

# GENERAL AGREEMENT ON

# TARIFFS AND TRADE

RESTRICTED

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COUNCIL

14 July 1992

## MINUTES OF MEETING

Held in the Centre William Rappard  
on 14 July 1992

Chairman: Mr. B.K. Zutshi (India)

	<u>Page</u>
<u>Subjects discussed:</u> 1. Term of office of the Director-General	2
2. Requests for observer status	2
(a) Armenia	
(b) Ukraine	
3. Accession of Slovenia	3
4. Committee on Balance-of-Payments Restrictions	5
- Simplified consultation with Bangladesh	
5. Egypt - Renegotiation of Schedule LXIII	6
- Request for a waiver under Article XXV:5	
6. Status of work in panels and implementation of panel reports	7
- Report by the Director-General	
7. Canada - Import, distribution and sale of certain alcoholic drinks by provincial marketing agencies	18
- Follow-up on the Panel report	
8. United States - Restrictions on imports of tuna	28
- Recourse to Article XXIII:2 by the European Communities	
9. Customs unions and free-trade areas; regional agreements	31
(a) EFTA - Czech and Slovak Federal Republic Free-Trade Agreement	
- Communication from Iceland on behalf of the EFTA countries and the Czech and Slovak Federal Republic	
(b) Free-Trade Agreements between Sweden and Estonia, Latvia and Lithuania	
- Communication from Sweden	

	<u>Page</u>
10. Southern Common Market (MERCOSUR) - Request by the United States for notification under Article XXIV and for the establishment of a working party	34
11. Trade Policy Review Mechanism - Programme of reviews for 1992 - Deferral of the trade policy review of the European Communities	47
12. EEC - Import régime for bananas	48
13. United States - Denial of MFN treatment as to imports of non-rubber footwear from Brazil - Follow-up on the Panel report	49
14. EFTA - Turkey Free-Trade Agreement - Working Party Chairmanship	49
15. International Trade Centre (UNCTAD/GATT) - Appointment of a new Executive Director	49
16. Dates of the Forty-Eighth Session of the CONTRACTING PARTIES	50
17. United Nations Conference on Environment and Development (UNCED) - Note by the Secretariat	50

1. Term of office of the Director-General

The Chairman of the CONTRACTING PARTIES said that following agreement at an informal meeting of the Council at the level of heads of contracting party delegations, he had, on behalf of the CONTRACTING PARTIES, invited the Director-General, Mr. Dunkel, to accept an extension of his present term of office until 30 June 1993. He informed the Council that Mr. Dunkel would agree to accept an extension of his term of office.

The representative of Bangladesh, speaking on behalf of the least-developed contracting parties, welcomed the decision to invite the Director-General to accept an extension of his term of office. He also welcomed Mr. Dunkel's acceptance of the proposal and commended the latter's contribution to the Uruguay Round process, in particular with regard to the least-developed countries' interests.

The Council took note of the statements and agreed to extend the term of office of the present Director-General until 30 June 1993 under the same terms and conditions as those of the existing contract.

2. Requests for observer status

- (a) Armenia (L/7033)
- (b) Ukraine (L/7045)

The Chairman proposed, on the basis of earlier informal consultations on the requests for observer status by governments concerned, that the

understandings regarding observers that had been noted at the May 1990 Council meeting, and to which he had referred at length at the Council meeting in June, should also apply to the governments of Armenia and the Ukraine if the Council approved their requests for observer status at the present meeting. He then proposed that the Council take note of his statement, agree to his suggestion and agree to grant Armenia and the Ukraine observer status.

The Council so agreed.

The representative of Korea supported the two requests for observer status and hoped that both Armenia and the Ukraine would accede to the GATT in the not too distant future.

The Chairman welcomed the two delegations to the Council and informed the Council that a request for observer status had also been received from Lithuania, and that this request would be considered by the Council at its next meeting.

The Council took note of the statements.

### 3. Accession of Slovenia (L/7032)

The Chairman drew attention to the communication from Slovenia in document L/7032 concerning its interest in acceding to the General Agreement pursuant to Article XXXIII.

The observer for Slovenia said that, since its independence, Slovenia had continued to apply the provisions and protocols of the General Agreement, as well as the Tokyo Round Agreements which had been accepted by the Socialist Federal Republic of Yugoslavia (SFRY). She added that Slovenia exercised sovereignty in international trade and in all activities covered by the General Agreement. In establishing its full sovereignty, Slovenia had not altered the spirit of the existing laws on customs tariffs, international trade, or customs regulations, but had merely assumed control over their application. Slovenia was determined to respect and exercise the duties and obligations that had not been fully and adequately met by the SFRY. To this end, it had already abolished the GATT-inconsistent requirements for regional approvals on imported goods. It had also undertaken to reduce comprehensively the number of tariff items subject to quotas. In 1991, twelve per cent of all imported goods had been subject to quotas. A further reduction of 54 per cent from this amount had been achieved until the present time, and only textiles and agricultural products were currently subject to quotas. In addition, GATT-inconsistent non-tariff charges had been suspended. The only quotas that had been retained were those required to overcome the balance-of-payments difficulties that had accompanied Slovenia's independence.

Slovenia intended to continue to apply the GATT's provisions in force before its independence, including the obligations pursuant to the Schedule of Concessions of the former SFRY. Slovenia expected that the terms of accession to be agreed upon by itself and the CONTRACTING PARTIES

should reflect the conditions that had prevailed thus far. This proposal was based on the conclusions of the Arbitration Commission of the Peace Conference on Yugoslavia. Her Government considered that the existing GATT provisions did not adequately address situations such as that of Slovenia. In the absence of more appropriate provisions, however, it had decided to seek accession to the General Agreement in accordance with the provisions of Article XXXIII, with the hope that the CONTRACTING PARTIES would be prepared to accept Slovenia as a contracting party without further negotiations and to agree that the terms of accession should reflect the conditions which had thus far prevailed. Given the current situation, Slovenia saw no reason for its accession request to be treated differently than one made under Article XXVI:5(c), which was customarily used in cases involving the succession to the GATT of an independent state after the dissolution of a union of states. In Slovenia's case, however, there was no legal and internationally-recognized entity of the former SFRY that could make the necessary declaration on its behalf under Article XXVI:5(c). Slovenia hoped, therefore, that the Council would agree to accept its proposal, and requested the Secretariat to draft a Protocol of Accession which would include a Schedule identical to that applied before independence, and to refer this question to the CONTRACTING PARTIES. She expressed her Government's intention to participate fully in the ongoing Uruguay Round negotiations, in which Slovenia was prepared to accept greater obligations and further tariff bindings.

The representatives of the United States, Japan, Canada, Hungary, India, Korea, Sweden on behalf of the Nordic countries, Switzerland, Austria and the European Communities supported Slovenia's request for accession, which they hoped would be effected as rapidly as possible. They also welcomed the autonomous trade-liberalization measures, including the abolition of certain GATT-inconsistent measures, already adopted by Slovenia. They encouraged the latter to continue to pursue its efforts in this direction.

The representatives of the United States, Japan, Canada, India, Korea and Switzerland said that they could not accept Slovenia's immediate accession without negotiations, as had been done when Bangladesh had applied for accession (BISD 19S/6). They suggested that it would be in both Slovenia's and the CONTRACTING PARTIES' interests to follow the normal accession procedures of Article XXXIII, and requested that a working party with standard terms of reference be established to examine Slovenia's request, including the memorandum on its foreign trade régime, and to prepare the necessary instruments. They would work constructively in the working party with a view to concluding the process as rapidly as possible. The representative of the European Communities also rallied to this viewpoint.

The representatives of Hungary and Austria said that their authorities were open to either procedure, i.e., following the Bangladesh example, or following the normal working-party procedure under Article XXXIII. Their delegations would join any consensus on a procedure that would speed up Slovenia's accession to GATT.

The representative of India said that the circumstances were somewhat different for Slovenia than they had been for Bangladesh. His delegation

favoured the normal procedures of accession under Article XXXIII. It would, however, join any consensus in the Council.

The representative of Switzerland said that Slovenia's recent trade-liberalization measures, and its acceptance of the former SFRY's GATT obligations, put it in a different category from other governments requesting accession under Article XXXIII. Switzerland considered that much of the accession-related work had almost been completed and that this, therefore, paved the way for what it hoped would be an expeditious accession process.

The observer for Slovenia noted with appreciation the large support for her Government's request. She emphasized that all the measures her Government had recently taken had been effected in a GATT-consistent manner. Her delegation recognized from the debate that its proposal regarding accession without negotiations would not be acceptable to the Council. Accordingly, as a compromise, Slovenia would accept that a working party be established in accordance with Article XXXIII procedures.

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

Terms of reference:

"To examine the application of the Government of Slovenia to accede to the General Agreement under Article XXXIII, and to submit to the Council recommendations which may include a draft Protocol of Accession."

Membership:

Membership would be open to all contracting parties indicating their wish to serve on the Working Party.

The Chairman proposed that the Council authorize him to designate the Chairman of the Working Party in consultation with representatives of contracting parties and with the representative of Slovenia.

The Council so agreed.

The Chairman then invited the representative of Slovenia to consult with the Secretariat as to further procedures, in particular regarding the basic documentation to be considered by the Working Party. He also invited Slovenia, on behalf of the Council, to attend the meetings of the Council and of other GATT bodies as an observer during the period when the Working Party was carrying out its work.

4. Committee on Balance-of-Payments Restrictions  
- Simplified consultation with Bangladesh (BOP/R/200)

Mr. Boittin, Chairman of the Committee, introducing the report in BOP/R/200, said that the Committee had met on 10 June 1992 to conduct a consultation with Bangladesh under the simplified procedures for regular

consultations with developing countries and the 1979 Declaration on Trade Measures Taken for Balance-of-Payments Purposes (BISD 26S/205). The consultation had been held in conjunction with Bangladesh's review under the Trade Policy Review Mechanism. The Committee had decided to recommend to the Council that Bangladesh be deemed to have fulfilled its obligations under Article XVIII:12(b) for 1992.

The Council took note of the statement, agreed that Bangladesh be deemed to have fulfilled its obligations under Article XVIII:12(b) for 1992, and adopted the report in BOP/R/200.

5. Egypt - Renegotiation of Schedule LXIII  
- Request for a waiver under Article XXV:5 (C/W/697/Rev.1, L/6986 and Add.1, 2, 3 and 4)

The Chairman recalled that at its meetings in March, April and June, the Council had considered this matter, and in June had agreed to revert to it at the present meeting. He drew attention to Egypt's recent communications (L/6986/Add.3 and 4) which provided additional information related to the waiver request, and to a revised draft waiver decision (C/W/697/Rev.1).

The representative of Egypt said that since the June Council meeting, Egypt had pursued consultations with contracting parties, in particular with its major trading partners, and had reached an agreement that would permit the Council to take a consensus decision on Egypt's waiver request at the present meeting. He reiterated that Egypt would enter into Article XXVIII negotiations immediately after the waiver had been granted. In so doing, Egypt would work within its GATT rights and obligations.

The representative of the European Communities said that the Community had been provided with all the necessary information to agree to a decision on Egypt's waiver request.

The representative of the United States said that his Government's concerns had been dealt with satisfactorily, and the United States could now support Egypt's request. He noted that Egypt had already submitted the trade data necessary to allow Article XXVIII negotiations to proceed, and had expressed its willingness to promptly respond to requests for compensation under that Article. The United States looked forward to completing these negotiations at an early date.

The representative of New Zealand expressed satisfaction that conditions had been set, after a consultation process, for the waiver to be granted. New Zealand considered that the issues that had been under discussion with Egypt were important for many contracting parties. It looked forward to the commencement of Article XXVIII negotiations, which would help to resolve remaining issues of bilateral concern.

The representative of Colombia said that his delegation fully supported Egypt's request and was pleased that the GATT's golden rule of decision-making by consensus had prevailed in the end.

