GENERAL AGREEMENT ON

TARIFFS AND TRADE

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MINUTES OF MEETING

Held in the Centre William Rappard
on 29-30 May 1991

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

Prior to adoption of the Agenda, the Chairman, on behalf of the Council, welcomed El Salvador as the 102nd contracting party and as a Council member, following its request for membership.

1. Trade and environment
- Structured debate (Spec(91)21, L/6859)

The Chairman recalled that at its meeting in April, the Council had agreed to hold a structured debate on this subject at the present meeting. He drew attention to an outline of points circulated by the Chairman of the CONTRACTING PARTIES (Spec(91)21), and to a communication from the ASEAN contracting parties (L/6859).

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[1]During the course of the discussion the Chairman suggested that in light of the importance and lengths of the statements made, they be issued in extenso in the Spec(91)... series for those delegations that so wished. The following statements have subsequently been issued: Argentina - Spec(91)28; Australia - Spec(91)30; Austria, on behalf of the EFTA countries - Spec(91)27; Bolivia - Spec(91)56; Brazil - Spec(91)51; Cameroon - Spec(91)46; Canada - Spec(91)38; Colombia - Spec(91)45; Cuba - Spec(91)48; Czech and Slovak Federal Republic - Spec(91)49; Hong Kong - Spec(91)35; Hungary - Spec(91)43; India - Spec(91)40; Israel - Spec(91)52; Japan - Spec(91)54; Malaysia, on behalf of the ASEAN contracting parties - Spec(91)41; Mexico - Spec(91)37; New Zealand - Spec(91)36; Nigeria - Spec(91)53; Pakistan - Spec(91)47; Peru - Spec(91)39; Sweden, on behalf of the Nordic countries - Spec(91)42; Switzerland - Spec(91)32; Tanzania, on behalf of the African contracting parties - Spec(91)31; Turkey - Spec(91)33; United States - Spec(91)44; Uruguay - Spec(91)34; Venezuela - Spec(91)50; Yugoslavia - Spec(91)29; and Zaire - Spec(91)55.

The Chairman of the CONTRACTING PARTIES said he had held further informal consultations on 23 May to discuss the EFTA countries' request to activate the 1971 Working Group on Environmental Measures and International Trade (C/M/74, item 3), and the possible GATT contribution to the United Nations Conference on Environment and Development (UNCED) process. While a productive debate had taken place, participants had agreed that the structured debate at the present Council meeting would be relevant to the consideration of these two issues, and that a further round of consultations should therefore be held shortly after the present meeting.

The representative of Austria, on behalf of the EFTA countries, said they stood firmly behind their request that the 1971 Working Group be convened at the earliest appropriate date, which they considered should be not later than the second half of September. International trade and the environment had become a topical issue, and other international organizations were taking up the trade aspects thereof because the GATT had failed to discuss it. A sound and viable environment was part and parcel of standards of living and of development, both of which the General Agreement sought to promote. Furthermore, the concept of sustainable development, especially the sustainable management of resources, was an important addition to the objective laid down in the Preamble to the General Agreement of "developing the full use of the resources of the world". Environmental concerns should not, however, lead to unnecessary trade barriers, and he endorsed the principle that the measure with the least trade impact should be used to achieve a given end. Noting that the General Agreement did not refer explicitly to the environment, he said this term would need to be defined prior to any GATT discussion.

The current environmental problems called for international cooperation, and would involve new obligations not only for developing countries but also for industrialized countries under the concept of international burden sharing. With regard to the means of environmental protection, these had thus far concentrated on the regulatory approach. The EFTA countries believed that internalization of environment costs should become a common policy objective. However, the more that environmental costs were internalized nationally, the greater potential there was for trade friction, and the more urgent the need to clarify trade rules. He cited the kinds of problems that GATT might encounter in the face of trade restrictions imposed on goods and on processes and production methods in pursuance of environmental concerns. There was also a related problem of how present or future international environmental agreements that used trade instruments to achieve their aims would accord with the GATT, and how conflicting obligations might be resolved. While these problems concerned all contracting parties, he recognized that the social cost pricing of natural resources and natural resource- based products as well as offsite environmental damages were not reflected in export prices, and were generally of special concern to developing countries. For all these reasons it was essential to continue discussion of this issue in the GATT, and the appropriate forum was the 1971 Working Group.

The representative of Argentina said that this debate would assist the current informal consultation process and would contribute to clarifying GATT's rôle with regard to the environment. Beginning with the 1972 UN Conference on Human Environment and culminating in the 1992 UN Conference, a large amount of interest had been devoted to this issue. This indicated the need for decisive international action to counter the deterioration of the environment, the main cause of which was unsustainable production and consumption particularly in the industrialized countries. Poverty and the deterioration of the environment were also closely interrelated. Strategies aimed at reaching commitments to promote sustainable development needed to be examined, although environmental concerns should not be used to introduce any conditionality in development financing, nor as a pretext for unjustified trade barriers. GATT's greatest contribution would be to ensure the process of trade liberalization which would lead to an improved allocation of resources and to their less intensive use through comparative advantage and efficient production. He added that international environmental rules should satisfy GATT principles, and commitments agreed in the UN system should be interpreted under Article XX exceptions. This would avoid the use of unilateral or regional action, or the application of discriminatory and unjustified measures. It would also ensure a positive linkage with international agreements in the UN system. Argentina believed that GATT discussion on trade and the environment should continue and no hasty decisions should be made. In this regard, informal Secretariat documents on the relationship between trade and the environment, and on the UNCED discussions, would be useful.

The representative of Yugoslavia said that environmental issues were being discussed widely in national and international bodies and it would be wrong for the GATT to ignore them. GATT should address the trade aspects of environmental policies and measures to prevent them from being used as disguised trade restrictions and in ways contrary to its objectives. Yugoslavia believed that the environment issue would be on GATT's agenda for some time to come, and that the Council should therefore agree on the objectives for deliberations thereon. His delegation suggested that the Council agree on the following course of action for the autumn of 1991: (a) to invite contracting parties to submit information on national environmental measures; (b) to invite international organizations to provide information on environmental measures within their scope of activity; and (c) to request the Director-General to undertake a study along the lines suggested in document Spec(91)21. On the basis of the information received from contracting parties and international organizations, the Secretariat might prepare an analytical study to be reviewed by the Council with a view to taking the necessary further steps. An examination of the relevance of GATT provisions to environmental concerns should be approached in an organized and analytical manner. In this regard, the proposal to activate the 1971 Working Group should be given positive consideration, and discussion should focus on its mandate.

The representative of Australia said his Government fully supported a GATT discussion on this important matter and the convening of the 1971 Working Group with appropriate terms of reference to study in detail how the GATT system might address current environmental issues. Most unilateral trade measures to enforce environmental policies were presently confined to specific products and, arguably, did not yet have a measurable impact on world trade. However, as countries sought to resolve their perceived environmental problems -- whether global or local in nature -- and as international environmental agreements lagged behind governments' domestic imperatives to be seen as taking action, there would likely be an increasing move toward the unilateral use of trade instruments. Furthermore, as countries moved towards sustainable development policies, there would be efforts to internalize environmental values into market prices, and a greater use of economic and fiscal instruments. Contracting parties had to decide whether or not to provide direction to countries contemplating taking environmental measures. The fundamental questions were how to distinguish between trade measures taken for environmental purposes and those taken for purely protectionist purposes, and what approach GATT should take toward legitimate environment-related measures that could be inconsistent with it.

Trade restrictions necessary to give effect to an international agreement whose primary objective was to resolve non-trade concerns that had political or moral goals should be considered apart from a party's GATT obligations. In the past, GATT's approach to such agreements had been implicit and Australia believed there was no need to involve the GATT directly in examining the consistency of international environmental agreements. However, if a need to formalize GATT's recognition of such agreements arose, Article XX(h) might be amended to include obligations under multilateral environmental agreements in addition to commodity agreements. Contracting parties involved in negotiations toward an international environmental agreement might also request that the Secretariat act as an advisory body to ensure that GATT's views were incorporated therein.

Australia considered it appropriate for the GATT to examine unilateral actions taken for environmental reasons which affected international trade. The GATT already had a framework that could accommodate many trade measures taken for environmental reasons, such as rules relating to the principles of transparency, non-discrimination and national treatment. If such measures could not be made GATT-consistent, then an Article XX exception might be invoked. However, while the application of Article XX was reasonably straightforward when the environmental problem was confined within a customs territory, it became complicated when environmental goals involved another country's products or resources, or where the measure was used to discriminate, for environmental reasons, between "like products" on the basis of production or process methods. Article XX did not anticipate action taken by countries to promote or coerce adoption of environmental controls in other countries. The GATT discussion of environmental measures would need to focus on five fundamental issues: (1) Should GATT recognize the environment issue? (2) Should measures used to give effect to

environmental objectives come under GATT rules? (3) What was the relationship between GATT and international environmental treaties? (4) Was discrimination between "like products" solely on the basis of production or process methods legitimate from the GATT point of view? and (5) Did Article XX have extra-territorial application?

The representative of Tanzania, on behalf of the African contracting parties, said it was significant that since the establishment of the 1971 Working Group, no contracting party had found it necessary to convene it. Over the years, developed countries had been content to take environmental risks in the course of their rapidly accelerating industrialization, and it was only when developing countries became convenient dumping grounds for toxic and hazardous industrial exports that the interrelationship between trade practices and environmental concerns had begun to be driven home. For the African contracting parties, environmental concerns were primordial. Development was also their principal imperative, and in this regard the 1992 UN Conference would be a watershed in arresting the marginalization of development concerns. He supported the ASEAN contracting parties' proposal that the Secretariat prepare a factual paper, but this should also indicate whether development concerns had been taken into account or reflected in respect of each of the elements identified in the proposal. Any modification to the 1971 Working Group's mandate should await an exhaustive scrutiny of this complex subject in the broader, more universal United Nations fora.

The representative of Switzerland said that the rapid degradation of the environment underlined the need for protective measures. However, as economic mechanisms began to be used increasingly for this purpose, a detailed GATT study was necessary in order to make the objectives of environmental protection and trade liberalization more compatible. While the harmonization of national and international environmental measures was beyond GATT's competence, this did not mean that the issue did not concern it. The question to be addressed was under what conditions would recourse to trade measures be legitimate. Although dispute settlement procedures could deal with these measures on a case-by-case basis, their purpose was to apply the law and not to define it. It was necessary for the GATT to define precisely these rules, and also to determine whether Article XX covered all environmental measures, how these measures could be judged to be "necessary", whether scientific proof would suffice and whether that Article could be extended to exports and to extra-territorial applications. One would also need to determine if taxes that penalized national or foreign products being produced in a manner harmful to the environment would be compatible with Article III, and whether processes and production methods could be used in the definition of a "like product". Regarding international environmental agreements with trade provisions, it would have to be determined whether they conflicted with the General Agreement, particularly when one contracting party was a signatory to such an agreement and another not. Switzerland considered the link between trade and the environment to be indisputable, and therefore that this issue

should be discussed in the GATT. The appropriate forum for this was the 1971 Working Group; its work should begin immediately, without prejudging the results of the current informal consultations.

The representative of Turkey expressed concern that the environment might be used as a pretext for protectionist trade measures or that trade measures might be used in support of environmental policies without adequate consideration as to their effectiveness. It was often difficult to distinguish between those cases where environmental concerns were a pretext for protectionist measures and those that involved the legitimate use of trade measures. As a starting point, an analytical study could be undertaken to clarify effects of trade flows, trade policies and liberalization on the environment which should take account of the special situation and concerns of developing countries. He expressed concern that demands for compatibility in environmental policies might lead to more stringent environmental standards, and reduce developing countries' access to developed country markets. Also, products and processes banned in industrialized countries might find their way into developing country markets. Although environmental concerns had increased in importance since GATT rules and procedures had been drafted, the philosophy behind Article XX should still be kept in mind and trade barriers on environmental grounds should not be legitimized. The relationship between trade measures taken for environmental reasons and Articles I, III, VIII, XI, XX and Part IV merited examination. He supported the ASEAN contracting parties' request for a Secretariat paper, which could serve as the basis for discussion in an appropriate forum such as the 1971 Working Group, for which new terms of reference would be needed. The Secretariat's work could also serve as the GATT's contribution to the UNCED.

