience in the area of environmental issues, and that these were very closely related to economic and other issues. As it had already been noted in the context of other GATT work, certain aspects were interrelated, and exercised mutual impact. For this reason, his delegation felt that the initiative at hand was indeed most appropriate and should be studied. These extremely complex issues required consultations with a view to reaching a consensus on where they should be considered within the GATT and which instrument should be adopted. These issues should be solved by consensus. His delegation would have no objection to the establishment of a working party and would indeed be interested in taking part in its work. Such study within the GATT framework might help drawing up the GATT's contribution to the 1992 UN Conference.

The representative of Argentina said that the previous statements clearly indicated the importance contracting parties attached to environmental issues, and highlighted the concerns they all had about the trade impact of such issues. He recalled that one of the objectives of the General Agreement was to ensure the greater well-being of all contracting parties through trade liberalization and negotiations to this effect. Various GATT provisions had been referred to in the present debate which set out ways in which trade liberalization was to be achieved. He noted in this respect that Article XX clearly stipulated that no measures could be adopted as a means of unjustified discrimination or as a disguised trade restriction. The Community had, for its part, referred to an opinion given by the Community's legal services relating to existing international conventions and the possibility that these might be taken as exceptions under Article XX. His delegation believed that environmental issues were being dealt with by specific organizations and that any GATT consultations or studies should take this fact into consideration. Fundamentally, environmental issues should not serve as a pretext for the adoption of unilateral measures or arbitrary measures which might be adopted on an individual basis by contracting parties. In the course of the present discussion reference had been made to this particular aspect and to the danger of such unilateral application as a result of the establishment of a special group. It was a very important issue altogether, and a very complex one. Uruguay Round issues were also being tackled, which came under Article XX -- e.g., sanitary and phyto-sanitary regulations -- and all these aspects had to be assessed in the light of the efforts being undertaken in other organizations and fora which were seeking to draw up multilateral conventions. All these aspects should also be considered bearing in mind that they should not be used as a pretext for establishing disguised trade barriers, or to effect arbitrary or unjustified discrimination.

His delegation welcomed the suggestion that the Chairman conduct informal consultations, which would enable Council members to give greater consideration to the whole issue, including the possibility of setting up a working group. The consultations should also consider the possible mandate which could be given to such a working group were it established. He assured the EFTA countries that Argentina would make a constructive contribution to the debate in the GATT.

The representative of Yugoslavia said that her delegation supported suggestions that a working group be established within the GATT framework to consider environmental measures as they related to international trade. The problem raised by Mexico under agenda Item 9 had further convinced her delegation that this matter had to be studied in greater detail. She did not as yet have a final view as to the mandate for such a group, but believed that its main task should be to facilitate a better understanding of the problem thus enabling contracting parties to act appropriately within the GATT framework. She hoped that the GATT could make a contribution to the 1992 UN Conference.

The representative of Austria, on behalf of the EFTA countries, said that the various statements confirmed what he had initially stated, namely that the trade and environment issue was difficult both in a technical sense and in the sense that differences of opinion existed. The EFTA countries were thankful for the large support their proposal had received, but were to some extent surprised by certain statements. To contest the interlinkages between trade and environment was to contest the obvious. By pure coincidence, the matter considered by the Council under the previous agenda item had proved this point. The EFTA countries' statement had further highlighted the existing interlinkages as well as the previous GATT involvement in this area.

He cautioned that the alternative to the multilateral approach proposed by the EFTA countries would be a unilateral or bilateral approach in which arbitrary means and methods would be employed to the detriment of the weaker trading partner. A multilateral approach was certainly in the interest of the small EFTA countries that were keenly interested in promoting free trade and fighting protectionism. They were convinced that this also had to be the choice even of those who voiced concern that GATT was getting more involved in environmental affairs. The EFTA countries agreed fully with those who argued that environmental concerns should not lead to additional trade barriers, and believed that there could not be a better institution than the GATT to assure this. He suggested that some of the concerns expressed during the present debate might have been founded on a misunderstanding of the thrust of the EFTA countries' initiative, and supported proposals that the Chairman conduct informal consultations and report to the Council at its next meeting. In requesting the Director-General to convene the already existing 1971 Working Party, the EFTA countries had shown one way of achieving this goal.