The Council took note of the statements, approved the text of the draft decision in C/W/697/Rev.1, and recommended its adoption by the CONTRACTING PARTIES by postal ballot.

6. Status of work in panels and implementation of panel reports  
- Report by the Director-General (C/181 and Corr.1)

The Chairman recalled that at its meeting in June, the Council had agreed to defer consideration of this item until the present meeting, and had also heard from Australia its intention to address particular cases of trade interest to it under this item. He drew attention to the report by the Director-General in document C/181 and Corr.1.

The Director-General, introducing his report, said that contracting parties were continuing to make frequent use of the GATT dispute settlement system. There were nine currently active panels, down from eleven in November 1991. Six new panels had been established since his previous report, the same number as in the period covered by that report. Of the new panels, three had been established under the Anti-Dumping Agreement<sup>1</sup>, two under the Subsidies Agreement<sup>2</sup>, and only one under the General Agreement. This confirmed a trend, noted in his previous report, that a significant proportion of new disputes were being brought under the Tokyo Round Agreements. He noted that six panel reports had been adopted in the previous six months: three under the General Agreement, two under the Subsidies Agreement, and one under the Government Procurement Agreement<sup>3</sup>. He was pleased to note that the reports adopted under the Subsidies Agreement were the first to have been so done and he hoped that a positive solution would also be found in respect of the other unadopted reports under that Agreement. As had been pointed out in his previous report, the most pressing problem in the field of dispute settlement was implementation of adopted panel reports. The situation did not appear to be improving, despite the slight reduction in the number of implementation cases raised in the Council. Over the past six months, the implementation of seven disputes had been discussed in the Council, compared to nine in the period covered by his previous report. However, this did not necessarily mean that there were now fewer adopted panel reports that had not been fully implemented. Implementation of some adopted reports had remained conditioned on the completion of the Uruguay Round. He had commented previously on this regrettable situation and would do so again: panel reports interpreted existing rights and obligations and therefore needed to be implemented regardless of the results of the Uruguay Round. The acceptance of new obligations was not made easier if existing rights were not seen to be effectively protected.

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<sup>1</sup> Agreement on the Interpretation and Application of Articles VI, XVI and XXIII (BISD 26S/56).

<sup>2</sup> Agreement on the Implementation of Article VI (BISD 26S/71).

<sup>3</sup> Agreement on Government Procurement (BISD 26S/33).

The representative of Australia said that while the adoption of panel reports appeared to have become less of a problem recently, the same could not be said of implementation. In some cases, the parties concerned had either refused to countenance implementation or had been selective in their approach. Some others had refused to acknowledge their obligation to begin and build on the process of GATT-consistent liberalization. In certain instances, selective implementation based on a settlement between the two parties to a dispute had led to fresh panel processes. These had arisen from concerns that the bilateral accommodation in question might not have resulted in the fulfilment of GATT obligations to third parties with a trade interest in the issue.

The Council appeared to have become marginalized in the area of implementation of panel reports, despite the April 1989 Decision on improvements to the GATT dispute settlement rules and procedures (BISD 36S/61), which was designed to give the Council a surveillance rôle and to make individual parties accountable to the contracting parties as a whole. It was of concern that the Council's rôle seemed to have diminished to one of process and that Paragraph I.3 of the April 1989 Decision had been largely ignored. Australia was not aware of any Council decision overturning the requirement that implementation of specific reports remain on the Council Agenda until the matter was resolved. Nor was it aware of any Council decision to dispense with the requirement for the contracting party concerned to provide a status report on progress in implementation. In addition, the broader m.f.n. objectives of Paragraph A.2 of the April 1989 Decision might not be attainable in the absence of appropriate Council surveillance of implementation, and of bilateral settlements as called for in Part B of that Decision. The apparent non-observance of these provisions should be of concern to all contracting parties. Australia requested that they be adhered to in the future, as part of the ongoing rôle and work of the Council.

Turning to specific cases in the Director-General's report, Australia underlined again its concerns at the absence of movement by Japan, in the four years since the adoption of the Panel report on restrictions on imports of certain agricultural products (BISD 35S/163), to address the outstanding dairy and starch items. Australia requested Japan to provide a progress report on full implementation of the Panel's recommendations in line with the principles laid down in the April 1989 Decision. In addition, Australia regarded full implementation of the Panel reports on US import restrictions on sugar (BISD 36S/331) and on Korea's restrictions on imports of beef (BISD 36S/202, BISD 36S/234, BISD 36S/268) as unfinished business, pending progress by those countries in moving towards full GATT-consistent liberalization of their respective import régimes in those commodities. These cases should therefore continue to be included in the Director-General's report.

The representative of Argentina recalled his delegation's oft-expressed concern at earlier Council meetings at the lack of adoption or implementation of panel reports. This concern had led many contracting parties to endorse all efforts made with a view to ensuring immediate implementation of panel recommendations by those countries which found themselves in violation of their GATT obligations. While in certain



circumstances contracting parties might have difficulties in implementing immediately a panel's recommendations, it was doubtful whether the adoption of panel reports could be postponed for several months on the pretext that they were related to the results of the Uruguay Round. The General Agreement was a treaty which set forth agreed rights and obligations for all parties. This legal framework also included procedures for the settlement of disputes between parties, who agreed thereunder to work towards a solution in good faith. The results of the Uruguay Round still had to be incorporated into the existing GATT framework. For the present, one had international standards and legal and political obligations to fulfil in connection with the basic need for respecting international obligations. The General Agreement was based on a contract of good faith between contracting parties; hence, his delegation's concern with the non-implementation of panel recommendations, a concern about the future of the GATT and about the need to preserve its international credibility. If one drew up a balance sheet of the existing panels, and took out two of them which were still to be adopted -- i.e., the reports on Mexico's complaint regarding US restrictions on imports of tuna (DS21/R), and on Canada's measures affecting the sale of gold coins (L/5863) -- one was left with eleven panels for which implementation presented problems. Of these eleven, if one excluded two more -- the reports on US denial of m.f.n. treatment as to non-rubber footwear from Brazil (DS18/R), and on the import, distribution and sale of certain alcoholic drinks by Canada's provincial marketing agencies (DS17/R), both adopted at the June Council meeting -- and also the dispute on the Community's payments and subsidies to processors and producers of oilseeds and related animal-feed proteins (DS28/R, BISD 37S/86) for which the Council had authorized Article XXVIII renegotiations, one ended up with eight reports for which implementation was totally or partially pending for an average period of 28 months. This situation was of great concern, particularly regarding two cases in which the parties concerned had stated that their implementation of the reports would depend on the results of the Uruguay Round. The Uruguay Round was a separate negotiation from existing GATT obligations and the linkage being made greatly compromised the credibility of the GATT and put into question the underlying good faith in the fulfilment of international standards.

The representative of Chile recalled that his delegation had repeatedly stated that the dispute settlement mechanism was essential to ensure that rights and obligations of contracting parties in the multilateral trading system were protected and maintained. Chile was therefore concerned at certain types of practices which weakened the mechanism. It seemed to have become commonplace to use a series of arguments to side-step or not to comply with recommendations of panels, thus in effect removing the very credibility and efficiency of the dispute settlement mechanism. An example of this was the delay in the adoption of panel reports in such a way that the complaint had remained pending while the reason that had led to the complaint had in fact been superseded. It also appeared that in some cases contracting parties affected by the conclusions of a panel accepted the panel report but with reservations. This was not appropriate because panel reports could not be adopted with reservations or only partially. Often, contracting parties also simply refused to adopt the measures necessary to bring their legislation into

line with the recommendations of a panel. A further means of avoiding implementation of reports was to link the taking of corrective measures to the results of the Uruguay Round negotiations. This was inadmissible because the obligations in question had been acquired in the framework of GATT, while the results of the Uruguay Round were a possible future commitment which could not in any way condition the application of obligations already acquired within the GATT's framework.

Despite the efforts which had been made in order to strengthen the dispute settlement mechanism in the Uruguay Round Mid-Term Review, the practice of unilaterally altering the commitments negotiated in GATT still continued, which brought about legal uncertainty as regards obligations negotiated in good faith. Chile therefore urged contracting parties to respect the dispute settlement mechanism to which all had agreed, and thus to commit themselves to adopting the conclusions and recommendations of panel reports which applied to them. This was the only way to ensure an orderly development of international trade. It would be quite pointless to strengthen the dispute settlement mechanism in the Uruguay Round if, in the final analysis, there were no will on the part of contracting parties to respect the obligations acquired. The problem was not a lack of rules, but rather the will to abide by them.

The representative of Colombia said that the Director-General's report showed, on the one hand, the increasing interest on the part of contracting parties and, in particular, the signatories of the Tokyo Round Agreements on Subsidies and Anti-Dumping to solve multilaterally their bilateral disputes. On the other hand, the report clearly indicated that the multilateral dispute settlement system adequately supplemented similar provisions in the context of regional agreements. In Colombia's view, this was a direct result of the provisional adoption of the improvements to the GATT dispute settlement rules and procedures following the Uruguay Round Mid-Term Review. He noted that of the eight panel reports pending adoption or having recently been adopted under the General Agreement, half were reports of panels set up in 1991. Of the sixteen reports registered under the Tokyo Round Agreements, nine dated from 1991. As to the actual implementation of the seven reports already adopted, Colombia noted that all of these concerned disputes under the General Agreement, one of which dated from 1991. Also, the eight disputes under the General Agreement had all been brought exclusively against the United States, Canada, the Community and Japan, while 85 per cent of the panel reports on disputes under the Tokyo Round Agreements, which had been adopted but were still under discussion, involved these four contracting parties. Although there might be a favourable trend towards the adoption of panel reports, this was not always the case, in particular amongst developed contracting parties. Even though reports were adopted, there occurred delays as regards the actual implementation of the panels' recommendations, especially when this required substantial changes in domestic trade policies to bring certain practices into GATT conformity. He reiterated his appeal that the interest shown in an improvement to the dispute settlement mechanism be supplemented by the full implementation of panel reports as mentioned in the Director-General's report.

The representative of New Zealand said that his Government remained concerned at the number of unadopted panel reports, and at the evident lack of progress in implementing certain reports that had been adopted. Regarding the Panel report on Japan's restrictions on imports of certain agricultural products, he recalled the requirement in Paragraph I.3 of the April 1989 Decision calling on the Council to "monitor the implementation of recommendations or rulings adopted under Article XXIII:2". The Director-General's report had noted that the issue of full implementation of that Panel report had been raised in seven Council meetings and at the Forty-Seventh Session of the CONTRACTING PARTIES in December 1991. This particular issue, however, was still not resolved. Japan had not implemented that Panel's recommendations on certain starch and dairy products. Implementation was also outstanding in respect of skimmed milk powder, whole milk powder, evaporated milk, sweetened condensed milk, butter milk powder and prepared whey powder. These were items of major trade interest for New Zealand. The April Decision, in Paragraph I.3, required the issue of implementation of a panel report to remain on the Council's agenda until it was resolved. New Zealand therefore requested that the question of implementation of outstanding recommendations in this case be placed on the agenda of the next Council meeting.

Regarding the monitoring of this Panel report, Paragraph I.3 of the April 1989 Decision stated that "At least ten days prior to each such Council meeting, the contracting party concerned [Japan in this case] shall provide the Council with a status report in writing of its progress in the implementation of the panel recommendations or rulings." (BISD 36S/61). The Council had not been receiving these reports, and New Zealand requested that Japan fulfil this requirement before the next Council meeting, and also that, in its report, it address two aspects specified in Paragraph (viii) of the 1982 Ministerial Declaration (BISD 29S/9), namely, the action taken in response to the CONTRACTING PARTIES' recommendations or rulings, and its reasons for not implementing the latter. New Zealand hoped that in addressing these two aspects Japan would report on the status of its actions with respect to the particular products mentioned above.