The representative of Uruguay said the present debate was the beginning of the process of understanding the complex relation between environment and trade. The basis for GATT discussion should be that environmental issues should not be used as a pretext for trade barriers. Environment-related trade measures should not be used against developing countries that had shortcomings in their environmental policies. Particular account had to be taken of the technological asymmetry between developed and developing countries and that the latter would have to bear additional costs in converting production to more environmentally-sound technology. Trade had to respond to the objectives of sustainable development in developing countries, and inter-governmental agreements should be harmonized to ensure that no unilateral action was taken by contracting parties. It was not advisable to activate the 1971 Working Group because its mandate no longer corresponded to present needs. That mandate did not contemplate a global approach of substantive and institutional factors, and without that the GATT's response ran the risk of being inadequate. At this point it would only be possible to begin analytical work in the context of the General Agreement and of economic and trade realities. The Secretariat, which had attended preparatory meetings of the UNCED, should submit a report on developments therein relating to

all aspects of the trade and environment linkage. Also, a paper along the lines of the ASEAN contracting parties' proposal would be useful. Any future GATT work should consider developing contracting parties' interests as fully as in other international organizations.

The representative of Hong Kong acknowledged that there was a trade and environment linkage, and that the GATT could usefully clarify its position thereon. He welcomed a GATT discussion on this subject in order to ensure that its rules and principles were observed and that environmental issues were not used as a pretext for protectionism. There was merit, however, in proceeding cautiously in order to develop a common understanding of the parameters and objectives of this discussion. The top priority at the present time had to be the successful conclusion of the Uruguay Round, and this discussion should not be allowed to distract attention therefrom or to influence the substance of issues that were already at an advanced stage in the Round. Hong Kong believed that the GATT at present coped adequately with many aspects of the trade and environment linkage, because many environment related trade measures were often compatible with GATT obligations. Article XX(b) and (g), as well as the Agreement on Technical Barriers to Trade (BISD 26S/8), were relevant in this regard. There were, of course, instances where conflicts with GATT obligations existed, but in many cases this was due more to a disregard of those obligations than to the inadequacy of the GATT. Hong Kong also believed that, as a rule, multilaterally agreed trade restrictive measures in environmental agreements posed less practical difficulties to the GATT system than unilaterally imposed trade measures. The former reflected a degree of consensus, relied on a commonly agreed notion of an appropriate environmental standard and of the balance between environmental gain and negative trade impact. Unilateral measures, on the other hand, held the most risk of being hidden forms of protectionism and of having extra-territorial implications, and it was more difficult to judge their validity and merit as means of environmental protection. A further issue in this regard was the extent to which GATT could make a judgement about the legitimacy of such trade measures without judging the validity of environmental policies per se, or without making value judgements about the relative priority that trade and environmental policies should be given in a particular territory. While the GATT was clearly capable of distinguishing between an environmental and non-environmental objective, the question was whether it could assess in all circumstances the merit of a particular environmental objective as compared to its trade consequences.

The representative of New Zealand said that the GATT did not need to engage in a wide-ranging debate on trade and the environment; rather, its interest should be to ensure that GATT rules and environmental protection were mutually supportive. His Government believed that the GATT framework of rules did apply to trade measures taken for environmental reasons, as it did in other policy areas. He indicated how the main GATT principles and rules such as non-discrimination, transparency, legitimacy of objectives in order to invoke Article XX, proportionality, harmonization, and second-level obligations of state and local authorities were applicable to the environment. The GATT was, therefore, neither ignorant of environmental concerns nor did it allow for open-ended derogations. It was a set of

reasonable disciplines which could allow genuine environmental protection measures and also prevent excesses. Thus, there was no need for a new, broad environmental exception to the GATT. The GATT's applicability to the environment was likely to be given greater clarity, without any fundamental change, through some of the agreements currently under discussion in the Uruguay Round. The GATT was therefore reasonably well equipped to allow the framework of national trade regulations to be supportive of environmental measures.

There were, however, areas for further consideration. Global environmental issues and the need to protect a global resource, whether through international agreements or not, posed certain problems such as the question of extra-territoriality, possible conflict with the GATT concept of "like product" if the production process was at issue, and pressures to introduce discriminatory trade measures or even sanctions against those not upholding the same environmental standards. Trade measures should not be used simply because there was a failure to achieve an international consensus on environmental rules and disciplines. Failing an international agreement, GATT-consistent possibilities were available to influence others' actions, such as non-discriminatory labelling schemes which could influence consumption of environmentally-sound products. However, when conflicts with GATT rules arose, these should be examined on a case-by-case basis or, if broad international consensus on a global environmental objective existed, a decision could be taken under Article XXV. In conclusion, the GATT should be involved in the international debate on the environment without duplicating other organizations' work. The 1971 Working Group would be the ideal mechanism to oversee this process. The GATT should also provide a contribution to the UNCED, and a Secretariat paper outlining current rules, case history, and the issues identified during the present debate would be useful in this regard. Finally, the GATT should be involved in the negotiation of international environmental agreements with potential trade effects, and contracting parties should ensure that domestic environmental policies took account of GATT obligations.

The representative of Mexico agreed that the Secretariat should prepare technical support notes and compile information on this subject. There should also be close coordination and exchange of information on a permanent basis with the UNCED. These inputs would enrich the contracting parties' knowledge without forgetting that GATT's competence was limited through its contractual obligations. Contracting parties should not create new environmental commitments and then attempt to bring them under the GATT, but should better define and manage the various GATT provisions which allowed environmental measures to be taken. The Council debate on this subject should continue, and the Secretariat's technical notes could perhaps be examined in September to decide on the next step. During the course of this examination, a decision on the terms of reference of the 1971 Working Group could also be taken.

The representative of Canada said that over the previous two decades environmental issues increasingly had been a focus for international discussions and that the UNCED would provide the next major multilateral opportunity to address these issues. However, the UNCED could not be expected to provide the basis for coherent environmental policies without the benefit of GATT's guidance on the recognized interlinkage between trade and the environment. The environment issue was not new to GATT, and a contracting party's right to adopt measures in response to environmental objectives, even where these might impinge on trade, was clearly recognized under GATT rules and in some of the Tokyo Round instruments. In this respect, Article XX provided exceptions for measures aimed at environmental protection, although many questions surrounded its interpretation and use. The review and further clarification of existing GATT rules and obligations regarding environment-related trade measures should take into account the principles of non-discrimination, notification and transparency as well as those of appropriateness and proportionality of measures. Multilateral environmental agreements provided the most appropriate means of addressing global environmental concerns, although the extra-territorial scope of such agreements needed to be examined as well as their application and enforcement with respect to non-signatories. Unilateral measures for legitimate environmental aims could benefit from harmonization although there was a need to guard against their use for protectionist purposes. In the GATT, a systematic approach to ensure that environment and trade questions received appropriate attention and analysis should be established. As a first step, the Secretariat should participate in the current negotiations on the Convention on Climate Change, and in the UNCED preparatory process. In addition, contracting parties should engage in a full assessment of the trade and environment issue. The appropriate forum for this was the 1971 Working Group, which should be activated with the original terms of reference, although Canada would not object to these being updated. The outline of points contained in Spec(91)21 provided a good basis for the Working Group to begin its examination.

The representative of Peru said that the environment was a matter of concern to the whole international community. This issue covered a wide area and its analysis called for a complex, multifaceted approach that would take account of the development concept. Although all shared the objective of environmental conservation, they did not necessarily have the same concerns and priorities. For developing countries, the problem was to achieve sustainable development without endangering their non-renewable natural resources or degrading the environment in the process. However, the acute poverty in these countries combined with factors such as the structural fall in natural-resource product prices as a result of protection in developed countries, deteriorating terms of trade and external debt, meant that indiscriminate use of non-renewable resources with the resulting environmental damage was one of the few alternatives for obtaining the income necessary to finance development. The environment issue could not, therefore, be separated from development. Countries that were unable even to satisfy the minimum needs of their populations could not be asked to assume responsibility for environmental conservation on the same terms as countries that had reached a level of production and consumption which had itself become an environmental danger. In light of the above, one had to address environment and trade policies and their links with sustainable development.

It would be premature for the GATT to elaborate trade measures that contributed to the formulation of an integral concept of sustainable development, because there was no clear definition of how the various aspects should covered and interlinked in the framework of the environment issue. The process of defining linkages would emerge at the 1992 UN Conference and the GATT should adopt trade measures in conformity with the general policies on environment which would emerge from that Conference. Precedence would thus be given to environmental and development aspects in relation to trading interests. In the present circumstances, it would be counterproductive to convene the 1971 Working Group whose terms of reference and composition were totally obsolete. A better approach would be for the Secretariat to prepare the paper suggested by the ASEAN contracting parties. A questionnaire could also be prepared on national environmental measures that had trade consequences, and on trade policies which affected the environment. A factual paper on the UNCED process would also be useful, as would a list of international environmental instruments whose provisions had a direct or indirect bearing on trade. The above information could be used in a GATT contribution to the UNCED process, and would also lead to a better idea regarding the terms of reference for a possible working group on the subject.

The representative of India said that his Government attached great importance to the promotion and conservation of the environment. It was essential, however, to view environmental conservation from the perspective of sustainable development not only in the national or regional context, but also in the global framework. In this regard, he recalled that the developed countries had contributed largely to the present state of the global environment due to their unsustainable production and consumption patterns. This had been recognized in the 1989 UN General Assembly Resolution setting up the UNCED. In developing countries, poverty was the main source of environmental degradation and conservation would therefore have to begin with measures for its alleviation and eradication. Trade could play an important role in generating growth and giving an impetus to development. However, active assistance from the international community to reverse the deteriorating terms of trade for developing countries, provide adequate remuneration for their commodity exports, and remove tariff escalation and tariff and non-tariff barriers on products of export interest to developing countries would be necessary. Developing countries would also need additional resources to implement specific programmes for environmental conservation. India did not deny the concept of burden sharing; however, equity required that the burden must be borne by those most responsible.

Trade was only one aspect of the wide area of economic activity. It was inappropriate to seek to introduce the all-encompassing subject of environment and sustainable development into the GATT, which was a contractual trade agreement and therefore not the forum for a free-wheeling discussion of the environment per se. His delegation believed that the existing GATT framework was adequate to deal with the current trade-related environmental concerns. Protection of the environment in certain instances, however, could require trade restrictions on imports or exports. This would generally be applicable to those environmental issues that were of a global nature. Objectives, guidelines, standards and procedures in

these cases would have to be discussed and decided in the relevant international fora. Specific aspects of such international environmental instruments could then be reviewed in relation to the rights and obligations of existing economic instruments like GATT. He added that countries which required higher standards of environmental protection than were covered by any international consensus would have to make their own judgement keeping in view their overall interest; they could not be allowed to impose these standards on other countries or to penalize them for alleged "unfair" trade practices. India believed that the 1971 Working Group did not have the mandate to undertake an examination of the issues proposed by the EFTA countries. Informal consultations should continue in order to determine the GATT contribution to the UNCED process, although a factual paper by the Secretariat, on its own responsibility, could be envisaged. The subject of that document would need to be discussed and decided upon through a consultation process. In the meantime, his delegation could support the ASEAN contracting parties' proposal for a factual Secretariat document.

The representative of Malaysia, on behalf of the ASEAN contracting parties, said that the GATT should not rush into adopting definitive decisions on the question of trade and environment, given the broad trade implications of environmental concerns and measures. Environmental degradation had reached global proportions affecting all nations, and although all countries had to cooperate in alleviating the situation, this should be done in accordance with the principles of responsibility, justice, equity, capacity and needs. International efforts to address the environment should also be dealt with within the terms and principles accepted by the 1992 UN Conference. In the pursuit of environmental conservation and sustainable development at the global level, developing countries would require enhanced technology as well as additional economic resources. Any plan to deal with environmental degradation should include programmes to reduce poverty, and raise standards of living. It should also be recognized that countries had sovereignty over the use and management of resources within their own territories. A supportive international economic environment would also encourage and enable developing countries to pursue sound management of their environment. An improvement in market access for resource-based products to allow for increased exports of greater value-added products from developing countries, financial and technical assistance, and transfer of environmentally-sound technologies were necessary for sustainable development and environmental protection. The net transfer of resources from indebted developing countries also affected their ability to cope effectively with global environmental degradation.