The Chairman noted that this issue seemed to be regarded by all as important. He recalled that the proposal was not to establish a working group because one already existed. It was quite clear, however, that a number of points had been made which would require consultations.

While it had been pointed out that there was a need for reflection on work being done in other organizations, it seemed to him, as had also been mentioned by several Council members, that there would be a need, in particular, to reflect upon whether the existing mandate of the working group was the most appropriate. He took it, therefore, that the Council agreed unanimously that there was a need for informal consultations. Having considered this possibility prior to the meeting, he had requested the Chairman of the CONTRACTING PARTIES to conduct such consultations. The latter had agreed to this.

The Council took note of the statements and agreed to revert to this matter at a future meeting, and in the meantime asked the Chairman of the CONTRACTING PARTIES to conduct informal consultations.

The representative of the European Communities said that the Community fully supported the Chairman's conclusions, which he hoped would be borne in mind because they would be important in light of the future framework of the programme of work that might be adopted. It augured well that the Chairman of the CONTRACTING PARTIES had been asked to hold these consultations. Noting that there had been some 35 statements on this very important issue, many of which had been well prepared while others not sufficiently so, he cautioned that if the environment issue did not come in through the window, it would come in through the main door eventually, whether one liked it or not. The environment dimension was already inherent in trade policies and this dimension might in fact lead one to lose his way if there was not a common approach to trade policies. Most of the concerns had been voiced by countries in the Southern Hemisphere, but there was no reason to adopt the attitude of the three fabled monkeys. The discussion was already underway in the Council, and the Community for its part would continue the discussion at that level and, at the appropriate time, would contribute further elements for reflection. As Argentina had said, this was not a pretext to adopt unilateral discretionary measures. On the contrary, the Community wished to discuss the matter so that precisely the adoption of unilateral or arbitrary measures could be avoided. The Community, therefore, would object to any restrictive interpretation of the GATT's competence in this matter.

The Council took note of the statement.

11. Roster of non-governmental panelists
- Proposed nomination by Colombia (C/W/663)

The Chairman drew attention to document C/W/663 containing a proposed nomination by Colombia to the roster of non-governmental panelists.

The Council approved the proposed nomination.

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

The Chairman recalled that at the CONTRACTING PARTIES' Forty-Fourth Session, the Council Chairman had suggested that "in future, at the first Council meeting each year, on the basis of a consensus which would have emerged from consultations, the Council Chairman should propose the names of the presiding officers of the Committee on Balance-of-Payments Restrictions, the Committee on Budget, Finance and Administration and the Committee on Tariff Concessions for the current year. This would not preclude the re-appointment of an incumbent" (SR.44/2). The CONTRACTING PARTIES had taken note of that suggestion. The proposal called for prior consultations, open to all delegations and conducted so as to ensure transparency of the process.

At the Council meeting in November 1990, the previous Chairman had announced that his successor would carry out such consultations. Having done so, he was now in a position to announce that Mr. Boittin (France) had agreed to continue for another year as Chairman of the Committee on Balance-of-Payments Restrictions, Mr. Broadbridge (Hong Kong) as Chairman of the Committee on Budget, Finance and Administration and Mr. De la Peña (Mexico) and Mr. Tuusvori (Finland), respectively as Chairman and Vice-Chairman of the Committee on Tariff Concessions.

The Council approved the reappointments.

13. Administrative and financial matters
- Pension and salary matters (W.46/10)

The Chairman recalled that at the Forty-Sixth Session in December 1990, the Chairman of the CONTRACTING PARTIES had made a statement on this matter (W.46/10), and that the CONTRACTING PARTIES had agreed that the Council should take it up in the new year.