With regard to the Panel report on Korea's restrictions on imports of beef, in July 1990 his delegation had informed the Council about the agreement reached on the first stage of implementation of this report which covered the period until the end of 1992. Consultations had now been initiated on the further implementation of that Panel report, which should lead to the elimination of remaining beef import restrictions or to their GATT conformity by 1 July 1997, in line with the understanding reached in the Committee on Balance-of-Payments Restrictions. He underlined that this did not involve the tariffication of these measures. New Zealand looked forward to reporting to the Council later in the year on the results of these consultations.

He referred briefly to New Zealand's specific proposal in the Uruguay Round Surveillance Body concerning implementation of the rollback commitments (MTN/SB/18). The delay in concluding the Uruguay Round had meant that this proposal had not yet been considered by the Trade Negotiations Committee (TNC) in the manner envisaged by the Surveillance Body. He reaffirmed New Zealand's commitment to that proposal and its

expectation that it would receive full consideration by the TNC, which had been requested by the Surveillance Body to consider "further action that may be needed to ensure that the rollback undertaking is fully met".

The representative of Venezuela said that his Government attached great importance to the adoption of panel reports because it believed that this strengthened the GATT's international respectability and, in particular, its dispute settlement mechanism. One of the GATT's main appeals, which had attracted several countries to seek accession recently, was that it offered a multilateral framework for channelling potential or current trade conflicts. Any delay in the adoption of panel reports undermined contracting parties' confidence in the dispute settlement mechanism. Venezuela also wished to underline that, among the panel reports pending adoption in the Council, that on Mexico's complaint regarding US restrictions on imports of tuna was of great concern. This was only natural, because Venezuela had been affected by the United States' tuna embargo. The non-adoption of that report explained the fact that at the present meeting there was a request by the Community and the Netherlands which touched on essentially the same issue dealt with by that Panel. Venezuela believed that the most efficient and expeditious manner of ensuring that there would be no further requests for panels on the same issue would be for the Council to adopt the conclusions and recommendations of the Panel on that particular issue. Venezuela hoped that all the other panel reports outlined in the Director-General's report would also be adopted.

The representative of Norway, on behalf of the Nordic countries, said that they were seriously concerned about the problem of non-implementation of panel recommendations. Regrettably, this problem had not diminished since the Council's previous discussion of this subject in November 1991. On the contrary, many of the same panel reports remained non-adopted or non-implemented. Indeed, one report under the Anti-Dumping Agreement which directly affected the Nordic countries continued to be unadopted although almost two years had passed since it had been tabled by the Panel. The Nordic countries had previously pointed to a disturbing aspect of the current situation, namely that the ability to resist adoption and delay implementation in reality seemed to be a privilege of the major trading nations. Smaller nations were increasingly obliged to conclude that the rules were not applied equally and fairly. This tendency, if sustained, would only erode the system of rules that were so vital for the GATT's functioning and credibility, a point which the Nordic countries could not avoid emphasizing at the present time. All parties, large or small, should do their utmost to recognize their common responsibility in following not only the rules but also the fundamental intentions thereof. The Nordic countries had sincerely tried to meet this challenge, even when panel decisions had not been favourable to them.

The Director-General's report showed that the number of panels -- whether established under the General Agreement or the Tokyo Round Agreements -- was growing rapidly. In the previous twelve months, ten new panels had been set up, almost all of them under the Subsidies and Anti-Dumping Agreements. This highlighted two important features: the overall increase in the number of panels and their concentration in two

Committees. This put a heavy burden on parts of the Secretariat, and could sometimes have the highly undesirable consequence of hindering a panel in maintaining its timetable. The Nordic countries feared this development might only be the first indication of the situation and of the kind of work GATT would be faced with in the future if the Uruguay Round were not concluded soon.

The representative of Tanzania recalled that the Director-General had been consistently advocating compliance with the rules of the game. His efforts were expected, given the circumstances, and were much appreciated. As a representative of a least-developed country, he was necessarily looking at a distant horizon, in which he would clearly include a successful outcome of the Uruguay Round. If the situation as reflected in the Director-General's repeated statements and in his most recent report (C/181) persisted, he wondered what the outlook would be for the dispute settlement mechanism in the event that a successful conclusion to the Uruguay Round extended the GATT to more subjects, some of which would perhaps be even more intractable than the ones presently dealt with. It was altogether possible, if not predictable, that the large number of issues to be included in the final package of the Uruguay Round could mean even more disputes and relatively still fewer implementations of panel recommendations. He hoped he would be proved wrong in this.

The representative of India recalled that on previous occasions, his delegation, among others, had stated that the dispute settlement system was the core of the rule-based multilateral trading system. The credibility and integrity of any system was determined by the effectiveness of its dispute settlement system. This was particularly true for the smaller trading partners in the system, like the developing countries, which did not have the possibility of exercising their rather limited economic power but could only look to the dispute settlement process to enforce their rights. It had also been mentioned earlier that the primary responsibility for the effective functioning of the dispute settlement system lay with the major trading entities who should demonstrate their commitment to the observance of the rules by cutting down on delays in adoption and implementation of panel reports. No doubt, in several cases, this demanded a considerable amount of political will and courage, but it was expected that these countries would demonstrate such courage and wisdom to uphold the principles and further enhance confidence in the multilateral trading system.

A large number of delegations, including India's, had also stated on earlier occasions that the linkage of the implementation of a number of panel reports by some countries, all of whom happened to be major trading partners, to the results of the Uruguay Round was unwarranted since the panel recommendations had been made on the basis of existing GATT rules. All these points continued to be relevant and true at the present time. As the Director-General's report made clear, although many of the procedural bottlenecks until the stage of adoption of panel reports had largely been removed as a result of the agreement reached during the Uruguay Round Mid-Term Review, the area of implementation still called for considerable improvement. This failure on the part of certain contracting parties to abide by their GATT obligations was a matter of concern, and was detrimental to the multilateral trading system.

An equally disturbing picture could be seen in the operation of dispute settlement in some of the Tokyo Round Agreements, particularly in the area of subsidies. As was clear from the Director-General's report, the issue of adoption of panel reports in the Subsidies Committee was characterized more by disregard rather than by observance of the dispute settlement rules. There had, however, been a welcome development with the adoption of a report on the US definition of industry for wine and grape products (SCM/71) in the most recent meeting of that Committee. India hoped that this would encourage other Code signatories that were blocking adoption of panel reports, most of whom were also the major trading partners, to consider removing their objections to enable adoption of these reports.

India wished to emphasize that failure on the part of contracting parties to honour the obligations and disciplines of the dispute settlement mechanism would render the multilateral trading system hollow from within. At a time when all were collectively engaged in strengthening the system through the Uruguay Round, they would be rendering a disservice to the system by failing to uphold the principles and disciplines of the General Agreement.

The representative of the European Communities said that no-one could disagree with the Director-General that panels interpreted existing rights, and that if existing rights could not effectively be protected, that was a very serious sign of weakness for the system altogether. However, there was also the problem of legislators being confronted with the requirements of modifying certain legislation for subjects that were still under negotiation. No-one had thus far found an answer as to how one convinced legislators to modify legislation for a provisional period until negotiations within the GATT framework established new rules, and then possibly to modify that legislation again. With regard to a specific case of non-implementation, he recalled that the United States had indicated that it would implement the Panel report on Section 337 of the US Tariff Act of 1930 in light of the outcome of the Uruguay Round. The Community wanted to know what steps the United States had taken or envisaged taking, now that one had come to recognize far more clearly the possible results of the Uruguay Round negotiations in the field of intellectual property.

The representative of Hong Kong said that, like previous speakers, Hong Kong continued to be concerned with the very unsatisfactory state of affairs in the implementation of panel reports. Implementation was the ultimate but also the most vital step in the dispute settlement process. The problems faced in this area had already been elaborated upon by the Director-General. The conclusion of the Uruguay Round and the consequent implementation of the integrated dispute settlement system negotiated thereunder would go a long way in improving or speeding up the implementation process. However, and regrettably, at the present juncture when one did not know when the Uruguay Round negotiations would really conclude, something needed to be done by the parties whose measures had been ruled GATT inconsistent by panels if one were still concerned about the credibility of the dispute settlement system. Hong Kong supported Australia's remarks concerning the Council's rôle, and urged that as a

first step the provisions in the April 1989 Decision concerning surveillance should be observed. Regarding the large number of dispute settlement cases in the Tokyo Round Agreements -- of which disputes in the anti-dumping area accounted for a fair portion --, this seemed to reinforce Hong Kong's concern about the increasing use of the Anti-Dumping Code's provisions by governments for protectionist or trade harassment purposes. Hong Kong hoped the users of the Code, particularly the frequent users, would exercise due restraint because they otherwise risked bringing the liberal trading system into disrepute.

The representative of Korea associated his delegation with the previous speakers who had stressed the importance of early adoption and implementation of panel reports. Regarding the question of the Panel reports on Korea's restrictions on imports of beef, raised by Australia and New Zealand, he recalled his delegation's statement at the recent review of Korea's trade policies under the Trade Policy Review Mechanism (C/RM/M/27). Korea had faithfully abided by the Panel report, the bilateral agreements reached after the Panel report, and the understanding reached in the Committee on Balance-of-Payments Restrictions. It had placed great importance on the fulfilment of its GATT obligations, and would continue to do so. Pursuant to its GATT obligations, and in accordance with the bilateral agreements reached three years earlier, Korea was currently engaged in a second round of bilateral consultations with the United States, Australia and New Zealand. First meetings had already been held with these three countries. Once these discussions had been concluded, Korea would report on the outcome to the Council.

The representative of the United States acknowledged that the picture was not entirely pleasing as regards the implementation of panel reports. However, the United States recognized, as it was sure others would have too, that all governments faced certain political constraints in their ability to handle these disputes. In this connection, he noted that of the five panel reports adopted by the Council in recent years, and in which the United States had been a losing party and had been called upon to change its practices, the United States had implemented three of them. With regard to Australia's concern about the Panel report on US import restrictions on sugar, he said that the United States had fully implemented that report. It was true that the United States maintained restrictions on the importation of sugar that were fully consistent with its GATT obligations, as did many other contracting parties, and he agreed with Australia that the appropriate means of addressing this would be to successfully accomplish a re-instrumentation of agricultural protection measures in the Uruguay Round. However, there was no question that that report had been implemented.

He acknowledged that there were a few highly visible panel reports in respect of which the United States had not been able to achieve implementation. The Community had cited one, namely, the report on Section 337 of the US Tariff Act of 1930. In response, he reaffirmed the United States' commitment to developing a GATT-consistent Section 337 mechanism, and said his authorities had given very high priority to the development of a mechanism that would resolve the procedural difficulties found by the Panel report. Since January 1990, an inter-agency task force

had worked to develop a consensus on how, within the constraints of the US Constitution, Section 337 could be amended to address the Panel's recommendations. It was, of course, the United States' view that the high standards of protection and effective enforcement of those standards under an international agreement would greatly facilitate such an amendment, and that this could only be accomplished with a successful conclusion of the Uruguay Round. He recalled that in his policy statement at the time this report had been adopted, the US President had noted that the enactment of legislation amending Section 337 could most effectively occur through Uruguay Round implementing legislation.

He noted that the vast majority of panel reports in which the United States had been the complaining party and had prevailed, had not been implemented by its trading partners. He cited in this connection the Panel reports on Japan's restrictions on imports of certain agricultural products, on the Community's payments and subsidies to processors and producers of oilseeds and related animal-feed proteins, on Canada's import restrictions on ice cream and yoghurt, on the import distribution and sale of certain alcoholic drinks by Canada's provincial marketing agencies and on Korea's restrictions on imports of beef. The United States' record of obtaining successful implementation by others was therefore not as impressive as their record of obtaining implementation by the United States. This analysis of the record of implementation of panel reports adopted by the Council in recent years in which the United States had been a party, had recently been requested by and presented to a Congressional Committee in the United States. His authorities had affirmed very strongly their belief that the United States had an obligation to implement panel reports and that Congress had to take seriously the findings and obligations thereof.