Environmental concerns could often be a convenient cover for protectionist motives. GATT provisions that facilitated or provided easy justification for countries to apply environment-related trade measures would be undesirable, as would the use of such measures to influence environmental practices in other countries. The ASEAN contracting parties also believed that environmental standards setting was not within GATT's purview. As a result of their concerns, they had proposed that the Secretariat prepare a factual paper on trade and the environment to be submitted to the Council which could then decide how to deal with it in relation to the UNCED process. The paper should provide factual

information and not attempt at this stage an assessment of the broad question of the effects of environmental policies and measures on international trade.

The representative of Sweden, on behalf of the Nordic countries, said that it was important to avoid hasty conclusions and to proceed gradually in this area. One had to examine first the ways in which trade and environmental policies interacted and how existing GATT rules covered these situations, following which one could evaluate the implications thereof for the content and the interpretation of GATT rules. The results of the analytical phase could be the CONTRACTING PARTIES' contribution to the UNCED. The appropriate forum for this work was the 1971 Working Group, which should be open-ended.

The issue of national sovereignty, and how it should be treated in the context of GATT disciplines for environmental measures, was a key issue. In the GATT, contracting parties had voluntarily accepted some limits on their sovereignty. However, the GATT did not explicitly allow action to influence conditions within another contracting party's territory, or its policies outside the trade field. Indeed, the GATT's strong emphasis on non-discrimination underlined the opposite position. Contracting parties, therefore, retained a basic right to remain free from such pressures, which in many cases could effectively be brought to bear through trade measures. This had implications for a number of the issues in the trade and environment area. For example, did national treatment mean that contracting parties could, under Article XX, require imported products to comply with environmental process standards, i.e., to require that they be produced as "cleanly" abroad as domestically? The Nordic countries believed that the manner in which products were produced abroad did not affect the domestic environment. They also believed that environmental standards should be allowed to differ because environmental conditions varied greatly from country to country, although shifts in competitivity would become a serious factor as environmental regulations proliferated. Clearer rules would be needed in this regard. Also, the harmonization of product standards, although not of process standards, would be desirable. Special cases, however, where production in the exporting country could directly or indirectly affect conditions in the importing country would have to be addressed. He emphasized that the GATT should not attempt to set environmental standards or discuss transfer of environmentally-sound technology or conditionality, but should deal only with trade issues. Free trade was the central theme of GATT rules, but GATT exceptions were an explicit acknowledgement that governments had other goals beside free trade.

The representative of Hungary welcomed the opportunity to discuss this subject. Further in-depth work should be carried out in an appropriate GATT forum to be agreed in the informal consultations by the Chairman of the CONTRACTING PARTIES. Noting that environmental policies were often enforced by trade measures, he stressed the importance of ensuring that environmental concerns were not used as a pretext for additional trade barriers, and did not lead to disguised forms of protectionism. In general, solutions to environmental problems should be sought in a framework of international cooperation, inter alia, by coordinating and

harmonizing national standards and requirements, and by the common elaboration of standards. In this approach, trade instruments would have only a complementary and limited rôle to play. However, this limited rôle should be sufficiently and adequately addressed by the GATT. Actual levels of economic development in developing countries should also be taken into account through the principles of progressive implementation and the need for cooperation and assistance. Also, international conventions on environmental issues should prevail over GATT rules in case of conflicting obligations, although this was a subject which required further reflection.

The representative of the United States said that there was a danger that the GATT would be ignored in finding solutions to environmental problems if it did not forthrightly discuss and deal with perceived and actual linkages between trade and the environment. Strong sentiments existed within certain segments of the US private sector that the GATT and free trade were inimical to a healthy environment. These concerns were often based on a misunderstanding because experience had shown that the basic principles of the GATT -- such as non-discrimination, national treatment and transparency -- were not inimical to health or environmental objectives. If these views persisted, a serious erosion of pubic support for the trading system could occur. Thus, a thorough examination of all concerns and questions was necessary. Contracting parties were facing the need at the national level to devise solutions to urgent environmental problems. In an increasingly interdependent world, these solutions would have implications for the interests of other contracting parties. Therefore, a clear understanding of how GATT rights and obligations related to the options that governments faced, was necessary. He noted that an increasing number of international environmental agreements were emerging which incorporated trade provisions. The GATT had a responsibility to make a contribution, within its areas of competence, to the international debate on environmental problems and contracting parties had to address urgently the question of how to accomplish this. If no contribution were made, rules and practices might spring up in a manner that created real and dangerous conflicts between the goals of trade liberalization and enviromental protection. These goals were not mutually exclusive, but they could become so if governments ignored the important and complex interlinkages between trade and the environment.

A GATT examination of the growing interlinkage of trade and environment policies was therefore necessary and could be done in the 1971 Working Group whose terms of reference could be updated. It was important to ensure that governments did not use environmental concerns as a pretext for trade barriers. On the other hand, GATT's rules should continue to recognize a government's sovereign right to protect its citizens on legitimate health, safety and environmental grounds. This meant that they should recognize the right of all governments to develop sound environmental policies, even those with trade implications, provided they were non-discriminatory and were not designed simply to protect domestic industries. Contracting parties should not let the important principles of GATT be trampled upon by governments trying to protect the environment in any manner they deemed appropriate.

The representative of Colombia said that ecologically rational exploitation of natural resources as well as a dynamic and increasing participation in international trade would achieve the goal of sustained growth within a pattern of sustainable development. The relationship between trade and the environment was complex, and GATT discussions thereon should not spill over into areas better dealt with in other fora. This work should begin by exploring how trade liberalization was affecting the environment. Before taking action, one should understand the relationship between the use of existing technology and the shared aims of environmental conservation and free trade. GATT must join in the ongoing discussions on appropriate economic tools for tackling the problems of globalization and cross-border movement of environmental degradation, whether through restrictive measures or subsidies established to internalize externalities in the production and marketing of goods and services. The shared responsibility in global environmental issues must be reconciled with the national sovereign rights of contracting parties. Also, environment conservation measures that affected the export of key products for a region's subsistence and development should be given special consideration in order to avoid a deterioration in the conditions of poverty, which would subsequently have a worse impact on the environment.

His delegation believed that the GATT should proceed by stages in this area. The first stage would be to begin work immediately on an information base that took into account the UNCED discussions. He urged the Secretariat to submit, as quickly as possible, the study described in the ASEAN contracting parties' proposal. It was also desirable that, until global solutions were found in international discussions and the UNCED produced results, the GATT should, on the basis of its existing legal instruments, face up to the threats to free trade under the pretext of environmental protection.

The representative of Cameroon said that GATT discussion on this issue should begin by examining the elements, the measures, and GATT provisions in order to identify the linkage between trade and the environment. Discussion could then be held on this relationship and on the existing international environmental agreements and their relationship to the GATT. In this context, the definition of "environment" warranted a thorough discussion, with particular attention to the concept of "human environment". The deliberations in the Working Group on Domestically Prohibited Goods and Other Hazardous Substances constituted important GATT work in this area, and the speedy adoption of the proposed Decision on products banned or severely restricted in the domestic market would be a step in the right direction.

He questioned whether, in the light of its competence and of its contractual nature, the GATT was the appropriate forum for examination of the trade and environment issue. He doubted whether the normative approach in the GATT would be enough to satisfy developing countries' needs and concerns. However, developing countries could be willing to discuss this subject in the GATT if the CONTRACTING PARTIES recognized that their capacity to promote sustainable development would be strengthened by greater opportunities for their export growth. This would require simultaneous action to stabilize commodity prices at remunerative levels,

to do away with tariff escalation and tariff and non-tariff barriers on products of export interest to them, and to transfer new and additional resources to these countries to enable them to bear the costs of high technology and of environment protection measures. His delegation believed that while the 1971 Working Group existed and could be convened to discuss this issue, it was too early to do so in light of the forthcoming 1992 UN Conference. The Secretariat could, however, be requested to undertake a study on this subject.

The representative of Pakistan said that GATT should not be the primary forum for dealing with the environment, although the outcome of the 1992 UN Conference might require the GATT to assess the implications of environmental protection measures for the conduct of trade in general and for the General Agreement in particular. He said that the developed countries had been alerted to the demands of the environment by their own patterns of production and consumption. Developing countries, however, remained concerned by the economic and social problems generated by poverty. Increased demand was increasing the exploitation of natural resources in both developed and developing countries. In addition, developing countries were burdened with problems generated by protectionism in the developed countries, their debt and the consequent difficulties of finding additional resources to sustain minimum growth and development levels. Efforts to eradicate poverty and restore growth and development should underpin any environment conservation efforts. This implied that developed countries had the primary responsibility to put in place the mechanisms to resolve global environmental concerns. It also implied the provision of additional financial resources by the industrialized countries, improved access to technologies and the elimination of protectionist measures which served as a drain on the generation of resources needed for growth and development. His delegation believed a deeper understanding of the trade implications of environmental concerns was necessary. He suggested a step-by-step approach in the GATT, particularly to avoid detracting from the Uruguay Round negotiations which should remain the primary focus. He supported the ASEAN contracting parties' proposal for a factual background paper by the Secretariat.

The representative of Cuba said that if the trade and environment nexus were to become a permanent responsibility of the GATT, one would have to define the exact scope of GATT's action. Although the consequences in the long term would be the same for all, environmental problems affected rich and poor countries in different ways, and also originated from different causes. The responsibility for environmental conservation would have to be borne by all in differing degrees. He believed that GATT discussion on this subject should await the results of the 1992 UN Conference in order to develop more precise guidelines. His delegation also supported the ASEAN contracting parties' proposal.

The representative of the Czech and Slovak Federal Republic welcomed the EFTA countries' initiative which he said was positive and constructive. The interlinkages between the economy and the environment were generally recognized, and he considered the GATT to be the appropriate forum for dealing with the trade aspects of this linkage. A Council debate, however,

could not substitute for a detailed analysis at the level of experts. The 1971 Working Group should therefore be convened for this purpose, although its mandate would have to be updated.

The representative of Venezuela said that the importance and significance of this issue was undeniable. However, any GATT examination should consider not only how the environment was affected by trade practices, but also how trade was affected by environmental measures. Venezuela was concerned that unilateral measures were being applied on the pretext of environmental conservation without due examination by the international community of their consequences. However, he questioned the timing of the EFTA countries' request to convene the 1971 Working Group, given the critical stage of the Uruguay Round negotiations. His delegation believed that the GATT should address this issue cautiously, since discussions thereon were already well advanced in other international bodies. The GATT should recognize the efforts being made by other international institutions in the environment area, and take account of trade commitments in environmental agreements that had already been negotiated or were still under discussion.

He noted, however, that if the legal void caused by the absence of clear GATT rules on trade and environment were not filled, one would continue to be affected by the practice of recourse to GATT dispute-settlement mechanisms. This would be regrettable, as the dispute settlement mechanism should be a last resort for contracting parties. Moreover, in the absence of multilaterally-defined regulations, countries lacked the necessary parameters to prevent trade practices that were detrimental to the environment. He said that GATT discussions on this subject would probably lead to the conclusion that to bring about changes in trade practices to protect the environment, it would be necessary to re-examine and perhaps reformulate the text of the General Agreement. If this were so, the results of the 1992 UN Conference would undoubtedly be an invaluable tool for such reform. The scale and the importance of the task were such that it would be a serious error to entrust it solely to a working group, however competent it might be. He added that contracting parties would benefit from a Secretariat paper on trade practices which directly or indirectly affected the environment, as requested by the ASEAN contracting parties, as well as from a paper on the UNCED preparatory process.