Mr. Broadbridge (Hong Kong), Chairman of the Committee on Budget, Finance and Administration, said that the Secretariat was very much aware of the need to attract and retain the right staff at all levels. In the Committee there had been preliminary exchanges on this matter, which had been constrained to some extent because the future needs of the GATT were not yet known. In his view, the Secretariat had properly kept in abeyance an organizational and grading review -- which would have had salary implications -- until the conclusion of the Uruguay Round. He was aware, however, that the Council Chairman and indeed the previous Chairman of the CONTRACTING PARTIES were calling for a review regardless of any changes in the GATT structure.

He believed that it was always easier to achieve reform when one had a peg on which to hang it. He could not think of a better peg than the successful conclusion of the Uruguay Round and, as a consequence, the need for the Secretariat to administer a wider range of responsibilities. Accordingly, the best service one could perform for the GATT staff would be to complete the Round quickly and successfully. Regardless of what

happened in the Round, however, it was timely to have brought before the Council the need for a review of the salaries and conditions of service of the GATT staff if only to start the softening-up process which would be necessary for improvements to be taken successfully through the Budget Committee. To this end he would ensure that this item was kept before the Committee.

The representative of Canada said that while Council members were perhaps not yet ready to engage in a full discussion on this matter at the present meeting, it was a very important issue which should now be addressed. In his view, the most effective way to begin a real dialogue amongst Council members might be for the Chairman to hold informal consultations on this matter.

The Chairman agreed that the Council did not yet appear ready for a discussion. As Chairman of the Council, it seemed to him quite clear that the statement by the Chairman of the CONTRACTING PARTIES at the Forty-Sixth Session raised a very important, serious and genuine problem. Personally he shared the views expressed in W.46/10, as well as those just stated by the Chairman of the Budget Committee. As Council Chairman, he intended to pursue and to promote this matter. He would begin by conducting informal consultations with Council members, who he trusted would be available for this. His consultations would be based on information that could be drawn up to help the process along and, hopefully, on a common understanding, shared by Council members, that it was of utmost importance that GATT continue to be able to attract the best talent in future. It was likely that the recruitment process had in the past been helped by GATT's having acquired a very good reputation and a good image. One, nevertheless, had to look at hiring competitiveness in financial terms, which meant staff salaries and pensions.

The Council took note of the statements and agreed to revert to this matter at a future meeting in the light of the Chairman's informal consultations.

The Director-General thanked the Chairman and the previous Chairman of the CONTRACTING PARTIES for their statements. He said that it would be of great comfort for GATT staff members to know that it was not only in the Budget Committee that personnel questions were considered. This was an urgent matter which could not be dragged on for too long, for two reasons. First, the problem was not only one of competitiveness in relation to new recruitment, but also in respect of some very good and long-serving staff members who were being pushed to resign immediately in order to recover a maximum from their payments into their pensions. There was not only a difficulty in bringing in new staff, but also in retaining experienced officials who were tempted to leave; GATT was thus losing their experience. He cited the case of one official who was far from having reached the sixty-year age limit, but having made his calculations, had decided to leave. Second, because of the competitive situation, he had sometimes been forced to offer new recruits conditions that were to a certain extent more favourable than those he could offer to existing staff, in respect of whom there were very strict regulations in terms of steps and

promotions. He could "cheat" a bit with new people, so to speak, but this was very bad for the atmosphere among the staff as a whole. He gave these examples to indicate what lay behind the urgent need to have a very thorough examination of these problems.

The Council took note of the Director-General's statement.

14. Trade Policy Review Mechanism - Programme of Reviews for 1991 - Review of Bangladesh
- Communication from the Chairman (C/W/664)

The Chairman suggested that the trade policy review of Bangladesh, which had been originally scheduled to be conducted in June 1991, be postponed until December 1991, as he had proposed in C/W/664.

The Council so agreed.