The representative of Japan said that the situation regarding non-implementation of panel reports was not completely satisfactory. Although there was a favourable trend towards adoption of reports, there were also a number of cases where adoption itself appeared to be a problem. One example of the latter was the Panel report on Mexico's complaint concerning US restrictions on imports of tuna. In this regard, he recalled that at the June Council meeting the United States had mentioned the possibility of lifting restrictions on intermediary nations on the basis of an agreement with them, and had also indicated an ongoing legislative process in the United States in connection with this matter. He asked if the United States could indicate the present status of this situation.

With regard to the implementation of the Panel report on Japan's restrictions on certain agricultural products, he reiterated that Japan had implemented in good faith the majority of that Panel's recommendations. Japan had been conducting consultations on the follow-up to this report with a view to reaching a mutually satisfactory solution as soon as possible. The outcome of these consultations would be applied on an m.f.n. basis. On the general question of implementation, he reiterated Japan's continued interest in the implementation of the Panel reports on Section 337 of the US Tariff Act of 1930 and on the Community's regulation on imports of parts and components.



The representative of Argentina said he wished to clarify a comment made by Japan to the effect that Argentina mentioned eight panels whose reports had not been adopted. In fact, his delegation had not referred to adoption but to implementation of the recommendations thereof. His delegation had also noted that contracting parties were having recourse to the GATT's dispute settlement mechanism more frequently. The fact that they were trying to settle disputes through the GATT's mechanism represented important progress in the context of the GATT's provisions. Another aspect was that notwithstanding the comments made by the Community, the United States and Japan, there was no doubt that legislators could not use as an excuse for the non-fulfilment of GATT obligations the pretext that they could not change legislation in an evolving situation. The rights and obligations in the General Agreement existed because contracting parties had agreed to them. They had, therefore, to be respected and fulfilled. Argentina supported New Zealand's proposal that the subject of non-implementation of panel recommendations, in particular the Panel on Japan's restrictions on certain agricultural products, be included on the agenda of the next Council meeting and that Japan be asked to provide a written communication on progress thereon. It was important that the Council have on its agenda not only this but also all other panels whose implementation was pending, and that the concerned parties inform the Council in writing of progress made in implementation or of national measures taken in this connection.

The representative of Brazil said that his delegation agreed in general with the statements made at the present meeting and in particular with those of Chile, Argentina and India. It had rightly been mentioned that in the list of panel reports to be adopted, that on US denial of m.f.n. treatment as to imports of non-rubber footwear from Brazil should be removed. However, whether this Panel should be listed under Section C of C/181 dealing with implementation of panel reports, was a question he would address later in the meeting (see item 13).

The Chairman recalled that New Zealand had requested putting on the agenda of the next Council meeting, pursuant to Paragraph I.3 of the April 1989 Decision, the question of implementation of one panel report, and that Argentina had broadened this request to include all non-implemented panel reports. He noted that the Council periodically considered implementation of panel reports under the present Agenda item on the basis of a report by the Director-General submitted in June and November. However, if it were the wish of the Council or of any delegation to have this particular matter included on the agenda of the next Council meeting, he believed that wish would have to be acceded to.

The Council took note of the statements and of the Director-General's report in C/181 and Corr.1, and agreed that its Chairman would hold consultations in the interval before the next meeting to see whether and how the question of the Council's monitoring of the implementation of panel reports in accordance with Paragraph I.3 of the April 1989 Decision on improvements to the GATT dispute settlement rules and procedures (BISD 36S/61) would be put on the agenda of that meeting.

7. Canada - Import, distribution and sale of certain alcoholic drinks by provincial marketing agencies  
- Follow-up on the Panel report (DS17/6)

The Chairman recalled that at its meeting in June, the Council had considered this matter and had agreed to revert to it at the present meeting.

The representative of the United States recalled that at the June Council meeting his delegation had indicated that if there were no resolution of the outstanding issues in this case which could lead to a final agreement to remove the discriminatory and trade-restrictive measures by Ontario and other Canadian provinces, the United States would seek appropriate redress from the Council. Regrettably, he could not report that a resolution was in sight. Indeed, the situation in real terms had deteriorated. In particular, the provinces of Ontario and Quebec, which represented about fifty per cent of the Canadian beer market, continued to maintain practices that discriminated against imported beer and were GATT inconsistent. At the June Council meeting he had described at length the events that had led the United States to the present situation. He recalled that Canada and the United States had reached an agreement in principle on 25 April 1992 to guide future negotiations. In a spirit of compromise and in the face of opposition from US industry, the United States had accepted the continuation of Canada's discriminatory practices for another eighteen months, i.e., until 30 September 1993, to allow for a transition period for Canada's industry. The United States had also accepted the continuation of minimum-price requirements as long as they were made GATT consistent.

Unfortunately, since 25 April, the United States' good faith efforts had been met with continuing attempts at circumventing the Panel's basic findings which were the basis for the agreement in principle. This had been especially true on the part of the province of Ontario, which was the largest market for imported beer in Canada. Ontario had insisted on maintaining a discriminatory distribution system which required an extra step in the warehousing process with all its attendant costs for imported beer. The province of Quebec had also insisted on maintaining such a practice. The Panel report had been quite clear in this regard: the maintenance of an import monopoly did not justify discrimination against imported beer through regulations affecting its internal transportation, including the requirement of extra warehousing; such discrimination was inconsistent with Article III:4. Ontario had also recently announced a new beer pricing system which included additional cost-of-service charges applied only to imported beer. Canada had not been able to demonstrate that these costs were necessarily associated with the marketing of imported products. Indeed, these additional cost-of-service charges applied to imported beer were clearly "incurred in respect of services prescribed for imported products" (paragraph 5:18 of the Panel report). The new minimum retail price standard effectively prevented price competition, which was inconsistent with Canada's Article III obligation not to afford protection to domestic industry. Even to the extent that Ontario's pricing measures applied both to domestic and imported beer sold through the liquor control board stores, it had to be emphasized, as the Panel had done (paragraph 5:29), that application of formally identical legal provisions

could work to accord less favourable treatment to imported products in certain circumstances, which was certainly the case in this instance where a new pricing system affected US-brewed beer disproportionately.

Furthermore, at the end of July, Ontario would add a new impediment, namely an increase in the environmental levy on non-refillable alcoholic beverage containers. This tax would be applied only to cans containing beer and not to all cans such as soft drinks and other types of cans. Could the Ontario authorities really believe that soft drink cans, which actually constituted a larger portion of the market than beer cans, did not have the same environmental effect? Since US beer was exported to Canada primarily in cans and Canadian beer was sold primarily in bottles, it was clear that Ontario's environmental tax worked to afford protection to domestic beer and was therefore inconsistent with Article III. He said that US brewers could not ship beer to Canada in refillable bottles because the bottle collection centres were currently maintained in the brewers' retail outlets from which imported beer was prohibited from being sold. Although Canada had recently offered to set up an interim collection facility in the Liquor Control Board System, even the proposed interim collection system discriminated against imported beer because it would operate only in selected stores representing 285 out of 703 sales points available to US beer, thus providing unequal access to collection sites for imported beer. As this discriminatory tax had been increased after the United States and Canada had reached an agreement in principle on this dispute, it called into question whether Ontario was dealing in good faith in attempting to reach a resolution of the beer issue.

At the June Council meeting, Canada had indicated that this tax stemmed from a legitimate environmental purpose. In this connection, he said that Ontario had the world's highest rate of recycling aluminium cans -- about 88 per cent. Interestingly, refillable glass bottles together with their bottle caps actually produced more solid waste than aluminium cans, even with the high recovery rates of refillable glass bottles; none of the bottle caps were recycled. With the new technology for producing aluminium cans one could actually produce 30 aluminium cans from a pound of aluminium, while one actually produced fewer stainless steel bottle caps from a pound of steel. In any event, 100 per cent of those bottle caps found their way into the waste system. With an 88 per cent recycling rate for aluminium cans and a zero recycling rate for bottle caps, and a certain number of bottles going into the disposal system, it was quite clear on the facts that this system had been drawn up by people who had either little appreciation of the environment or another motive in mind. He added that recycling cans and refilling bottles both required comparable amounts of energy. Recycling aluminium cans saved 95 per cent of the energy required to make aluminium from virgin materials, and washing, transporting and refilling bottles consumed about the same amount of energy as recycling aluminium cans. One might then ask why this measure had been adopted. From the information available through the US Embassy in Canada, it appeared that a very active rôle had been played in the adoption of this tax by lobbying interests of the domestic beer industry.

The United States had continually made clear to Canada its willingness to negotiate. Over the previous three months, the United States had demonstrated its good faith and shown significant flexibility in its positions in an effort to reach a resolution of the issue. Unfortunately, such good faith, flexibility and willingness to negotiate had not been demonstrated by, in particular, the province of Ontario, as these recently adopted regulations demonstrated. Accordingly and regrettably, the United States had no option but to place this matter before the Council and point to the need for an appropriate redress. More than any other fact illustrating the potential impact of all these policies, one could look at the retail sales of beer in both the US and Canadian markets, because once one stripped away all the specific elements of this case, it was the retail price difference that best illustrated what the province of Ontario had done to US beer. Until Ontario had changed its pricing structure for beer, the price of a typical popularly-priced case of US beer in Ontario was CAN\$18. With the changes made, it was now CAN\$27 as compared to the price of a comparable case of Ontario-brewed beer of about CAN\$23, therefore ensuring a price advantage to Ontario-brewed beer of about CAN\$4 a case. Across the border in Buffalo, New York, a case of US beer sold for US\$10 and a case of comparable Canadian beer for approximately US\$13, thereby granting a price advantage of about US\$3 to the US-brewed beer. Both beers sold, of course, at substantially lower prices than in the Ontario market.

In a paper circulated to Council members at the present meeting, the United States had indicated its very conservative assessment of the results of these discriminatory provincial practices that had been found to be GATT inconsistent. The United States estimated the current damage at an amount not to exceed US\$80.7 million. This was a very reasonable assessment, in the United States' opinion, arrived at through a simple calculation based on the fact that the injury to US beer exports had been experienced primarily in the popularly-priced brands, i.e., beer at the low end of the market. The assessment was there for everyone to see. Canada's market averaged 2.1 billion litres of beer. The United States believed that its assessment was based on a very fair calculation, since about 18 per cent of that overall market could be accounted for by what he had referred to as popularly-priced beer as opposed to premium beer and since the United States was the sole supplier to the Canadian market of popularly-priced beer -- all the other countries being exporters of premium beer. The United States estimated that the competitive US product would enjoy about half of that popularly-priced beer market, or one-half of 18 per cent of such market.

On the basis of these facts, the United States requested the Council to authorize the withdrawal of concessions in the amount not to exceed US\$80.7 million. It hoped that the provincial government of Ontario would see reason and would begin to move constructively towards implementation of the Panel report, thereby obviating the need for any further action. His delegation awaited Canada's response with interest. He again stressed the importance and urgency of this matter and the fact that it was necessitated by a situation which had not only remained uncorrected, but which had actually become worse and was causing more serious harm to the United States than before the dispute had been brought to GATT.