The representative of Brazil noted that the General Agreement included provisions which allowed, in exceptional circumstances, departures from trade liberalization. This placed the GATT in a better position to deal with the relationship between trade and the environment than other bodies in which parameters for the discussion of environment-related matters were yet to be defined. Brazil believed that a GATT discussion on this subject could help to evolve an international consensus on the extent to which trade could help in tackling the problems of environment and development. The application of the concept of most efficient allocation of resources should result in a better use of natural resources and in higher incomes for producers who, in turn, would be able to invest in more ecologically-sound techniques. But this could only take place in an international

context where trade restrictions and distortions, particularly in agriculture, had been eliminated. Excessive subsidization for less competitive agriculture, for example, encouraged the use of chemicals harmful to the environment. If GATT were to be assigned a role in any international norm-setting process to harmonize national legislations, the special situation of developing countries should be fully recognized, and equitable distribution of costs should be the guiding principle. At the same time, Brazil could not accept unjustified restrictions on the production of goods in developing countries, and on their export, on the pretext of environmental conservation. Countries that had attained high standards of living, in some cases by exhausting their natural resources, did not have the right to demand that developing countries take on a disproportionate burden so that the already advanced economies could continue to benefit alone from the fruits of development.

Brazil was aware of the complexities of this subject and that it could not be dealt with in one or two Council debates. The exchange of views, however, would shed light on the areas where clearer understanding was perhaps needed in order to eliminate undue hindrances to trade, or to make the General Agreement operate in harmony with the international consensus on environmental protection. As a preliminary step, the Secretariat should prepare a factual document, as suggested by the ASEAN contracting parties. This document should also identify the sectors of interest to developing countries which might be affected by environmental policy measures.

The representative of Israel said that the relationship between trade and the environment was obvious. He supported the EFTA countries' initiative in bringing this subject to the GATT. It was important to find the necessary equilibrium between trade and the environment so that trade was not affected adversely and the environment received the attention it deserved. In this process, special consideration should be given to the economies and trade of countries in the process of development. Continuous examination of the issues and points outlined in Spec(91)21 was necessary and would help in achieving that goal.

The representative of the European Communities said that a refusal to discuss the relationship between trade and environmental policies in the GATT would be an enormous error. Noting the concerns of developing countries in this regard, he emphasized that the GATT should not examine trade and environmental policies without fully taking into account their legitimate interests. Multilateral efforts to tackle global environmental challenges should incorporate specific measures to facilitate compliance by developing countries, and protectionist abuses should be avoided and sanctioned. The Community recognized the legitimate concerns of developing countries, but these should not be used to hinder a GATT debate or to orient it in the wrong direction.

The Community firmly believed that the GATT should not be turned into a forum for the harmonization or development of global policies on the environment. Such a task would not correspond to the vocation or the competence of the GATT and should be carried out in the appropriate and specific institutional setting. However, the GATT neither could nor should

abdicate its competence in trade policy matters, on account of the fact that certain measures, regulated under GATT principles and obligations, had been adopted for environmental policy reasons. There was a need to ensure that those questions for which the GATT did not currently offer a clear answer should not be solved in other institutions or, even worse, on the basis of unilateral responses. He noted that environmental protection policies often incorporated trade measures without due regard to trade policy concerns and constraints. The sooner the GATT was involved in the design stages of environmental policies, therefore, the easier it would be to bring in a moderating influence from the trade policy point of view. It was unacceptable that the GATT should have to assume the consequences, through its dispute settlement system, of policies designed to protect the environment.

The GATT should also not allow trade measures, whatever their motivation, justification or application might be, to create unnecessary obstacles to trade or to result in protectionist abuses. There was a mutually supportive relationship between the objectives of sustainable development and trade liberalization, since trade helped to generate resources required for environmental protection. Within the framework of any responsible environmental policy, trade measures should only be a last resort and not a substitute for effective environmental policies. Any trade measure had to be applied in clearly defined circumstances and in conformity with multilateral disciplines, including GATT principles and obligations.

The Community could foresee many environment-related problems emerging in the near future for which the GATT did not presently have a clear and unambiguous answer. These could be classified into three broad groups: those concerning domestic environment protection measures related to production or process methods which did not directly affect the characteristics of the products; those concerning trade measures applied at the border for environmental reasons, and their relationship with Article XX; and those concerning conflicting obligations under the GATT and international environmental agreements. These and other issues would need to be addressed in a policy debate. The Community could, meanwhile, support the ASEAN contracting parties' proposal for a factual background paper by the Secretariat so long as this was done within a reasonable time-period and did not constitute a delaying tactic. He added that GATT discussion on this subject should not affect the Uruguay Round nor become an integral part of the results thereof, although reference could be made in its final act to the necessity of future work in this area.

The representative of Nigeria said that his Government did not object to reviving the 1971 Working Group, although it did not see the need to do so at present. Environmental considerations appeared to have replaced economic development on the international agenda with a growing trend towards the use of GATT-inconsistent measures to achieve environmental objectives. The development objective of trade should be given greater attention in any GATT work on trade and the environment. Nigeria would be prepared to discuss this subject if simultaneous action were taken by CONTRACTING PARTIES for the alleviation of poverty and the heavy debt and debt-service burden in developing countries through improved terms of trade

for commodity prices, removal of tariff and non-tariff barriers on products of export interest to developing countries, and new and additional financial assistance to cope with the higher costs of adopting environment-friendly technologies. Only such concerted international action would reduce the over-exploitation of natural resources in developing countries and enable them to contribute towards environmental conservation. In order to assist developing contracting parties in pursuing sustainable development, the international community should also be in a position to transfer relevant technology to them at affordable prices by taking into account their trade and financial needs. He added that the proposed draft Decision on products banned or severely restricted in the domestic market, should be adopted in the Working Group on Export of Domestically Prohibited Goods and Other Hazardous Substances.

The representative of Japan said that the relationship between trade and environmental policies should be fully examined in the GATT with a view to creating a more stable and predictable trading environment. Multilateral dialogue on this issue, rather than unilateral decisions, would be of value to the trading system. Issues such as whether Article XX could be relied upon alone to respond to recent international and national developments should be tackled in the GATT or its credibility would be endangered. He noted that trade measures for purposes of environmental protection were increasing in number and complexity; a careful examination of their trade impact and of their GATT-justification was necessary. In this regard, it was important to ensure adequate transparency of such measures. A useful first step would be a compilation of available information by the Secretariat. With regard to international agreements that required participating countries to take trade restrictive measures, these could affect non-participants and raised the question of their possible conflict with the GATT. Obligations under the GATT must be strictly observed and derogations therefrom should not be allowed without appropriate justification. Japan supported a step-by-step approach on this subject in the GATT so that the issues would be examined and analysed carefully. A forum in which to begin this exercise was necessary and Japan supported the convening of the 1971 Working Group, although its terms of reference would need to be updated.

The representative of Zaire said that the GATT could not remain indifferent to the environment and that the question of its contribution to the 1992 UN Conference should immediately be raised. The GATT should participate in the preparation of an instrument to limit the damage that trade so often inflicted on the environment. Its contribution should take account of the fact that developing economies posed less of a threat to the environment than the developed countries. As a matter of urgency, the problems of developing countries must be identified and practical measures proposed to assist them with their environment conservation programmes. GATT's work in this area could be conducted within the 1971 Working Group, although its mandate would have to be updated. The Working Group would have to deal with questions such as: What measures should be taken to halt the expansion of trade practices harmful to the environment? Should the rules be the same both for developed and developing countries? What form of cooperation should there be between GATT and other international bodies dealing with environmental protection? How should GATT's work be conducted

so as to avoid an approach that could not guarantee an effective surveillance mechanism? What should be the approach to national legislation, and was harmonization desirable or necessary? The GATT would have to ensure that trade rules contributed to preserving the environment. It would not be enough to identify practices detrimental to the environment; effective instruments should be found that would preserve the ecological balance.

The representative of Bolivia shared the concerns about the implications for developing countries of examining trade and environmental issues within GATT. Environmental issues were an integral part of the development process and could not be addressed separately. A healthy international economic climate was therefore essential if development was to be environmentally sustainable. It was important for developing countries to receive assurances that their already difficult situation would not be worsened by the trade repercussions of measures which would further weaken their economies. One should examine options that strengthened developing economies rather than weakened them further. Protection of the environment could not be divorced from a nation's economic needs, and it should take due account of developing countries' aspirations to attain better and alternative standards of living.

The representative of Chile considered that the 1971 Working Group had a very weak legal foundation. It was appropriate in this regard to apply the principle of "sic rebus stantibus", i.e., that any fundamental change in circumstances brought an end to the rights and obligations that had been engendered. The environmental situation had changed significantly since 1971. The question now was whether a new working group or working party should be created, and what should be the scope of GATT discussions in this area. From GATT's point of view, the subject of the environment was important, but consultations should determine the subject matter of the discussions in this area so that there were no surprises.

Chile believed that an appropriate question for study was the scope of Article XX, and that the following questions required reflection: When did a measure adopted by contracting parties for the protection of human, animal and plant life or health constitute arbitrary or unjustified discrimination? From the legal point of view, what was arbitrary and unjustified? Were such measures to be considered hidden trade restrictions, and if not, were they to be permitted? What were exhaustible natural resources and when should a measure be considered as relating to the conservation thereof? When were measures relating to the conservation of natural resources to be interpreted as being "in conjunction with" restrictions on domestic production or consumption? These were some of the questions that should receive priority attention in future discussions.

The representative of Austria, on behalf of the EFTA countries, welcomed the support for their initiative. The large number of contributions to the debate indicated the growing interest in the trade and environment relationship. There was still much to study, however, and discussions should continue in the 1971 Working Group which should be convened at the earliest appropriate date. He recalled that they had presented a long list of items and specific issues for discussion in this Group. These discussions would be in the interest of developing countries;

indeed, the Working Group's mandate called on it to take into account the particular problems of developing countries. He cautioned that, if not taken up in the GATT, this subject would be discussed in some other body that would not be competent to deal with trade issues.

The Chairman said that the discussion had provided a better understanding of this subject. However, one could not yet talk of any firm guidelines and a lot of work remained for the informal consultations being conducted by the Chairman of the CONTRACTING PARTIES. The discussion had indicated that the GATT as it presently stood was not silent on environmental issues. Several GATT provisions and principles -- such as mfn, national treatment, transparency and the use of least restrictive trade measures -- had been mentioned as having a general application to trade-related environmental issues. The impression that the GATT was insensitive to environmental issues was, therefore, wrong as many had pointed out.

A number of concerns that had been present appeared to have been modified or eliminated as a result of the discussion. For example, it seemed clear now that no one had intended to engage the GATT in efforts to harmonize or to set environmental standards. He hoped also that responses to the concerns raised by developing countries had been reassuring. Some representatives had also identified areas where GATT's competence was doubtful and where clarification would be useful, including the relationship between GATT and international environmental instruments. Many had called for a step-by-step approach in dealing with these issues, although views had differed as to whether the 1971 Working Group would be the appropriate forum for further deliberations. This matter would need to be pursued in informal consultations, and the Council might revert to this at its next meeting. With regard to requests for factual background documents, he had been informed that the Secretariat would, in the next two months and sufficiently in advance of the next substantive discussion on this subject, prepare a factual paper along the lines of the ASEAN contracting parties' request, as well as a note on the UNCED discussions as they related to GATT provisions and principles.

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

2. Committee on Budget, Finance and Administration
- Report of the Committee (L/6858)

Mr. Broadbridge (Hong Kong), Chairman of the Committee, introduced the Committee's report (L/6858) on its meetings of 8 March and 2 May.

With regard to the GATT's involvement with the approval of the budget of the International Trade Centre (ITC), some Committee members had felt that although the GATT, along with the UNCTAD, was a parent body of the ITC -- and indeed contributed 50 per cent of the ITC's regular budget -- its ability to influence effectively that contribution was limited in practice. The ITC Secretariat had produced an impressive summary of the ITC's complex budgetary procedures, and key officials had appeared before the Committee,

with the result that the procedures were now better understood. However, there was a need to continue discussions with a view to a closer involvement of the Committee in those processes.