15. Working Party on "German unification - Transitional measures adopted by the European Communities"

The Chairman, speaking under "Other Business", recalled that at their Forty-Sixth Session the CONTRACTING PARTIES had agreed to establish a working party to examine transitional measures adopted by the European Communities following German unification (L/6793). The CONTRACTING PARTIES had authorized the Council Chairman to designate the Chairman of the Working Party in consultation with interested contracting parties. He informed the Council that, following his consultations, Mrs. Escaler (Philippines) had been designated as Chairperson of the Working Party.

The Council took note of this information.

16. Macau - Succession to the General Agreement
(a) Tariff régime of Macau (L/6806)
(b) Status of Macau as a contracting party (L/6807)

(a) Tariff régime of Macau (L/6806)

The representative of Macau, speaking under "Other Business", referred to the Declaration by Portugal dated 11 January 1991, concerning the application of the General Agreement to the territory of Macau (L/6806). She said that Macau would submit, within one year of its date of succession, a Schedule to which Macau's customs duties would be bound, up to an acceptable percentage of its imports.

The Council took note of the statement.

(b) Status of Macau as a contracting party (L/6807)

The representative of India, speaking under "Other Business", said that while India welcomed Macau as a contracting party to the General

Agreement, it had certain doubts as to the nature of Macau's status under the General Agreement once China assumed sovereignty over it in December 1999. He noted from China's communication (L/6807) that Macau would continue to enjoy full autonomy in economic and trade fields to enable it to claim contracting party status. This assurance notwithstanding, India reserved its position with respect to Macau's status as a contracting party after it became a part of China in December 1999.

The representative of China, speaking as an observer, said that in accordance with the provisions of the Joint Declaration of China and Portugal on the question of Macau, signed in Beijing on 13 April 1987, and in order to ensure the lasting stability and prosperity of Macau, China had agreed that Macau, in pursuance of Article XXVI:5(c), become a GATT contracting party. The Chinese Government had indicated, in its communication to the Director-General on 11 January 1991 (L/6807), that as from 20 December 1999, China would resume the exercise of sovereignty over Macau, which would become a special administrative region of China, while maintaining the current economic and trade systems and while continuing to be deemed as a GATT contracting party under Article XXVI:5(c). China hoped that Macau, as a separate contracting party, would play an active rôle in GATT's activities.

The Council took note of the statements.

17. Article XXIV:6 - Consultation between Argentina and the European Economic Community

The representative of Argentina, speaking under "Other Business", said that as his delegation had mentioned at the Forty-Sixth Session (SR.46/2, page 9), Argentina and the European Economic Community were pursuing consultations with regard to the December 1987 Compensation Agreement for Portugal's and Spain's accessions to the Community. In pursuance of that Agreement, the two parties had held a further meeting on 23 January 1991 with a view to arriving at a compensation equivalent to the nullification of GATT rights incurred by Argentina through the withdrawal of Spain's concessions on maize and sorghum. It had been agreed at that meeting that the Commission would request the Community's Council of Ministers to extend until 31 December 1991 the provisions of the above Agreement, which would incorporate the statistics relevant to the compensation and that a further consultation would take place in mid-February. Argentina reserved its GATT rights, and reiterated its willingness to work toward a satisfactory solution through this consultation process.

The Council took note of the statement.

18. Agreements among Argentina, Brazil, Paraguay and Uruguay

The representative of the European Communities, speaking under "Other Business", said that the Community had been informed that on 20 December 1990, Argentina and Brazil had signed an agreement called "Economic Complementarity Agreement". If the information was correct, this would represent an important step in the direction of establishing the Southern

Cone Common Market (MERCOMSUR) between Argentina, Brazil, Paraguay and Uruguay. He requested Argentina and Brazil to provide information on this agreement and to indicate whether they intended to notify it to the GATT.

The representative of Brazil welcomed the Community's interest in the cooperation agreements among certain Latin American countries. In accordance with normal GATT practice, the member countries of the Latin American Integration Agreement (LAIA) submitted to the Committee on Trade and Development all relevant information concerning commercial cooperation agreements of interest to GATT contracting parties. It was intended to proceed in the same manner in respect of the agreements signed the previous year and to which the Community had referred.

The Council took note of the statements.