The representative of Canada said that the United States' request for authority to suspend concessions to Canada was unwarranted. He noted that Canada had taken significant steps to bring its practices into GATT compliance. Furthermore, the United States had not advised the Council in advance of what specific actions it proposed to take; indeed, it had only circulated its impairment assessment just that morning to Council members. The Council had no basis to authorize the US action on this matter at the present meeting. He recalled that his delegation had informed the Council at its June meeting, that following bilateral consultations, the United States and Canada had reached agreement in principle on implementation of the relevant Panel recommendations in paragraph 6:1 of the report, sub-paragraphs (b), (c), (d), (e) and (g). The Agreement in principle had stipulated that measures on pricing and listing would be implemented by 30 June 1992 and on access to points of sale and distribution by 30 September 1993. This undertaking entailed compliance with the Panel's recommendations some 18 months sooner than envisaged in Canada's communication to contracting parties of 30 March (DS17/5). It also meant that the provinces would have restructured over the course of a few months alcoholic beverage systems which had been in place for over half a century. He added that no action had been required by the province of Prince Edward Island and no action concerning pricing had been required by the provinces of Quebec and Manitoba. All other provinces had now taken steps committed to in respect of pricing and listing practices, i.e., they had met the 30 June target contained in the Agreement in principle. All measures were being taken on an m.f.n. basis, and all the provinces concerned were modifying their pricing systems to comply with the Panel's recommendations. In keeping with the latter, British Columbia, Alberta, Saskatchewan and Ontario had each acted to remove the differential in the general and administrative components of their audited costs of service; New Brunswick and Newfoundland had removed the differential in their applied mark-ups; Nova Scotia now applied the same mark-up rate to both imported and domestic beer based on package size; British Columbia had removed the differential in the mark-up applied to draught beer; New Brunswick had removed its minimum price for beer, and Ontario, British Columbia and Newfoundland were implementing a GATT-consistent minimum price that was not fixed in relation to the price at which domestic beer was supplied.

On listings, all provinces provided national treatment: Ontario now permitted imported beer to be sold in the same package sizes as those in which domestic beer was sold in liquor commission stores. As to the cost-of-service charges, only those charges necessarily associated with marketing of imported products were now being applied in nine provinces. The remaining province did not apply any such charge and when the option of allowing foreign brewers to deliver their own beer from within a province to its retail points of sale came into effect, any applicable cost-of-service charges would be reduced by the amount of the transportation cost where the foreign brewer exercised that option.

On access to points of sale, Nova Scotia and New Brunswick currently applied equal access to imported and domestic products. Ontario had announced its intention to introduce legislation in the Fall session of the legislature with a view to providing equal access to all points of sale before Summer 1993, well ahead of the 30 September 1993 deadline agreed to

in the Agreement in principle. British Columbia, Alberta, Manitoba and Quebec were all committed to providing equal access to points of sale for imported and domestic products by 30 September 1993. Legislative changes would still have to be made in British Columbia, Alberta and Manitoba to meet this commitment. Newfoundland would ensure that imported beer was available at all liquor stores and liquor agencies.

On internal delivery, the option for foreign brewers to deliver their own beer from an in-province warehouse was directly tied to access to all retail outlets. New Brunswick now had in effect provisions for foreign brewers to deliver their own products directly to all points of sale from an in-province warehouse. Ontario would permit foreign brewers to avail themselves of this option before Summer 1993, and British Columbia, Alberta, Manitoba, Quebec, Nova Scotia and Newfoundland were committed to providing the option by 30 September 1993.

Canada considered this to be a comprehensive and impressive response in meeting its GATT obligations. It had moved a very long way in a very short time. It would appear, however, that because Canada had not made changes in a way that satisfied US brewers, the United States felt compelled to make its unwarranted request to the Council, and that some in the US industry were more interested in having the United States use Section 301 of the Omnibus Trade and Competitiveness Act of 1988, than they were in working through the GATT or in accepting Canada's right to act in accordance with its GATT obligations.

Regarding the United States' complaint on the environmental levy applied by Ontario, he said this had been specifically examined by the Panel. Paragraph 6.1(h) of the Panel report had found that the measure was not GATT inconsistent. As a budget measure Ontario had introduced on 30 April an increase in this levy from CAN\$0.05 to 0.10 for all alcoholic beverage containers, whether domestic or imported, and had extended its application effective 25 May. This levy was applied not only to cans, but to all non-refillable alcoholic beverage containers. While the original levy introduced in 1989 had applied only to containers that were not part of a deposit-return system, the revised levy now applied to all non-refillable alcoholic containers. As a result, domestic beer containers not previously covered because they were part of a domestic return system were now subject to the CAN\$0.10 levy. It was important to note that twenty per cent of domestic beer was sold in these containers; all wine, spirit and imported beer containers continued to be subject to a levy applied in accordance with the Panel's recommendations to all non-refillable containers regardless of origin, in accordance with the GATT's national treatment obligations, while alcohol sold in refillable bottles was subject to a refundable deposit instead of the levy. To accommodate the United States' concerns, Ontario had provided foreign manufacturers with three options to expedite the sale of imported beer in refillable containers and had established an interim refillable-container return and collection system. Some 720 locations, and not 285 as mentioned by the United States, had been made available to consumers to return these containers for a refund. US and other beers were sold in refillable containers. Ontario had gone to great lengths to accommodate the United States' interests. The fact that some US beer had become more

expensive did not constitute a violation of the GATT. This expense could be avoided by using refillable containers.

Regarding the United States' complaint concerning the requirement for imported beer to be shipped to a provincially-owned warehouse before it was delivered to retail outlets, Canada considered this action to be fully consistent with the operation of an import monopoly. The United States appeared to want the Council to accept that where a contracting party operated an import monopoly consistent with Article XVII, it could not take physical receipt of the imported product and charge for the costs of service in accordance with the provisions of Article 31.4 of the Havana Charter. This was contrary to the plain reading of GATT rules. Canada had operated import monopolies on alcoholic beverages since 1927, and its negotiations of tariffs on alcoholic beverages had been done in the full knowledge by its trading partners of the existence of these import monopolies. Canada had informed the Council that in adopting the Panel report, it intended to continue to operate these monopolies within the GATT's provisions. The United States was now asking the Council for authority to retaliate against Canada for exercising its GATT rights simply because some in the US industry had misread the Panel report to mean that Canada had to give up the full exercise of the import monopolies. US industry was demanding this in spite of the fact that Canada had negotiated tariff concessions on the imported products consistent with Article 31.4 of the Havana Charter. What Canadian provinces had had to change was the way they operated the internal sales of beer. This was being done, but the Panel had not said that Canada could not maintain its import monopolies nor charge, in accordance with Article 31.4 of the Havana Charter, for services incidental to the purchase and sale necessarily associated with importing the product. To accept the United States' interpretation would mean that no contracting party which operated a monopoly could take physical receipt of the goods and apply the relevant provisions of the Havana Charter without that monopoly also directly handling domestic products. This would render meaningless the concept of an import monopoly.

On pricing, the Ontario system applied equally to both imported and domestic products on a national treatment basis. Both domestic and imported products were assessed either a flat rate of CAN\$0.50 per litre or an ad valorem rate of twenty-one per cent, whichever was higher. The United States considered this to be contrary to the GATT because, in its view, it discriminated against the lower-priced product. A flat tax might, indeed, have a greater effect in ad valorem terms on the lower-priced product than on a higher-priced product, but this did not constitute discrimination contrary to Article III or any other GATT provision. The United States itself used flat taxes, even a combination of flat and ad valorem taxes, in a wide range of areas. The Panel (paragraphs 5.25 and 5.26) had confirmed, for its part, Ontario's method of assessing mark-up and taxes on beer.

On minimum price, Ontario had set a price below which beer could not be sold at any retail level, consistent with the Panel's recommendations. This price was below the price of any listed imported beer; it was not set at the price of domestic beer which was priced well above the minimum price. This left ample room for price competition between imported and domestic products.

Canada regarded the United States' request for authority to suspend concessions as unwarranted because the United States had not provided the Council with a sufficient basis on which to address the question. A proper request would call for an indication to the Council prior to its meeting of the specific action being proposed, i.e., the product coverage, the amount of trade involved and the tariff rates to be applied. Notwithstanding consultations held five days earlier, Canada had only been informed that day of the specific measures being proposed by the United States, which still presented only a partial picture of what the latter had in mind. He noted that no opportunity had been given to the CONTRACTING PARTIES, let alone to Canada, to consider the substance of this request. This disregard for the GATT was unacceptable. Canada had endeavoured to achieve a mutually agreed solution to this dispute with the United States; that did not mean that Canada necessarily had to accept any proposal. Canada remained open to a mutually satisfactory resolution of this matter; regrettably, this had not proved possible because of the excessive demands on the part of US industry enamoured with their Government's powers under Section 301. Canada considered the Council's consideration of the United States' request at the present meeting as inappropriate, and was obviously not in a position to agree thereto. In the interests of the dispute settlement process, however, and of living up to its GATT obligations, Canada was prepared to have the Council agree to an expedited review of the specific measures raised by the United States, namely the increase in Ontario's environmental levy, the operation of the import monopoly and the pricing of beer imported into Ontario. This could be done along the lines of paragraph 19.5 of the draft text on dispute settlement in the Uruguay Round Draft Final Act (MTN.TNC/W/FA) which called for an examination and decision within ninety days. Canada believed this demonstrated its commitment in this matter to meeting its GATT obligations. At the same time, Canada noted that the United States had imposed an arbitrary deadline, under its Section 301 legislation, of 24 July for retaliation against Canadian products, and asked the Council to remind the United States of its GATT obligations. Retaliation without the authorization of the CONTRACTING PARTIES was clearly contrary to GATT obligations. Were the United States to disregard its obligations and retaliate against Canadian products without the authority of the Council, Canada reserved the right to respond accordingly.

Regarding the informal paper circulated by the United States that same morning, he noted that the problems the US industry was allegedly incurring were with respect to Ontario and Quebec, which represented fifty per cent of the Canadian beer market. As the paper was based on the entire market, this assumption made the calculation therein somewhat excessive. He also noted that the paper based the calculation on two provinces where US brewers had enjoyed the highest level of import penetration, i.e., British Columbia and Alberta, in the period 1988 and 1990. In this connection, he recalled that an investigation into alleged dumping of US beer in the province of British Columbia over that same period was currently being discussed in another GATT body. While Canada had not had a chance to look fully into the details of the United States' paper, its first examination had convinced it that the United States had made some heroic assumptions, especially about the appeal and the price sensitivity of its beer.



The representative of the United States said he was dismayed at Canada's description of its response to this entire problem. It appeared that Canada did not accept that it was still doing anything inconsistent with the Panel's recommendations, and also that the United States' assessment of damage was not accurate. Canada had been very adept at urging the Council to remind the United States of its GATT obligations by constant references to Section 301, and also at creating the illusion that Canada was observing its GATT obligations. The United States fully acknowledged that many of Canada's provinces had taken appropriate steps to implement the Panel's recommendations. However, the truth of the United States' complaint against Ontario was proven by the results of Canada's efforts to urge that province to take the same steps taken by other provinces. He noted that, in implementing changes to its system, Ontario had in fact not taken the same steps but had adopted entirely different provisions with respect to minimum pricing, points of sale and the maintenance of an import monopoly.

The problem at hand was unique and had not been dealt with directly by the GATT previously. Apparently, the Federal Government of Canada was unable to compel the Government of the province of Ontario to comply with the former's GATT obligations. Canada's arguments were clearly based both on a misrepresentation of the Ontario Government's new measures and of the implications of the Panel's report. With respect to the issue of maintenance of an import monopoly, the Panel report was quite clear in saying that Canada's GATT right to establish an import and sales monopoly for beer did not entail the right to discriminate against imported beer inconsistently with Article III through regulations affecting its internal transportation. This was precisely what the modified Ontario system did. In addition, while Canada had described Ontario's pricing system as being one which was not based upon a minimum import price, it was ironic indeed that the additional cost-of-service charges applied to imported beer were applied in such a way as to effectively prevent price competition by imports.

With respect to the environmental levy, the United States believed that the Panel report had clearly indicated that this levy did not have to be addressed in light of the United States' arguments. However, it was clear from all he had said earlier that this levy was maintained and utilized in a way that was designed to prevent importers from effectively competing in the market; that was evident from the very complex rules for the use of refillable containers, i.e., with the access to dedicated centres being administered and applied in such a way as to make it virtually impossible for importers to compete through the sale of imported bottles. It appeared that the Government of Ontario had gone to incredible lengths to make it virtually impossible for US beer to be sold on a competitive basis.