The Committee was continuing its close monitoring of GATT's 1991 expenditure pending approval of the 1991 budget, and had noted that receipts of contributions were running 10 per cent below those for 1990. The Committee had also dealt with the question of contributions, both from observer countries and contracting parties. He requested contracting parties that had yet to pay their contributions for the current year, and in particular those with arrears from earlier years, to remind their authorities of this position. In this context, the Committee had recommended that a special plea be made for the early payment of arrears. The Committee had also dealt with the granting of certain temporary contracts, and a member's request that the Secretariat consider the use, as appropriate, of recycled paper.

The Council took note of the statement, approved the Committee's specific recommendation in paragraph 17 of the report, and adopted the report in L/6858.

3. Harmonized System - Requests for extensions of waivers under Article XXV:5
   (a) Brazil (C/W/674, L/6849)
   (b) Malaysia (C/W/675, L/6851)
   (c) Mexico (C/W/676, L/6852)
   (d) Pakistan (C/W/677, L/6853)
   (e) Philippines (C/W/673, L/6848)
   (f) Sri Lanka (C/W/672, L/6847)
   (g) Turkey (C/W/678, L/6854)

The Chairman drew attention to the communications from Brazil, Malaysia, Mexico, Pakistan, Philippines, Sri Lanka and Turkey, in which each had requested an extension of a waiver already granted in connection with its implementation of the Harmonized Commodity Description and Coding System (HS).

The representative of the United States said that while his authorities did not oppose granting the requested extensions, they would appreciate receiving a more detailed status report on the progress of the outstanding negotiations prior to any new requests for extensions from the governments concerned.

The representative of the European Communities said that the Community was aware of the present status of the HS negotiations, and was also participating in some of them. The Community would do everything to expedite the process and to complete the negotiations as soon as possible. Expressing concern at the sense of automaticity in regard to the extension of these waivers, he said that while the Community would help to resolve certain understandable difficulties involved at the present time, it would find it extremely difficult to extend the waivers beyond the end of 1991.

The representative of Sweden, on behalf of the Nordic countries, expressed support for the Community's statement. The Nordic countries had agreed to temporary waivers for the implementation of the HS when needed and would accept the requests for extensions at the present meeting. However, extensions of such waivers should not be automatic; accordingly, he urged the governments concerned to finalize the work leading to the implementation of their new tariff schedules within the additional time-period being requested.

The Chairman drew attention to the draft decisions contained in the documents: C/W/674 - Brazil; C/W/675 - Malaysia; C/W/676 - Mexico; C/W/677 - Pakistan; C/W/673 - Philippines; C/W/672 - Sri Lanka; and C/W/678 - Turkey. He then stated that the documentation still to be submitted and any negotiation or consultations that might be required should follow the special procedure relating to the transposition of the current GATT concessions into the Harmonized System, adopted by the Council on 12 July 1983 and contained in BISD 30S/17.

The Council took note of the statements, approved the texts of the draft decisions referred to by the Chairman, and recommended their adoption by the CONTRACTING PARTIES by postal ballots.

4. Zaire - Establishment of a new Schedule LXVIII
- Request for extension of waiver (C/W/679, L/6855)

The Chairman drew attention to Zaire's request (L/6855) for an extension of the waiver granted to it at the Forty-Fifth Session of the CONTRACTING PARTIES in December 1989, and to the draft decision which had been circulated to facilitate consideration of this item (C/W/679).

The Council approved the text of the draft decision in C/W/679, and recommended that it be adopted by the CONTRACTING PARTIES by postal ballot.

5. United States - Countervailing duties on fresh, chilled and frozen pork from Canada
- Panel report (DS7/R, DS7/3)

The Chairman recalled that at their Forty-Sixth Session in December 1990, the CONTRACTING PARTIES had referred this item back to the Council for further consideration. At its meetings in February, March and April 1991 the Council had considered the Panel report (DS7/R), and in April had agreed to revert to it at a future meeting. It was on the Agenda of the present meeting at the request of Canada.

The representative of Canada said that for more than eight months, the United States had offered no substantive or procedural GATT justification for not agreeing to adoption of this report. The United States had indicated that this was justified because a similar issue was the subject of a bilateral procedure under the Canada - United States Free-Trade Agreement. He reiterated Canada's view that there could be no linkage between the adoption of a GATT Panel report and a separate dispute under

the Free-Trade Agreement. The United States' inaction could only undermine the integrity of the GATT dispute settlement system, and he urged that it agree to adoption at the present meeting.

The representative of the United States said that his Government again requested deferral of discussion on this report. As indicated at earlier Council meetings, the US administering authority responsible for injury determination in this case had concluded that there was, in fact, no injury to the domestic industry from imports of Canadian pork. At present, the matter of the determination of no injury was under review by a special three-judge binational committee to determine whether there were grounds to reverse the finding; its work was expected to be completed in mid-June. At that time the United States would know if the countervailing duty case would terminate and whether it would even need to address the substance of this Panel report. He reiterated that no countervailing duties had actually been collected by the United States on Canadian pork imports, and that if the determination of no injury stood, all cash deposits of estimated duties would be returned automatically, with interest.

The representative of Canada expressed deep disappointment that once again, the United States had not offered any real justification for its continuing refusal. He requested that this item be considered at the next Council meeting, and expected the United States, as a strong supporter of the GATT dispute settlement system, to be in a position to agree to adoption of the report at that time.

The representative of the European Communities said it could only be a matter of disappointment and regret for all to have a report blocked for eight months at the point of adoption. The Community was concerned that bilateral procedures stood in the way of GATT rules, and urged the United States to resolve this matter and to move forward with adoption of the report at the next Council meeting.

The representative of Japan reiterated his Government's disappointment with the United States' continued inability to uphold the GATT dispute settlement process. His delegation shared the Community's concern that certain bilateral procedures seemed to be standing in the way of an effective functioning of the GATT system. He called on the United States to resolve this matter at the next Council meeting.

The representative of Argentina recalled that on several earlier occasions, his delegation had expressed concern at the attitude of some contracting parties with regard to the adoption of panel reports and the implementation of their recommendations. He noted that a number of agenda items at the present meeting dealt with the question of non-adoption or non-implementation of panel reports, and that at the April Council meeting the Chairman had announced his intention to hold private talks to ensure contracting parties' willingness to comply with their obligations under the General Agreement. He reiterated Argentina's concern at the United States' failure to agree to adoption of the Panel report at hand. Were such situations to continue, the functioning of the GATT would be seriously affected.

The representative of Norway, on behalf of the Nordic countries, said that non-adoption and non-implementation of panel reports was fast becoming a serious credibility problem for the GATT. It was also evident that the linkage of this problem to the conclusion of the Uruguay Round was a political reality, and that one was facing a serious challenge to the proper functioning of the multilateral trading system. The Nordic countries were particularly disappointed that the possibility to object to panel reports, or to delay implementation of Council recommendations appeared to be a prerogative of the major trading nations. A small contracting party, for which the functioning of the GATT system was of vital importance, could only get the impression that the rules applied to some but not to all. This would inevitably have disastrous consequences in the longer run, because the long-term viability of the GATT system was dependent upon a perception of fairness and equality before the law. This was not least the case with respect to the functioning of the dispute settlement mechanism, where the issue of "equality before the law" had been heralded on many occasions. Without doubt, the major trading nations also shared the same underlying perception of fairness and equity. They had, however, a particular responsibility for safeguarding the multilateral trading system, and the Nordic countries appealed to them to sort out the blockages now being faced in the dispute settlement area. Because of the political realities he had mentioned with respect to the linkages to the Uruguay Round, this also meant that the Round had to end soon.

The representative of Uruguay expressed support for the views of Argentina and the Nordic countries. The solidity and credibility of the GATT system rested on the pillar of the dispute settlement mechanism. Insofar as this system was being frustrated, and delays occurred in the application of its rules, the commitments and obligations under the General Agreement, which should apply equally to all, were being weakened. There could be no exceptions to the rule of law; this would only encourage non-compliance with GATT obligations which had been assumed by all contracting parties. The attempt being made to strengthen the dispute settlement system through the Uruguay Round negotiations was no reason for not complying with its present provisions. Uruguay's concerns in this regard were just as applicable to the Panel report under consideration as they were to other reports which faced delays in adoption or implementation. If this situation continued, the Council would have to devote particular attention to it, and perhaps call to order the contracting parties concerned. His delegation would revert to this subject more concretely and decisively if there was no improvement in the situation.

The representative of Australia shared the previous speakers' views in respect of the need for all contracting parties to support the viability of the dispute settlement system.

The representative of Mexico expressed concern at the whole series of problems recently encountered in the dispute settlement area. The dispute settlement mechanism was one of the fundamental pillars of the GATT, and the credibility of the multilateral trading system depended critically upon effective dispute settlement between contracting parties. One could not set rules of trade if they were not made to be respected by the system. Much had been done since the beginning of the Uruguay Round to

strengthen the GATT dispute settlement procedures, and Mexico hoped that an even more strengthened mechanism would be put in place following the conclusion of the negotiations. However, a number of situations had been recorded in the past few months which could not wait until then. Many contracting parties had opposed adoption or implementation of panel reports for various reasons, including that the matters involved were under negotiation in the Round. Mexico believed that panel reports had to be adopted and their recommendations complied with independently of other pending matters such as multilateral trade negotiations. Contracting parties had to comply with their GATT obligations as they presently existed, and not as they might be expected to be in future.

The representative of Colombia was concerned at the general practice on the part of some contracting parties to let months go by before adopting panel reports or complying with their recommendations. Colombia believed that the improvements to the GATT dispute settlement rules and procedures adopted in April 1989 (BISD 36S/61) should be applied fully. The present situation showed, however, that it was becoming more and more urgent to find a solution to this problem in the Uruguay Round negotiations on dispute settlement. Following the announcement by the Chairman at the April Council meeting that he would hold private talks on this matter, Colombia believed that the Council should be told why these panel reports had not been adopted or implemented.

The representative of Canada welcomed the wide expression of concern regarding the risks to the dispute settlement system and to the credibility of the GATT itself when any contracting party blocked adoption of a panel report. He hoped that the United States had noted these concerns, and that it would be in a position to move forward at the next Council meeting.

The Director-General said that in his periodic report on the status of work in panels and implementation of panel reports which would be presented to the Council at its next meeting, he would express the Secretariat's views on the operation of the dispute settlement mechanism. The Council could take that opportunity to hold a thorough discussion on the concerns expressed by representatives. He hoped that the present debate would have given the contracting parties concerned a bad conscience, and that at its next meeting the Council would find that things were back on track once again. Were this not to be the case, a serious discussion on the problems being faced in this crucial area of GATT's work would have to take place then.

The Chairman hoped that the Director-General would be proved correct in his optimism. He himself expected to be in a position to report on the results of his private talks at the July Council meeting. While these focused basically on panel reports which had been adopted but not implemented, they could certainly also cover reports which were not being adopted.

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

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

The Chairman recalled that the Council had considered this matter at its meeting in February, March and April, and in April had agreed to revert to it at a future meeting. It was on the agenda of the present meeting at the request of the United States and Australia.

The representative of Japan said that a second round of plurilateral consultations under Article XXII:1 had been held on 24 May and had not resulted in a mutually satisfactory solution. Under the circumstances, further consultations were appropriate, and his delegation would be in touch shortly with the contracting parties concerned to set a date therefor.

The representative of New Zealand recalled that at the April Council meeting, he had reported on his Government's participation in the first round of plurilateral consultations and had indicated its expectation that prior to the present meeting, Japan would respond to the questions raised by participants. His delegation was extremely disappointed that Japan had neither done so nor given a clear acknowledgement of its commitment to implement fully the Panel's recommendations[2]. There had been no proposals -- much less a timetable -- for implementation, nor had there been any indication that progressively improved market-access opportunities for dairy products and starch would be made available in the interim pending full liberalization. Japan had instead reiterated its criticism of the validity of the Panel's interpretation of Article XI, and had sought even to delay a decision on implementation until after the Uruguay Round. New Zealand's views on such linkages were similar to those of the majority of speakers under agenda item 5. By refusing to acknowledge its commitment to implement the Panel report, Japan was casting doubt on its intentions to comply fully with its GATT obligations. Japan should now clearly state those intentions. New Zealand wished to see the plurilateral consultations brought to a mutually satisfactory conclusion. It stood ready to meet again -- as soon as Japan indicated it was in a position to respond positively to the requests made by participants at earlier consultations. Meanwhile, New Zealand reserved its GATT rights in respect of the products concerned.