Regarding Canada's request for an expedited review on whether or not the revised changes by Ontario brought it into conformity with its obligations, he noted that the United States was the second contracting party to successfully prevail in a case involving the discriminatory aspects of Canada's provincial liquor policies. The United States did not consider it acceptable for the GATT to respond to this continuing discrimination by suggesting that the appropriate mechanism was yet another

panel report. Presumably, once another panel report had been issued, Ontario would make another minor change in its law in a way that would require the United States to come back to the GATT again. Canada had indicated its belief that United States' action to compel compliance was outrageous and inconsistent with the spirit of GATT. He would respond by saying that the deliberate policy by the Government of Ontario to circumvent its obligation to provide access to products which enjoyed comparative advantage in its market was, in his opinion, intolerable and should not be condoned by the Council. He was prepared to concede, in light of the attitude of intransigence adopted by Canada, that the Council was probably not going to resolve this matter at the present meeting. However, the United States would continue to take this matter very seriously. The United States of course had to question the ability of the GATT system to compel Ontario to comply with its obligations. The United States was left with very few practical options for resolving this dispute through the multilateral process.

The representative of Canada said that his delegation was no further advanced at this point than before in finding out what the United States planned to do and on what basis it would be asking the Council for authority to withdraw concessions. Nevertheless, he would respond to some of the United States' assertions. First, regarding internal transportation, there appeared to be a misunderstanding on the part of the United States -- and perhaps on the part of US industry -- as to what the Panel had addressed, namely the transportation charges after the import monopoly had received the goods. It was entirely consistent with Canada's GATT obligations for the import monopoly to receive the goods, and if that required a certain amount of transportation, this had to be reckoned with. The transportation from the import monopoly's warehouse to the points of sale was effected on a national treatment basis in that it could be done either by the monopoly itself or by the supplier's own means of transportation and deducting the charge thereafter, whichever was of interest to the supplier. The minimum price was below both the US price and the Canadian price, and did not impede the US exporters' ability to compete on a price basis.

As to the environmental levy, the answer could only be that it applied to all containers containing alcoholic beverages and that twenty per cent of Canadian domestically-produced products were also in non-refillable containers. One item that had perhaps been overlooked in this area was that Ontario collected a return fee of CAN\$0.10 per item for canned alcoholic beverages. This did not apply to the US product, which in a sense put the latter at an advantage. Moreover, as to the points of sale, the Ontario authorities had, in the short time available to them, placed 720 points of sale with these refillable containers should the US companies wish to use them. Canada had suggested the expedited review procedure on the remaining points at issue as a way out of this difficult debate. He had urged the United States earlier to give that suggestion its full consideration and trusted that the latter's response was not simply a way of masking the fact that it already intended to move to retaliation by 24 July, with or without the authority of the Council.

The representative of the European Communities recalled that at previous Council meetings his delegation had stated its concern over the lack of implementation by Canadian provinces of the Panel's recommendations. The Community continued to have serious concerns and questions as regards the necessary follow-up thereto. The Community also appreciated the United States' move to seek GATT procedures to take the process further. In this respect, he would certainly echo the question raised by Canada as to what would be the United States' next move if the Council did not agree to its request. The Community would certainly invite the United States to continue to remain within GATT procedures in that event. In order to allow the United States to do that it was clear that appropriate solutions had to be found that allowed for a settlement within existing procedures. Any request for withdrawal of concessions was obviously a very important and serious matter which had to be treated in that way. Equitable solutions had to be found and Canada had made a proposal in this respect.

The proposal for the Council to assess jointly whether or not Canada had implemented the Panel's recommendations could only be a first step. That decision could not be taken by individual parties, and solutions whereby the CONTRACTING PARTIES jointly were given such an opportunity had to be explored. Canada's proposal to this effect sounded interesting, and he hoped that all could work in good faith in the context of this proposal. The second step was to assess the damage in the event that lack of implementation had been found. One could not have a situation where the Council was asked to endorse on a decision placed on the table by the complaining party on the day of its meeting. A serious examination was required and perhaps one should draw on the dispute settlement procedures that were contained in the Uruguay Round Draft Final Act (MTN.TNC/W/FA). One could perhaps think of arbitration if other procedures could not be found to settle the question of the amount of injury. In order to solve this problem, the defending party should demonstrate its good faith and not seek to block procedures. He trusted that Canada would take all the necessary steps to work together with the Council and with other contracting parties in order to define an appropriate solution. Suggestions had been made therefore, for handling this process within the GATT rules and procedures, and the Community hoped the United States would remain within those until the end.

The representative of Australia said that his authorities were interested in this case. Australia would be examining the information provided by Canada on implementation actions, and any further information that might be forthcoming in this respect.

The representative of Norway, on behalf of the Nordic countries, said that the "normal" procedure in respect of the request for retaliation and the principles involved would of course be to reconvene the Panel to examine the GATT conformity of Canada's implementation measures. The Nordic countries had noted the United States' comments in this regard. If for some reason the reconvening of the Panel should be impracticable, arbitration -- to which the Community had just referred -- would seem to the Nordic countries to be a pragmatic and appropriate approach. One also had to be clear on whether Canada's measures conformed with the GATT before retaliation was authorized. Moreover, should a request for

retaliation be placed before the CONTRACTING PARTIES, time was necessary to assess whether the withdrawal of concessions was commensurate with the impairment or nullification of benefits, if any. For these reasons, the Nordic countries would be very hesitant to venture into a decision on the request for retaliatory measures at the present meeting. The question of the GATT conformity of the implementation would have to be resolved before one could have that debate. Some possibilities for that had been raised by Canada and the Community. One could return to the possibility of retaliation only after clearing the disagreement as to the GATT consistency of the implementation.

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

The representative of Argentina expressed his delegation's concern at the way in which this item had been dealt with. He said that when there was a follow-up to a panel report, as in the case at hand, a very rapid solution should normally be found as to the appropriate means for implementing the decisions of such a panel. He believed therefore that the Council should consider the possibility of an emergency procedure to deal with the points raised by the United States.

The Council took note of the statement.

8. United States - Restrictions on imports of tuna  
- Recourse to Article XXIII:2 by the European Communities (DS29/2, DS29/3, DS33/1)

The Chairman recalled that at its meeting in June, the Council had considered this matter and had agreed to revert to it at the present meeting. He drew attention to a recent request from the Netherlands on behalf of the Netherlands Antilles for Article XXIII:1 consultations with the United States on the same matter, circulated in DS33/1. The request for an Article XXIII:2 panel by the Netherlands on behalf of the Netherlands Antilles was in the process of being circulated as DS29/3.

The representative of the European Communities asked for additional information from the United States concerning the ongoing legislative process of modifying the contested piece of legislation.

The representative of the United States said that a bill was pending in the US House of Representatives which, if passed into law, would result in the lifting of the primary and intermediary nation tuna embargoes. The bill had been introduced in the House on 17 June and consideration had proceeded rapidly; it had been reported out of the Fisheries Sub-committee of the House Merchant Marine and Fisheries Committee on 25 June and out of the full Merchant Marine Committee on 2 July. The bill was now scheduled for consideration by the House Ways and Means Committee on 23 July and was expected to be reported out of that Committee shortly thereafter. The United States expected that consideration in the Senate would also proceed rapidly, and that a companion bill would be introduced in the Senate shortly after it reconvened on 20 July. The Senate Commerce Committee had scheduled a hearing on this legislation on 23 July. His

authorities remained hopeful that the bill would be signed into law within the not too distant future.

The representative of the European Communities said that the information provided by the United States was essentially based on hopeful expectations and not on hard facts, at least as far as the present legislation was concerned. The Community therefore would have to pursue its request for the establishment of a panel in the case at hand. It would obviously keep a very close eye on the movement of the bill in the US House of Representatives. If that bill was passed into law, effectively lifting the primary and secondary embargoes, the Community would obviously take that into account in the further proceedings of the panel. In the light of the available information, however, it had no choice but to request the establishment of that panel at the present meeting. In this context he asked that the Netherlands representative be given the floor to speak on behalf of the Netherlands Antilles.

The representative of the Netherlands, on behalf of the Netherlands Antilles, said that the Netherlands, in the interests of the Netherlands Antilles, had entered into Article XXIII:1 consultations with the United States. As these consultations had not led to a mutually satisfactory solution, and recalling his delegation's statement on this matter at the June Council meeting, the Netherlands thereby requested to join, as a co-complainant, the panel to be established pursuant to the Community's request (DS29/2).

The representative of the United States recognized that this was the second Council meeting in which a request for a panel had been pending from the Community. While the United States did not necessarily see a panel as the best mechanism to bring about a successful resolution of the problem, it recognized the Community's right to the establishment of a panel unless the Council decided otherwise, in accordance with Paragraph F(a) of the April 1989 Decision on improvements to the GATT dispute settlement rules and procedures (BISD 36S/61). With respect to the request from the Netherlands on behalf of the Netherlands Antilles, the United States did not see the need for an additional dispute settlement proceeding on this issue or to devote additional GATT resources to another panel. Accordingly, it was prepared to agree to their request to join the panel process requested by the Community. In accordance with Paragraph F(d)(2) of the April 1989 Decision, the United States reserved all its rights as if separate panels had been established.

The representatives of Canada, El Salvador, Australia, Colombia, New Zealand, Venezuela, Thailand, Costa Rica and Japan reserved their countries' third-party rights to intervene in the panel proceedings.

The representative of Canada welcomed the information provided by the United States on the progress that the bill was making in the House of Representatives and on the prognosis that a similar bill would be introduced into the Senate and hopefully be reconciled and passed before the present legislative season came to an end. That being said, Canada supported the Community's request for a panel on this matter as it continued to believe that important issues were at stake. Canada would

have preferred to see the original Panel report adopted so that jurisprudence could have been enshrined. As that was not possible perhaps one needed to take this secondary route.

The representative of El Salvador welcomed the information concerning a possible amendment to the US legislation which had led to the embargoes. Nonetheless, she wished to inform the Council that El Salvador had received a communication from the United States stipulating a threat of a secondary embargo on yellow-fin tuna products from El Salvador unless the latter decreed an embargo against imports of yellow-fin tuna or yellow-fin tuna products from Colombia. The district court of Northern California had classified El Salvador as an intermediary country, although El Salvador did not import yellow-fin tuna or yellow-fin tuna products from Colombia, and did not have its own tuna fishing fleet. El Salvador shared the objective of protecting all species, including dolphins, but believed that the extra-territorial application of unilateral trade measures was unacceptable since it violated contracting parties' GATT rights. Furthermore, it believed that to threaten a country with the imposition of trade restrictions unless that country in turn adopted a measure which would itself constitute a violation of its own GATT obligations vis-à-vis third parties led one to some extremely dangerous ground. El Salvador supported the Community's request for a panel to consider the secondary embargo.

The representative of Colombia said that his Government hoped to see a mutually satisfactory solution to the primary and secondary embargoes of certain tuna products which arose from the application of the US Marine Mammal Protection Act.

The representatives of Argentina and Peru supported the establishment of the panel requested by the Community. They also voiced their concern at the non-adoption of the Panel report on the complaint by Mexico, which would have provided a solution to the problem at hand.

The representative Singapore registered Singapore's interest in the case at hand.

The representative of Japan said that his country's position on this matter was clear. Japan was concerned with the primary and secondary embargoes. He hoped that this new panel process would be activated quickly and that an appropriate conclusion would be reached expeditiously therein.

The representative of the United States said that his Government had been instructed that very day to clarify the situation with regard to the imposition of the secondary embargo against El Salvador. This clarification showed that El Salvador was not subject to a secondary embargo based on findings under the law. On a more general point, the imposition by the United States of primary and secondary embargoes was not a matter for discretion by the Executive branch of Government. The embargoes were imposed by a federal court order interpreting an Act of Congress and there was absolutely no discretion in the means in which those embargoes were decided upon and imposed. The only appropriate means

available to the Executive to change this situation was to have a legislative enactment which would provide the authority to lift those embargoes as part of a negotiation process.