The representative of Australia said his Government had always accepted that full implementation of this Panel report could not be achieved overnight; indeed, for those products on which GATT-consistent liberalization had now been achieved, Japan had been given the opportunity to phase out restrictions over periods of up to three years. However, in the three years since the adoption of this report, Japan had not begun to lay the groundwork for domestic restructuring in the dairy and starch sectors which would smooth the way to full observance of its GATT obligations -- and this some 30 thirty years after it had disinvoked balance-of-payments justification for these restrictions.

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[2] BISD 35S/163.

Australia had participated in the two rounds of plurilateral consultations with Japan because of a lack of any indication on Japan's part that it would move to bring into conformity the measures that clearly had been found to be GATT inconsistent. While some of the technical clarifications provided during these consultations had been useful, Australia was disappointed that Japan had been unable to address substantively any of the central issues at stake. In the recent consultations, Japan had not only failed to present a plan and timetable for bringing its remaining restrictions into GATT consistency, but had also failed -- and this was fundamental -- to accept in clear terms that it had a GATT obligation to do so. There had also been no commitment from Japan that it would take steps to repair the breach of its tariff bindings on certain dairy products.

There was no GATT standing or legitimacy to the concept that contracting parties were free to select which parts of a panel report to implement. Japan's claim that the matter could only be resolved as part of rule changes in the Uruguay Round was equally unacceptable. Japan's policies at issue had to be judged against the GATT as it was, not how Japan might want to see it rewritten. He urged Japan to reconsider its position and to reflect further on the importance of adhering to a system that had served it well over the decades. Australia was open to further consultations, but Japan would need to demonstrate a substantial evolution in its thinking to make these productive. In the meantime, Australia reserved its GATT rights.

The representative of the United States said his Government was extremely disappointed that at the recent plurilateral consultations Japan had been unable either to present a plan for the elimination of the remaining GATT-inconsistent import quotas on dairy and starch products, or to give an indication that it would at any time bring its import policies into compliance with current GATT rules. He strongly urged Japan to reconsider its position, and noted that Japan had had since 1988 to prepare for such liberalization. Failing an indication from Japan that it would respond positively to the Panel report, and in light of the Chairman's comments at the April Council meeting urging governments to implement their obligations under panel reports, the United States would have to consider what additional action to take to protect its GATT rights. The United States, however, remained ready to participate in additional plurilateral consultations, if Japan was prepared to make them substantive and meaningful.

The representative of Argentina said that as a participant in the plurilateral consultations with Japan, his Government shared the view that these had not yielded positive results. Argentina understood that Japan had to make the political efforts necessary to comply with its GATT obligations. However, three years had passed since adoption of this report, and Japan had thus had sufficient time to adjust gradually its internal legislation to comply with the Panel's recommendations. Argentina was willing to continue consultations with Japan, but the latter had to change its attitude. One could not give effect to GATT obligations according to one's interpretations thereof, as if the General Agreement were an "à la carte" menu. On various occasions, certain contracting

parties had stated that the conclusion of the Uruguay Round negotiations would resolve the current problems in the dispute settlement area and activate the dispute settlement procedures. His delegation could not accept such linkages. GATT rights and obligations as they currently existed should be respected. He emphasized the need for contracting parties to comply with their present GATT obligations in order to reinforce the credibility of this institution and to help its positive evolution in the future.

The representative of Thailand said that having participated in the plurilateral consultations with Japan, his Government had a clearer understanding of the complexities of Japan's import régime for dairy and starch products. However, a big understanding gap remained between Japan and the other countries participating in the consultations as to how the import restrictions on those products could be made GATT-consistent in light of the Panel's recommendations. Thailand supported the continuation of the consultations and reserved its rights to participate therein. He urged Japan to play a leading rôle in preserving the dispute settlement system by reflecting more on its stance of partial acceptance if this Panel report. The danger of this case setting a precedent was obvious, and all should join to prevent it. He added that the comments made by several representatives, including Japan, under agenda item 5 were particularly relevant to this case as well.

The representative of Uruguay said that if there was a case to which his comments under agenda item 5 applied particularly, it was the one at hand. His delegation had also participated in the plurilateral consultations with Japan and fully shared others' frustration at the results thereof. Whenever a GATT obligation was not fulfilled, somebody was affected, and in this case Uruguay's and others' dairy exporters were being frustrated because Japan had not complied with this Panel's recommendations. If one were always to invoke domestic political considerations as the reasons for not being able to comply with GATT obligations, then the GATT might as well close up shop. Uruguay would participate in the further plurilateral consultations announced by Japan in the hope that they would lead to the Panel's recommendations being implemented fully.

The representative of Chile shared fully the concerns with regard to non-implementation of panel reports. This was indeed a very serious matter and one that was contributing to the further erosion of the GATT system.

The representative of the European Communities said that this case was symptomatic of the whole problem area of follow-up on panel reports. There was also, in this case, evidence of foot-dragging with regard to implementation. The Community believed in the importance of abiding by panel recommendations.

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

7. European Economic Community - Payments and subsidies paid to processors and producers of oilseeds and related animal-feed proteins - Follow-up on the Panel report (L/6627)

The Chairman recalled that the Council had considered this matter at its meeting in April, and had agreed to revert to it at a future meeting. It was on the agenda of the present meeting at the request of the United States.

The representative of the United States said his Government remained concerned that the Community had not thus far taken any significant steps towards resolving the problems identified in this Panel report. His delegation had already indicated at the April Council meeting that the Commission's proposals in the 1991 price package did little to address the problem, and it was very disappointed that the European Council of Ministers had refused to implement fully even these modest proposals. However, the United States had accepted the idea that the Community should be prepared to implement, by 31 October 1991, a definitive solution to the Panel's recommendations on oilseeds. This commitment had been contained in the Commission's 1991 price package and had been accepted by the Council of Ministers. The Commission had assured the United States that it would put forward a proposal for the substance of the solution in July, which would apply to all oilseeds harvested in calendar year 1992 or later, including the fall 1991 plantings. The United States eagerly awaited this proposal and considered it imperative that it should address both the violation and non-violation nullification portions of the Panel report. The United States reserved its option of pursuing its GATT rights if a satisfactory solution was not implemented by 31 October, or if the Commission's proposal was unsatisfactory.

The representative of the European Communities confirmed that the Commission would present proposals before the end of July with a view to reforming the Community's present oilseeds régime, notably to bring it into conformity with the Panel's recommendations, and that the European Council would take a decision thereon before 31 October.

The representative of Australia said that as a third party in this Panel proceeding, and with an active trade interest at stake, Australia was heartened by the statements just made. He urged the Community to do all it could within the deadlines that had been mentioned, and said that Australia, like others, would be awaiting the outcome of the proposed action with great interest.

The representative of Canada indicated his country's strong interest in this case, and in the Community's statement. He requested details of the Community's proposals as soon as they were available, especially as they related to Canadian canola export interests.

The representative of Argentina said that as an interested party in this matter, his delegation had also listened with great attention to the Community's statement. It would examine carefully the Community's proposal and its implementation to ensure that it was in conformity with the General Agreement and with the Panel's recommendations.

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

8. United States - Measures affecting alcoholic and malt beverages - Recourse to Article XXIII:2 by Canada (DS23/2)

The Chairman recalled that at its meeting in April, the Council had considered Canada's request for a panel to examine its complaint, and had agreed to revert to it at the present meeting.

The representative of Canada reiterated his Government's request for a panel to examine the measures of the United States' federal and state governments affecting the pricing, distribution, and sale of beer, wine and cider. Canada considered that these measures provided less favourable treatment to imported alcoholic and malt beverages than to like domestic products and that this discrimination constituted a violation of the United States' GATT obligations, including, but not limited to, Articles III and XI. He recalled that the 7 March and 16 April Article XXIII:1 consultations with the United States had not produced satisfactory results.

As had been stated at the April Council meeting, Canada's complaint involved, at the US federal level, the introduction of reduced tax rates on domestic beer and tax credits on wine under the 1990 Omnibus Budget Reconciliation Act. Canada considered these measures to be in contravention of Article III:2. In addition, GATT benefits accruing to Canada were nullified and impaired through the resulting loss of existing and future sales to the US market. At the state level, Canada had identified a number of measures and practices which had had the cumulative effect of creating a significant barrier to Canada's beer, wine and cider exports to the United States. These practices, which he went on to describe in detail, covered virtually all states and covered pricing, availability for sale and distribution of beer, wine and cider which discriminated against like imported products. Canada considered these measures to be in contravention of Articles III and XI. His Government had provided the United States with a full list of the measures identified as being discriminatory against imported products. As the Article XXIII:1 consultations had not led to a satisfactory resolution of the matter, Canada requested the establishment of a panel.

The representative of the United States said that his Government recognized and supported a contracting party's right to the establishment of a panel. It found no difficulty with the provision in paragraph F(a) of the April 1989 Decision[3] that a panel should be established at the latest at the Council meeting following that at which the request had first appeared as an item on the Council's regular agenda. However, the United states also believed -- and hoped that others supported this -- that

[3]Improvements to the GATT dispute settlement rules and procedures (BISD 36S/61).

requests for panels should also meet the requirements of paragraph F(a) of the April 1989 Decision which stated, in part, that such requests should "provide a brief summary of the factual and legal basis of the complaint sufficient to present the problem clearly".

While Canada's request for a panel (DS 23/2) had set out in detail those provisions of US federal law which formed the basis of its complaint, it had made, in respect of state government practices, a very general statement that covered as many as 50 states and more than 200 laws and regulations. It had indicated that state-level practices affecting imported alcoholic and malt beverages included measures concerning taxation, availability for sale, labelling, distribution and other measures that discriminated against imported products. In their consultations, it had become clear to the United States that Canada's request was still imprecise and vague as to the number of practices, the states in which those practices were maintained and the exact nature of the alleged GATT inconsistency. Furthermore, a recent communication sent in this regard to the US representative in Ottawa had contained statements with regard to tax measures, licensing fees, transportation measures, provisions regarding alcohol content, labelling requirements, listing and delisting, pricing practices and so on. He then quoted passages from the communication which were imprecise.

There seemed to be a great deal of uncertainty as to how many practices Canada's complaint covered, the precise nature thereof, and why they constituted a violation of the United States' GATT obligations. It was ironic that this matter was being brought to the GATT so soon after the United States itself had brought a case regarding certain Canadian practices that concerned the distribution and sale of alcoholic beverages -- a case which covered specified, narrowly defined practices, the majority of which had been the subject of a 1988 panel ruling against Canada[4]. That case, furthermore, had come about because at at the November 1990 Council meeting, Canada had blocked a US request for authorization to suspend concessions based upon that earlier Panel ruling. He suspected that this case had not been filed in response to complaints from Canada's industry, which was selling large amounts of beer in the United States. In fact, Canadian beer was obtainable in the US market at very reasonable prices, and in many cases at prices lower than those in Canada. Whatever Canada's motives for bringing this complaint to the GATT, it should spell out the details thereof to a reasonable extent. A defence of US practices in this case would require a collection of information from 50 separate state governments. The critical question was one of fairness; the tight time limits in the April 1989 Decision on dispute settlement rules and procedures could only be seen as fair if parties to a dispute had ample notice of the alleged practices which formed the basis of a complaint. If new allegations were raised at short notice, a respondent could not be expected to meet the short time deadlines.