The Council took note of the statements and agreed to establish a panel with the following standard 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 next twenty days:

"To examine, in the light of the relevant GATT provisions, the matter referred to the CONTRACTING PARTIES by the European Communities and the Netherlands on behalf of the Netherlands Antilles in documents DS29/2 and DS29/3 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. Customs unions and free-trade areas; regional agreements
- (a) EFTA - Czech and Slovak Federal Republic Free-Trade Agreement - Communication from Iceland on behalf of the EFTA countries and the Czech and Slovak Federal Republic (L/7041 and Add.1)
  - (b) Free-Trade Agreements between Sweden and Estonia, Latvia and Lithuania
    - Communication from Sweden (L/7036)
- (a) EFTA - Czech and Slovak Federal Republic Free-Trade Agreement - Communication from Iceland on behalf of the EFTA countries and the Czech and Slovak Federal Republic (L/7041 and Add.1)

The representative of Norway, speaking on behalf of the EFTA contracting parties, said that on 18 June 1992, the EFTA member States and the Czech and Slovak Federal Republic (CSFR) had notified to contracting parties a Free-Trade Agreement between the EFTA member States and the CSFR together with the Annexes and Lists which formed an integral part thereof. This notification had been made with reference to Article XXIV:7. The Agreement had been signed on 20 March 1992, and had entered into force on 1 July 1992 for the CSFR, Sweden and Norway. The Agreement was being provisionally applied by Switzerland, and was still subject to ratification by Austria, Finland and Iceland. The Agreement covered trade in industrial products, fish and other marine products, and processed agricultural products. Within its framework, bilateral arrangements on agriculture had also been concluded between each EFTA State and the CSFR. The objective of the Agreement was to abolish tariffs and other restrictions on substantially all the trade between the EFTA States and the CSFR. It also contained legally binding provisions dealing with, inter alia, state aid and competition. An evolutionary clause offered the possibility of extending relations to areas not covered by the Agreement. The parties to the Agreement were at the Council's disposal for further information and consultation.

The representative of the Czech and Slovak Federal Republic, said that in the process of transformation of the CSFR's economy from a centrally-planned to a market one, the quality of trade relations played a crucial rôle. The CSFR's trade policy was guided by the spirit of liberalization, and adherence to the multilateral trading system was the cornerstone of this policy. The CSFR was participating in the European integration processes which it considered to be complementary to the multilaterally agreed rules and principles of international trade. His authorities shared the view that free-trade agreements served as a suitable instrument for the development of links with traditional trade partners, reflecting both the economic realities of the 1990's and the CSFR's economic needs. He recalled the salient features of the Free-Trade Agreement at hand, as had been indicated by Norway's representative. The Agreement took into account the CSFR's economic reform process, and the different economic and social conditions prevailing in the signatory states. Accordingly, the dismantling of trade barriers would be asymmetrical, with the EFTA States abolishing trade barriers more quickly than the CSFR. He stressed the CSFR's readiness to provide further information, and to engage in consultations on this Agreement.

The Chairman proposed that the Council take note of the statements and agree to establish a working party with the following terms of reference and composition:

Terms of reference:

"To examine in the light of the relevant provisions of the General Agreement, the EFTA - Czech and Slovak Federal Republic Free-Trade Agreement, and to report to the Council".

Membership:

The Working Party would be open to all contracting parties indicating their wish to serve on it.

The Council so agreed.

The Chairman said that, in accordance with its normal practice, the Council would have authorized him to appoint the Chairman of the Working Party in consultation with interested parties. He informed the Council that he had already carried out the necessary consultations, and that Mr. Kesavapany (Singapore) had agreed to Chair the Working Party.

The Council took note of this information.

- (b) Free-Trade Agreements between Sweden and Estonia, Latvia and Lithuania  
- Communication from Sweden (L/7036)

The representative of Sweden informed the Council of three free-trade Agreements entered into between Sweden and Latvia, Lithuania and Estonia respectively. The Agreement with Latvia had been signed on 10 March 1992 and had entered into force on 1 July; that with Lithuania had been signed



on 17 March 1992 and would enter into force subject to ratification by Lithuania; that with Estonia had been signed on 31 March 1992 and had entered into force on 1 July. All three Agreements covered trade in industrial, fishery and agricultural products. Their objective was to abolish tariffs and other restrictions on substantially all the trade between Sweden and each of the other parties. The underlying objective of the Agreements had been to contribute to and facilitate the integration of the Baltic States into the European and the world economy. In the Agreements, consideration had been given to the economic and social conditions in Latvia, Lithuania and Estonia, and to the need to contribute to the process of economic liberalization taking place in these countries aimed at the establishment of a market economy. The Agreements were of an evolutionary nature in that provisions dealing with certain sectors -- public procurement, state aid (other than export aid), competition between enterprises, and intellectual property rights -- would be put into effect not later than 31 December 1995. Moreover, an evolutionary clause offered the possibility of extending the rules to areas not currently covered. The Agreements had been concluded as a result of Sweden's desire to assist Latvia, Lithuania and Estonia in their difficult task of establishing market economies and securing a place in international trade. He noted that market access was of fundamental importance in achieving this end. In its wish to comply with the GATT's rules, especially the Decision of the CONTRACTING PARTIES of 1971 (BISD 18S/38), and to facilitate the Council's work, Sweden had endeavoured to inform it as early as possible of these Agreements, even though one of them had not yet been ratified. Sweden remained at the Council's disposal to provide further information and to engage in consultations on the Agreements.

The representative of Australia asked whether, in accordance with GATT practice, it might be appropriate to establish a working party to examine these Agreements.

The Council took note of the statements and agreed to establish a working party as follows:

Terms of reference:

"To examine, in the light of the relevant provisions of the General Agreement, the Free-Trade Agreements between Sweden and Estonia, Sweden and Latvia, and Sweden and Lithuania, and to report to the Council".

Membership:

The Working party would be open to all contracting parties indicating their wish to serve on it.

Chairman:

The Council Chairman would be authorized to designate the Chairman of the Working Party in consultation with the delegations principally concerned.

10. Southern Common Market (MERCOSUR)  
- Request by the United States for notification under Article XXIV  
and for the establishment of a working party (L/7029)

The Chairman recalled that the matter of the Southern Common Market (MERCOSUR) had been discussed at the Council meetings in February and April 1991, and also at the CONTRACTING PARTIES' Forty-Seventh Session in December 1991, under the heading "Agreements among Argentina, Brazil, Paraguay and Uruguay". The matter had also been raised by the United States under "Other Business" at the April 1992 Council meeting. As recently as the day before, this matter had also been discussed in the Committee on Trade and Development. He drew attention to a communication from the United States in document L/7029.

The representative of the United States noted that the Southern Common Market (MERCOSUR), which according to its text contemplated the formation of a customs union by 31 December 1994, had been notified by its participating countries as a preferential arrangement under the Enabling Clause<sup>4</sup> (L/6985). The United States fully supported the efforts of the MERCOSUR countries to form a common market that liberalized trade amongst its member states and did not raise barriers to third countries. However, it did not consider notification of MERCOSUR under the Enabling Clause as sufficient to meet GATT requirements concerning the establishment of a customs union. The substantive and procedural GATT requirements for the formation of free-trade areas and customs unions were established in Article XXIV. In the United States' view, the Enabling Clause had been negotiated to address developing-country preference systems which could not otherwise be justified under GATT provisions. The selective preferences under ALADI as well as other partial preferential systems were clearly not covered by Article XXIV and therefore required the additional provisions of the Enabling Clause to justify them under the GATT. However, this was not the situation with the emerging MERCOSUR, which was explicitly described as a common market and customs union and was currently in the process of developing a common external tariff. The United States believed that Article XXIV was the principal GATT provision addressing the formation of free-trade areas and customs unions. The Enabling Clause, which dealt with preferences of a more limited scope, could not be considered to replace this long-standing substantive and procedural framework. Since the inception of the GATT, Article XXIV provisions had been the principal benchmark against which the CONTRACTING PARTIES had assessed the trade implications and effects of large general trade preference systems that departed from the m.f.n. requirement under Article I. Article XXIV procedures were well established and had a good track record of providing the transparency and assessment needed to help develop GATT-consistent preferential systems. Certainly, contracting parties would object if one of the major trading partners decided not to follow such procedures.

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<sup>4</sup>Differential and More Favourable Treatment, Reciprocity and Fuller Participation of Developing Countries (BISD 26S/203).

Of equal significance was the extremely large scope of the emerging MERCOSUR, which was an important event in global trade with implications for a broad range of countries which traded and invested in that market. With over 200 million people and a combined gross domestic product of almost half a trillion dollars, MERCOSUR would serve as a significant engine to global and regional trade. In the United States' view, following Article XXIV was the best assurance that the trade-liberalizing goals of MERCOSUR would be met and supported, and that trade-distorting aspects or GATT-inconsistent provisions could be identified, reviewed and presumably avoided. The MERCOSUR parties had indicated their intention to create an open common market and their willingness to subject this arrangement to close scrutiny to determine its conformity to the GATT's procedures and rules. The United States welcomed their statement in that regard, and, therefore, hoped that these countries could agree to a working party under Article XXIV which could provide an outlet for all contracting parties to examine the specific details of the MERCOSUR Treaty. The United States further requested that, in accordance with the provisions of Article XXIV:5 and XXIV:7, a working party be established, that the relevant documents which had been provided by the MERCOSUR countries be referred to it, and that a report be prepared for the Council.

The representative of Brazil recalled that at the meeting of the Committee on Trade and Development (CTD) held the day before, Argentina and Brazil had offered contracting parties ample opportunity to debate the Treaty establishing the MERCOSUR, and had sought, in all transparency, to provide clarification on some points that delegations had felt to be necessary. The parties to this Treaty continued to be ready to furnish, in the CTD, all information deemed necessary for a complete understanding of the MERCOSUR and of its implications for contracting parties' interests. The debate in the CTD had been substantial and should have demonstrated the resolve of the parties to this Treaty to promote a broad discussion of the MERCOSUR in that forum. He recalled that the Community had presented certain "elements for a compromise" at that meeting, and hoped that the procedures proposed in the meeting for the review of the MERCOSUR would provide a basis for consensus, thus avoiding further and unnecessary discussion on this matter in the Council. Over a long period of time, developing contracting parties had striven for inclusion in the GATT of legal recognition of differential and more favourable treatment for them as a means of promoting their export capacity and economic development. One of the many forms of such treatment was preferential treatment among the developing countries themselves or that accorded by developed countries. The Enabling Clause agreed in the Tokyo Round had given legal expression to this objective. It had been the result of developing contracting parties' efforts to ensure greater security, stability and predictability to the operation of the principle of differential and more favourable treatment within the GATT framework. The Enabling Clause had met a fundamental concern of developing countries by making such treatment an integral part of the GATT system which no longer required waivers for its application. It also provided the perspective against which the developing countries' participation in the trading system should be seen. The MERCOSUR was part and parcel of the efforts of a group of developing countries to put into practice the principle of differential and more favourable treatment. The

Enabling Clause, in paragraph 2(c), provided for the application of that treatment to "regional or global" arrangements entered into amongst less developed contracting parties".