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

The United States accepted that a panel had to be established at the present meeting unless there was a decision to the contrary. His delegation believed, however, that there was a persuasive case in support of a Council decision not to establish a panel at the present meeting. He urged others to support the United States in rejecting this request until Canada had submitted a summary of the factual and legal basis of the complaint "sufficient to present the problem clearly". If the Council decided to establish a panel, the United States would accept that decision but would insist that its rights to a fair proceeding be protected fully. The panel proceedings could not go forward until Canada had spelled out the legal and factual basis of its complaint; the United States would then have to be given ample opportunity to formulate a defence. These realities would have to be reflected in the panel's schedule. Furthermore, the United States could only agree at the present meeting to the establishment of a panel with regard to those practices that had been notified to it during the Article XXIII consultations. It could not acknowledge Canada's right to have the panel examine practices as yet unspecified.

The representative of Australia noted that the United States was an important and growing market for his country's wine and beer producers. Australia was seriously concerned at the potential trade effects of US taxation and other measures that appeared to discriminate against foreign suppliers. He reiterated Australia's support for the establishment of a panel, and reserved its rights to intervene in the proceedings. He would reflect further on the conditions specified by the United States and revert to them if necessary.

The representative of New Zealand said that his country also had an interest in the US market and that several concerns had been identified by New Zealand's industry. His delegation supported Canada's request for a panel, although it accepted that the panel's examination should be well focused and should address key concerns precisely. New Zealand might make a submission to the panel.

The representative of the European Communities said that the Community was an important beer producer and also had a strong interest in this matter. It supported the establishment of a panel and reserved its right to intervene therein. His delegation urged the United States to abide by the April 1989 Decision on dispute settlement. With regard to the United States' argument that the complaint had not been substantiated adequately, the Community believed this would be an appropriate issue for the panel to consider. With regard to the other argument that the time limits in the April 1989 Decision were unfair, it appeared to the Community that they were largely influenced by those in Section 301 of the US Omnibus Trade and Competitiveness Act of 1990. Some of the requests in the Uruguay Round negotiations for even stricter and perhaps somewhat exaggerated time limits were even more influenced by the Section 301 procedures. It appeared to be inappropriate for the United States to seek to invoke too strict or rigid time limits in GATT dispute settlement procedures.

The representative of Canada said that the fact that Canada's complaint covered a large number of measures in numerous states, in addition to recent federal actions, served to underline its serious concerns. In the two Article XXIII:1 consultations with the United States,

Canada had outlined its concerns with regard both to federal and state measures, and had provided considerable detail on specific legislation and regulations. His Government had also sent a letter, as just acknowledged by the United States, which contained considerably more detail regarding this complaint than had been indicated by the United States. Canada had clearly fulfilled the requirement of the April 1989 dispute settlement procedures that a request for a panel should "provide a brief summary of the factual and legal basis of the complaint sufficient to present the problem clearly." As regards the United States' request for adequate time to consult with its state governments, this was presumably a matter for the panel to take into account. Finally, his delegation noted that the United States had indicated it would not have any difficulty with a panel being established at the present meeting.

The representative of Venezuela stated his Government's interest in participating in the proceedings of the panel, were one to be established. He reserved Venezuela's GATT rights in this matter.

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 Canada in document DS23/2 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 its Chairman to designate the Chairman and members of the Panel in consultation with the parties concerned.

9. Roster of non-governmental panelists
- Proposed nomination by Australia (C/W/671)

The Chairman drew attention to document C/W/671 containing a proposed nomination by Australia to the roster of non-governmental panelists (L/6763).

The Council approved the proposed nomination.

10. Trade Policy Review Mechanism - Programme of reviews for 1992
- Statement by the Chairman

The Chairman, speaking under "Other Business", said that the programme of trade policy reviews for 1991 was broadly on schedule. Thailand's and Chile's trade policies and practices would be reviewed in early July; those of Nigeria, Norway and Switzerland in September; and those of Argentina, Austria, Finland, Ghana, Singapore and the United States in December. In view of the particular difficulties currently facing Bangladesh, he suggested that that country's review be postponed until the 1992 programme.

In order to fulfil the long-term aims of the trade policy review system, the programme of reviews for 1992 should cover up to eighteen contracting parties or entities. On a cyclical basis, second reviews would be scheduled for Canada, the European Communities and Japan. Indications had also been received from a certain number of contracting parties of their readiness to undertake reviews during 1992. As regards other contracting parties, there was a need for further consultations.

For the smooth operation of the Trade Policy Review Mechanism, it was important that a clear programme be established by mid-year. He therefore planned to announce the full 1992 programme at the next Council meeting. In this connection, he requested contracting parties that had been approached for trade policy reviews in 1992 and which had not yet replied, to confirm to him by 12 June, through the Secretariat, their willingness to undertake reviews then.

The Council took note of this information.

11. Accession of Paraguay
- Working Party Chairmanship

The Chairman, speaking under "Other Business", said he had been informed that Mr. Ceska (Austria) had asked to be relieved of his duties as Chairman of the Working Party on the Accession of Paraguay. The Working Party would meet on 24-25 June. He suggested that he be authorized as Council Chairman to designate a new Chairman after consultations with interested contracting parties.

The Council so agreed.

12. 700th anniversary of the Swiss Confederation

The Director-General, speaking under "Other Business", suggested that contracting parties might participate in the celebration of the Swiss Confederation's 700th anniversary by planting, in the park surrounding the Centre William Rappard, representative trees from the different geographical regions of the world. The Geneva authorities had identified seven tree varieties from various regions which would adapt well to the city's climate. These were the Swamp Oak from North America; the Chilean Pine from South America; the Norway Maple from Europe; the Gingko from Asia; the Eucalyptus from Australia; the Southern Beech from Oceania; and the Algerian Fir from Africa. The cost of this project would be around SwF 25,000 and would have to be financed by contracting parties. The City of Geneva had undertaken, free of charge, to import the trees at an early stage and to nurture them here until they were ready for planting. He proposed that a Trust Fund be established for this purpose which would be open to contributions by interested contracting parties. Any surplus money in the Fund would be returned to those who had contributed, on a pro rata basis.

The representative of the United States thanked the Director-General for his proposal and said his delegation would await further developments.

The representative of the European Communities said the proposal was an interesting one. He believed the Community would be able to support it once it had had the opportunity to look into some of its aspects.

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

13. Organizational changes in the Secretariat (GATT 1510, Spec(91)25)

The representative of Chile, speaking under "Other Business" on behalf of the Latin American and Caribbean contracting parties[5], referred to the consultations announced by the Director-General at the April Council meeting under the 1987 procedures for the appointment of the deputy directors-general (BISD 34S/173). He said that these consultations had been limited and should be extended as much as possible so as to culminate in the appointment of the successor to the outgoing Deputy Director-General within a reasonable time. These contracting parties welcomed the Director-General's intention to continue the consultations, and looked forward to giving their views on the names under consideration for this post.

With regard to the organizational changes in the Secretariat (GATT 1510), some of its aspects had to be provisional since the Deputy Director-General's post in question appeared to have no responsibilities attached to it. Indeed, these responsibilities had been assumed by one of the two newly appointed Assistant Directors-General, posts which had been created in this reorganization. This structure seemed to bear no clear relationship to the Director-General's statement that he would continue consultations with a view to appointing a successor to the outgoing Deputy Director-General. He hoped that the responsibilities of the Deputy Director-General to be appointed would be made clear in due course.

The Latin American and Caribbean contracting parties were also concerned that a Secretariat Division specifically designated and responsible for matters relating to development had disappeared, and had been replaced by another entitled "Session, Council Affairs and Subordinate Bodies". They wished to see the old name reappear, so as to leave no doubt about the importance of development problems for GATT. They were concerned, too, with the appearance of a new Division on Technical Barriers to Trade and Environment, because GATT's competence as regards environment was still being studied and awaited a decision by the Council.

He quoted Regulation 2.1 of the United Nations Staff Rules and Regulations, which applied to the GATT, to support their view that the CONTRACTING PARTIES had general responsibilities with regard to these

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[5] Following the meeting, the text of the statement was circulated as document Spec(91)25.

administrative matters, apart from their budgetary aspects. Accordingly, in the face of such important and far-reaching administrative decisions, they considered that a broader process of consultation with contracting parties would have been desirable.

The Director-General said that the Council was, perhaps, not the ideal forum to have the fullest exchange of views on matters such as these, and for this reason he had been consulting with delegations as extensively as possible on these matters in recent weeks, given the time constraints and the availability of heads of delegations. He hoped that his comments at the present meeting would clear the air and remove any misunderstandings.

With regard to identifying a successor to the out-going Deputy Director-General, he recalled his announcement at the April Council meeting -- i.e. three months before the expiry of the present incumbent's tenure -- that he had been holding consultations, which he would continue, with a view to appointing a new Deputy Director-General. This was in keeping with existing procedures. He would continue these consultations in order to fill this post as expeditiously as possible. Because the Deputy Directors-General were the central pillars of the system, his primary concern had been, and continued to be, to find someone with the qualities necessary for the job.

With regard to the recent reorganization of the Secretariat, he said that as Executive Head, he had deemed this reorganization essential for two main reasons. First, the immediate need to make the adjustments required by the impending retirement of a number of top officials in key positions; and second, the long-felt need to streamline and rationalize the Secretariat's functioning with a view to ensuring better results. The reorganization was also an immediate necessity in the context of the Uruguay Round, since these negotiations were entering a new, intensive and, he hoped, final phase. All were aware of the significant developments in recent days. The US Government had received the necessary authority to negotiate through the extension of the "fast-track authority". Also the agriculture "price package" negotiations in the European Community had taken place and had led to a decision. There was also now in place a new negotiating structure for the Uruguay Round, and it was his firm intention to start working with this new structure and the new persons in charge of the negotiating groups from the week of 3 June. In this context, he had had tried to ensure that the reorganized Secretariat and the new Uruguay Round negotiating structure would be set in motion in a fully co-ordinated manner.

With regard to concerns about the so-called disappearance of the Development Division, he pointed out that not a single task or responsibility of this division had been dropped. These tasks and responsibilities, including the servicing of the Committee on Trade and Development and its sub-bodies would now be co-ordinated in the new division entitled "Session, Council Affairs and Subordinate Bodies". It was logical and rational that the work of the CONTRACTING PARTIES and its offshoots be dealt with in the most integrated and coherent manner possible. More importantly, the reorganization had brought development issues and the special needs of developing countries into the mainstream of

GATT activities through a much closer interaction between the Committee on Trade and Development, the Council and the CONTRACTING PARTIES, not to mention the Trade Negotiations Committee of the Uruguay Round. The Secretariat had had the privilege of going over these same issues with the Chairperson of the Committee on Trade and Development, Ambassador N. Escaler in response to specific questions she had raised. She, as was well known, was keen to ensure that the Committee on Trade and Development played its full rôle in the GATT system. She and the Secretariat had already established an excellent rapport and the latter looked forward to an active Committee on Trade and development under her guidance.

With regard to other changes, he said that environment had been put together with technical barriers to trade and export of domestically prohibited goods to streamline the Secretariat's work. In recent months, the Secretariat had been asked frequent questions on environment-related matters not only from institutions of the United Nations system but also from the private sector and from individual contracting parties. This interest, and the task of responding to queries, had created a fairly heavy volume of work in this area. Under these circumstances, he had felt it best to clarify that there would be one division in the Secretariat to help him and the General Directorate on environment-related issues. The use of the word "environment" did not have any political overtones. After all, there was a Group of Negotiations on Services Division in the Secretariat, though all knew that this division's work was not yet considered as being part of the GATT system. The objective of streamlining and rationalizing was also behind the new structure of the Technical Co-operation and Training Division, and the Agriculture Division.

He hoped his comments had been helpful in explaining the rationale behind the new Secretariat structure. He remained available to delegations for further clarifications and discussions, and would value greatly any suggestions that contracting parties wished to make. In conclusion, he said that the new structure which would enter into force on 3 June would be subject to review and would be adjusted when the need arose. It would naturally have to be looked at again when the successor to the out-going Deputy Director-General joined the Secretariat, and also in the context of the Uruguay Round results, including the institutional aspects thereof. He also wished to confirm that the new structure would be managed within existing budgetary and financial resources.

The representative of Chile welcomed the Director-General's invitation to contracting parties to share their views on the organizational changes. Because this matter was of great importance to the Latin American and Caribbean contracting parties, and because the Council was the appropriate forum to discuss administrative matters, he asked that the Council revert to this matter at its next meeting.

The Chairperson of the Committee on Trade and Development said that she had been conducting intensive consultations with a view to revitalizing interest in the Committee's work. She had also been concerned at the disappearance of the Development Division in the new organizational structure, and had raised this matter with the Director-General. His response had been along the lines of his comments at the present meeting.

The representative of the European Communities said that all Council members were obviously interested in the process of the Secretariat's reorganization. However, that process would not be assisted by a formal Council debate, and he regretted the suggestion that this item be on the agenda of the next Council meeting. As regards the choice of the successor to the outgoing Deputy Director-General, the Director-General had conducted broad consultations, and the Community fully supported him in that process. Whilst the appointment was of interest to all contracting parties, there came a point beyond which the Director-General should enjoy full confidence to make his own choice and to exercise his responsibilities.

The representative of Chile said that the regulations governing administrative matters in the GATT, to which he had referred earlier, indicated that the CONTRACTING PARTIES had general responsibilities with regard thereto. For this reason, and because they had not been consulted on these administrative changes, the Latin American and Caribbean contracting parties would raise this matter in the Council until their concerns had been considered.

The Chairman said that he understood that the Director-General would be prepared to keep the Council continuously informed on his consultations regarding the post of the Deputy Director-General.

The Council took note of the statements.

14. United States - Action under the Marine Mammal Protection Act with respect to "intermediary nations"

The representative of Japan, speaking under "Other Business", said that on 24 May, the United States had notified Japan that it would be implementing the Marine Mammal Protection Act in respect of "intermediary nations" as provided for in that Act. Japan understood that "intermediary nations" included not only itself, but a relatively large number of other countries as well. According to the notification, the US Customs Service would require importers of products from the intermediary nations to certify that these did not include yellowfin tuna caught by purse-seine fishing in the eastern tropical Pacific Ocean by vessels from countries subject to embargo under this Act, such as Mexico. He expressed Japan's serious concern about this measure. Trade restrictive measures under this Act with regard to so-called intermediary nations were not consistent with the General Agreement. He called on the United States not to implement such trade restrictive measures, and reserved Japan's GATT rights on this matter.

The Council took note of the statement.

15. Korea - 1992-1994 Programme of liberalization (L/6834)

The representative of New Zealand, speaking under "Other Business", recalled that at the April Council meeting, his delegation had set out a number of concerns regarding Korea's 1992-1994 liberalization programme

(L/6834). He had indicated then that New Zealand looked forward to further information from Korea, and to discussing this programme with it. While New Zealand was keen to move the matter forward, such discussions had not taken place. Accordingly, New Zealand reserved its GATT rights, and would revert to the substantive aspects of the matter at a future meeting, if necessary.

The representative of Australia recalled that at the April Council meeting his delegation had also expressed dissatisfaction with various elements of Korea's 1992-1994 programme. Australia looked forward to further consultations with Korea on these matters, and hoped to be able to report thereon at the next Council meeting.

The representative of Korea said that he had conveyed to his authorities the concerns expressed by a number of contracting parties at the April Council meeting over Korea's 1992-1994 programme. He would be in touch with the parties concerned as soon as instructions were received from his Government.

The representative of the United States said his delegation wished to be associated with the statements by New Zealand and Australia. He indicated the United States' strong interest in this matter, its concern over Korea's future course of action, and the need for a speedy resolution of the problem.

The representative of the European Communities associated his delegation with the statements by New Zealand, Australia and the United States.

The Chairman expressed the hope that the consultations requested would take place before the next Council meeting.

The Council took note of the statements.

16. Establishment of a panel under the April 1989 Improvements to the GATT dispute settlement rules and procedures (BISD 36S/61, C/M/249 - Item 10)

The representative of India, speaking under "Other Business", requested a clarification regarding the Chairman's response at the April Council meeting[6] to a question by the United States concerning the application of the improvements to the GATT dispute settlement rules and procedures adopted in April 1989 (BISD 36S/61). He recalled that the Council had been considering, for the second time, Brazil's request for a panel to examine its complaint against the United States over a matter involving the alleged denial of MFN treatment. In response to the question addressed to him by the United States, the Chairman had pronounced on the substance of the April 1989 Decision in what had appeared to be an

[6] C/M/249, item 10.

interpretation thereof. India had expressed reservations on the course of action then adopted, and had also reserved its position with respect to the nature of the pronouncement.

His delegation was not clear about the legal status of that pronouncement and whether it constituted a ruling on the interpretation of a substantive provision of the April 1989 Decision. In India's understanding, the legal authority to interpret provisions of the General Agreement was vested in the CONTRACTING PARTIES and had not been delegated to any other body or office bearer. Any deviation from this position was fraught with serious implications for the multilateral trading system. India was concerned that office bearers at various levels -- from the Chairman of the CONTRACTING PARTIES to the Chairmen of various Committees established under the Tokyo Round Agreements -- could also arrogate to themselves the authority to interpret provisions of the General Agreement and the Tokyo Round Agreements. He therefore requested a clarification as to the legal status of that pronouncement, without, at this stage, expressing his delegation's views on the substance of the pronouncement.

The Chairman stated that it had not been his intention to give an interpretation of the April 1989 Decision but simply to recall the content of a particular provision thereof. He was certainly aware of the 1949 interpretation by the Chairman of the CONTRACTING PARTIES (GATT/CP.3/SR.37) that it was up to the CONTRACTING PARTIES acting jointly to interpret the General Agreement. To him it seemed quite clear from the discussion at the April Council meeting that his statement related only to the application of a particular provision in the April 1989 Decision to the case under discussion at that meeting. It had in no way been intended to have a general bearing or to create a precedent in respect of the interpretation of GATT provisions.

The representative of the United States said it was his understanding that the Chairman's statement at the April Council meeting arose as a result of his delegation's concern regarding the effect of the April 1989 rules as they related to the establishment of a panel at the Council meeting following that at which the matter was first placed on the Council agenda. The Chairman had indicated then that the April 1989 Decision clearly established the rule that unless there was a consensus not to establish a panel requested by a contracting party, a panel would have to be set up at the second Council meeting at which the matter was being discussed. In his opinion, the Chairman had interpreted a decision of CONTRACTING PARTIES as it related to Council procedures. It was not, as had been suggested by India, an interpretation of GATT rules or GATT law. He recalled that later at that meeting his delegation had clarified that it had not asked the Chairman to pronounce on how matters still under consideration should operate, but rather for a ruling as to how the particular provision in question, i.e., paragraph F(a) of the April 1989 Decision, would operate in practice at that Council meeting. His delegation had been satisfied with the Chairman's ruling and on that basis had accepted that a panel be established at the meeting. The United States' willingness to go forward with the establishment of a panel was on the basis of an understanding by contracting parties as to the

interpretation of the April 1989 Decision. The United States believed that that Decision established a rule as described by the Chairman at that meeting.

The representative of India said the United States appeared to have accepted that GATT law could not be interpreted by any other authority than the CONTRACTING PARTIES acting jointly. However, the United States appeared to believe that the April 1989 Decision was not GATT law or rule, and that the Chairman had pronounced not on GATT rules but on procedures related to the conduct of Council business. India did not share this interpretation. One might have to seek legal advice from the Secretariat on this point. Depending on the advice given as to whether the April 1989 Decision was GATT rule and law, his delegation maintained that GATT law could only be interpreted by the CONTRACTING PARTIES. If this issue could not be resolved at the present meeting, he requested that it be kept on the Council's agenda. He suggested that the Chairman might want to conduct informal consultations or find some way of resolving this matter, because it was too important to be left to an interpretation like the one that had been given to it.

The representative of the United States said he drew a distinction between substantive GATT law and decisions or rulings established by the CONTRACTING PARTIES concerning GATT procedures. He accepted that one would not want the Chairman of a GATT body to have the power to interpret substantive law. He did believe, however, that in order to expedite the orderly business of a body, the Chairman had to have certain powers to interpret procedural matters therefor with the understanding, of course, that ultimately the CONTRACTING PARTIES retained the full authority either to change or maintain the procedures. At the heart of the matter at hand was the question of whether or not a contracting party which did not accept the basis for another contracting party's panel request, was in a position to block a consensus at the second Council meeting. It was his delegation's understanding from the proceedings of the April Council meeting that this could not occur unless there was a decision by the Council not to establish the panel. Were the United States to find later that other contracting parties did not accept the establishment of panels under this procedure, then obviously this would call into question the wisdom of the United States' own decision to accept the establishment of a panel at the April Council meeting. The United States expected others to be guided by the same rules which governed its behaviour. If this were not to be so, then others had an obligation to state that clearly at the present time so that the Council could deal with the issue.

The representative of the European Communities agreed that it was the responsibility of the CONTRACTING PARTIES acting jointly to interpret GATT provisions authoritatively and in a generally binding manner. At the same time, the Community did not consider that the views expressed by the Chairman at the April Council meeting represented a ruling or interpretation. The Community did believe, however, that it was the Council Chairman's responsibility to conduct business effectively and, if need be, to give his views in order to resolve procedural difficulties, and to suggest solutions to deal effectively with agenda items. He said that the Community supported the principle of a right to a panel, which of course should be exercised responsibly.

The Chairman said he had noted the suggestion that there might be a need to consult the Secretariat's legal service. He would certainly do that. He would also hold informal consultations to see if there was a need to revert to this item in the Council.

The Council took note of the statements.

17. Committee on Budget, Finance and Administration - Request for membership by Colombia (L/6827)

The representative of Colombia, speaking under "Other Business", said that his delegation had sent a communication to the Director-General on 17 May (L/6827), requesting membership in the Committee on Budget, Finance and Administration. He hoped that at its next meeting the Council would be able to act on this request.

The Council took note of the statement.

18. Restrictions on exports from Peru following the cholera epidemic (Spec(91)12, L/6845)

The representative of Peru, speaking under "Other Business", informed the Council that a resolution adopted by the World Health Assembly on 13 May (WHA44.6) had, inter alia, called upon the international community "to intensify its solidarity with the countries affected or threatened by cholera" and had urged member States "not to apply to countries affected by the epidemic restrictions that cannot be justified on public health grounds, in particular as regards importation of products from the countries concerned". This Resolution had been adopted unanimously and had received extraordinary political support in being co-sponsored by 69 countries, both developed and developing.

He noted that, in accordance with procedures under the streamlined mechanism for reconciling the interests of contracting parties in the event of trade-damaging acts (BISD 36S/67), the European Community had recently communicated information relating to two decisions concerning food imports from Peru following the outbreak of the cholera epidemic (L/6845). By these decisions, the Community had taken the positive step of establishing a common standard for all its member States, some of which had been adopting, unilaterally, various levels of restrictions on imports from Peru. While the recommendations of the World Health Organization had been used as a reference in the adoption of these decisions, Peru considered that the generic prohibition in Article 1 of the respective decisions was not in accord with the World Health Assembly Resolutions of 1971 and 1991 (WHA24.26 and WHA44.6). Peru understood that these decisions were to apply in all of the Community's member States immediately after their publication on 20 March. It therefore considered that the national regulations that had been introduced in Denmark, the Netherlands and the United Kingdom, would no longer be valid and could not be applied. With regard to other countries' restrictions on imports from Peru since the cholera epidemic, he indicated that the majority had now been replaced by health and sanitary

control measures. Peru was continuing informal consultations with three contracting parties that still maintained import restrictions, and hoped that these would also be lifted soon.

The representative of Colombia said his country had also encountered trade problems related to the cholera epidemic, and fully supported Peru's statement. He hoped that unnecessary trade measures taken in this regard would be lifted promptly. The Council should follow developments on this matter closely, and revert to it when necessary.

The representative of Chile expressed support for Peru's statement, and noted that Chile was one of the 69 co-sponsors of the recent Resolution referred to by Peru.

The Council took note of the statements.