The MERCOSUR was an integral part of the agreements under the Latin American Integration Association (LAIA) established by the Montevideo Treaty of 1980 and notified under the Enabling Clause in 1982. Article 1 of the Montevideo Treaty set out clearly that the LAIA would have as a long-term objective "the gradual and progressive establishment of a Latin American common market". Article 3(b) of that Treaty stated that "In the implementation of the present Treaty and the evolution towards its final objective, member countries shall bear in mind the following principles: ... (b) Convergence, meaning progressive multilateralization of partial scope agreements by means of periodical negotiations between member countries, with a view to establish the Latin American common market". These references illustrated how the Montevideo Treaty had been notified under the Enabling Clause and how the MERCOSUR, which was under the latter's framework, had followed suit. The MERCOSUR countries did not dispute the validity of the application of Article XXIV for free-trade areas and customs unions, in the same manner as they did not question the validity of the waiver requirement in Article XXV:5 for the granting of trade preferences. However, the Enabling Clause had been established to offer special procedures for the negotiation and implementation of trade preferences to or among developing countries. It was therefore disquieting to be confronted with the United States' request which, if maintained, would be tantamount to withdrawing a right developing countries had acquired in the Tokyo Round after prolonged negotiations, and to substantially reducing the scope and effectiveness of the Enabling Clause.

One of the reasons for invoking Article XXIV procedures had to do with ensuring the "level of transparency", as indicated in the United States' communication. He assured the United States that in notifying their Treaty under the Enabling Clause, the MERCOSUR countries were not expecting to be granted a procedure any less transparent than that normally followed in GATT. As they had indicated in the CTD meeting the day before, they were ready to furnish, in that forum, all the information necessary for a full understanding of the MERCOSUR.

Another matter for concern, especially for developing contracting parties, was the very limited interpretation given by the United States to the scope of the Enabling Clause, in that the latter had been established to address, inter alia, preferential trade arrangements that did not meet the criteria of Article XXIV. Brazil wondered on what basis the United States promoted such a limited interpretation of the Clause. It was perhaps the United States' intention to restrict its application to the bare minimum, because, to Brazil's knowledge, such an interpretation was certainly not based on any GATT decisions.

The MERCOSUR countries, which maintained with the United States a cooperation agreement, under the "Initiative for the Americas", were puzzled at the United States' attempts to withdraw from them the right to invoke the principle of differential and more favourable treatment, on the grounds that the dimensions of the MERCOSUR "could not be considered in the same context as the limited selective preferences previously justified

under the Enabling Clause". Their bewilderment was compounded by the number of preferential concessions being granted by the United States to countries that did not claim to be developing countries. He said that the social and economic predicaments of the MERCOSUR countries were not any less serious than those facing these other countries.

Another serious point raised by the United States related to its possible interpretation that the Enabling Clause would command less respect than other GATT rules. Brazil firmly disagreed with such an interpretation. Decisions of the CONTRACTING PARTIES carried no less weight than the Articles of the General Agreement. To initiate a process of categorizing decisions, understandings and other disciplines adopted in the GATT, would mean embarking on a very risky business with serious implications for the integrity of the General Agreement.

In as much as Brazil recognized the right of contracting parties to seek fullest possible access to information on trade measures and agreements undertaken in the GATT's framework and every opportunity to consult with the MERCOSUR countries on any aspect of their Agreement, Brazil reserved the right to resort to all the principles and disciplines available to developing countries in the GATT framework. For this reason, Brazil was not able to accept the United States' request. Brazil was ready, however, to consult in the appropriate context -- that of the CTD -- with interested parties to reach a solution that would ensure full satisfaction to the concerns raised by any contracting party.

The representative of Canada said that his Government supported the principles underlying the MERCOSUR arrangement, namely the desire of the MERCOSUR countries to promote their economic development on the basis of enhanced trade and competition in expanding and liberalized markets. As indicated in the meeting of the CTD the day before, Canada continued to believe that Article XXIV provided the appropriate context and procedures to examine an agreement as ambitious as MERCOSUR. In Canada's view, the Agreement's scope and coverage surpassed by far the kinds of arrangements that were foreseen by and concluded under the Enabling Clause. Canada had noted the compromise solution suggested by the Community in the CTD meeting, and to which Brazil had referred. This proposal included several positive elements which could contribute to full transparency in the examination of the MERCOSUR. His delegation had referred this suggested compromise to its authorities for their consideration. Given that several delegations were, as he understood it, in the same position, he proposed that time be allowed for delegations to consult their capitals, and for informal consultations on this matter by the Chairman of the CTD to continue. His delegation was confident that a mutually acceptable solution could be worked out.

The representative of Argentina noted that this matter had been placed on the Agenda by the United States, which considered it to be inappropriate to notify the MERCOSUR under the Enabling Clause. He said that the process of integration in the Latin American region had begun in 1960 with the Latin American Integration Association (LAIA), which was subsequently replaced by ALADI. He recalled that ALADI included three types of agreements in order to reach its objectives: (1) liberalization through regional agreements; (2) complementarity agreements between

countries to which one might not have to apply the m.f.n. principle, such as in the case of MERCOSUR; and (3) sectorial agreements such as the Argentina/Brazil Agreement in 1986 prior to MERCOSUR. The Treaty of Asunción setting up the MERCOSUR should be seen as a new effort to develop progressively the integration of Latin America in a way compatible with the ALADI; it was no more than a step further along the integration process as defined by the ALADI agreement. The proof thereof was that in Article VIII of the MERCOSUR Treaty the parties had committed themselves to preserving all the commitments assumed in the framework of the Montevideo Treaty of 1980. Article XXIX of the Treaty expressly stated that it was open to all other parties to ALADI. It was by virtue of the ALADI umbrella that MERCOSUR had been incorporated as an additional agreement: it was not something separate, but rather something that was part of the ALADI process. It was on the basis of this reality that MERCOSUR had been approved and signed as a complementarity agreement. As Brazil had indicated, this Treaty had been notified on 5 March, and one had had the opportunity of discussing it in the CTD the day before.

Regarding the experience of GATT as concerned customs unions and free-trade agreements, he said that until 1979 such matters had been notified and examined under Article XXIV both for developed as well as developing countries. This had been the case with the first Latin American Treaty in 1960. Since 1979, however, the situation had been modified with the adoption by the CONTRACTING PARTIES of the Enabling Clause. He then referred to the experience with both of these provisions. Fifty-five cases of customs unions and free-trade areas had been examined under Article XXIV, by working parties for most of them; only in five insignificant cases had the conclusion been reached that a particular customs union was compatible or incompatible with GATT. No other working party had reached any other conclusion. He recalled that in introducing the Working Party report on the Canada-US Free-Trade Agreement at the November 1991 Council meeting (C/M/253, page 24), its Chairman had pointed out that the experience had shown that more than fifty working parties had been set up and yet no conclusions had been reached on the compatibility of the agreements examined with the GATT. Furthermore, no agreement had been explicitly disapproved. The same Chairman had wondered what the object would be of setting up a new working party if nobody hoped to reach a consensus on the GATT conformity of these agreements, and had indicated that there was a risk that future agreements would be examined in a more superficial manner each time and that contracting parties would lose the capacity of distinguishing the degree of GATT compatibility of these agreements. Under the Enabling Clause, seven regional agreements among developing countries had been examined.

All these agreements, including ALADI, had been first examined, and reviewed periodically thereafter, in the CTD under the Agenda item dealing with the Enabling Clause without there having been any objection with regard to the pertinence of the notifications and the competence of that Committee to deal with them. With regard to the MERCOSUR Treaty, he said that the parties thereto had notified it under the Enabling Clause, because paragraph 2(c) thereof clearly included regional or global arrangements entered into among less-developed contracting parties for the mutual reduction or elimination of tariffs. The MERCOSUR was indeed an

integration agreement which aimed at establishing a common market in 1994 with the objective of reducing tariffs. He noted that since 1979, all regional agreements among developing countries had been presented to the GATT under this Clause. He noted also that the ALADI Agreement, which governed MERCOSUR, had been notified in 1980 to the Committee. Periodic reports had been presented to the CTD under the Enabling Clause without any contracting party ever having objected to this. Furthermore, there was no obstacle at all in carrying out consultations or having an in-depth examination of any such agreement in the CTD. He therefore asked why the United States insisted on having the MERCOSUR notified under Article XXIV when the same possibility of an in-depth examination existed in a working party set up under the auspices of the CTD and the Enabling Clause. He pointed out that except in two or three cases, in no working party had a customs union or free-trade area -- including the Canada-United States FTA and the agreement establishing the Community -- been declared compatible with the GATT. The MERCOSUR parties would thus have to agree to a procedure which in practice had never yielded positive results. Another question was why an attempt was being made to limit contracting parties' rights within the framework of the General Agreement and its related instruments. The Enabling Clause was part of the GATT's legal framework and of the obligations undertaken by contracting parties. It was not correct to deprive any contracting party of its legitimate right. As far as other contracting parties' rights were concerned, the notification mechanism did not in any way impair those rights under the General Agreement, including those under Article XXIV. It was in the light of these considerations that the MERCOSUR parties had ensured maximum transparency on all issues relating to that Agreement. They preferred the establishment of a working party in the CTD to examine the Agreement under the Enabling Clause, and hoped that the United States would agree to this.

The representative of Colombia said that his Government did not share the United States' view on the Enabling Clause, as set out in its communication (L/7029). In the United States' view, "the Enabling Clause was established to address, inter alia, preferential trade arrangements that do not meet the criteria of Article XXIV, and can in no way be considered to replace the long standing substantive and procedural provisions of Article XXIV". Colombia believed, on the contrary, that the Enabling Clause was the very foundation which substantiated preferential treatment for developing countries in the GATT. This Clause established for the very first time in international trade relations, as from 1979, a legal basis for preferences among or for developing countries. Paragraph 2 of the Enabling Clause provided a non-exhaustive list of the possible applications of its provisions, leaving open the possibility for the CONTRACTING PARTIES to consider, on an ad hoc basis, any proposals for differential and more favourable treatment not falling within the scope of that paragraph. It was evident that Part IV of the General Agreement and the Clause provided the guarantees for the examination of all cases while at the same time preserving the political objectives of the Clause. The 1979 Decision establishing the Clause had enabled the GATT to maintain its basic principles in the regulation of international trade relations between countries with very different economic characteristics and levels of development. The establishment of the MERCOSUR was to be placed within the overall framework of the LAIA. Colombia and ten other countries in the region, among which nine were GATT contracting parties, were members

thereof. The MERCOSUR was a typical example of a regional arrangement aimed at the reduction of barriers to trade amongst its members, and of a preferential arrangement among developing countries which did not contravene the obligation to maintain trade relations with third parties based on the principle of non-discrimination. Therefore, notification of the MERCOSUR should be made under the provisions of Part IV of the General Agreement and the Enabling Clause, and not under Article XXIV.

The representative of Uruguay said that his delegation did not intend to make a detailed legal analysis at this stage of the various issues which arose with regard to the notification of MERCOSUR to the GATT. It did, however, have some comments with regard to the assertions made by the United States in its recent communication. In Uruguay's understanding, the Enabling Clause did not have only the limited objective of providing for preferential arrangements among or in favour of developing countries. On the contrary, the Enabling Clause also covered regional or global arrangements entered into among developing countries for the mutual reduction of tariffs and, in accordance with prescribed conditions or criteria, for the mutual reduction of non-tariff measures. An example of such an arrangement was the LAIA, which had much broader objectives than simply establishing preferences amongst its members. He recalled that the LAIA, whose main objective was the establishment of a common market amongst its members, had been notified to the GATT in 1982 under the Enabling Clause, which, he said, not only covered all the situations not covered by Article XXIV, but also those cases foreseen in that Article when they involved only developing contracting parties. In this sense, both Article XXIV and the Enabling Clause in its paragraph 2(c) dealt with similar cases, but concerned different contracting parties with different levels of development.

As to the United States' assertion about the lack of transparency in notifications under the Enabling Clause, he said it was quite clear, and borne out by the facts, that the MERCOSUR countries had tried to be as transparent as possible in providing the maximum amount of information both with regard to institutional aspects and on the development of the very structure of MERCOSUR. In this connection, he recalled the presentations made by Argentina, Brazil and Uruguay at the CTD meeting the day before. The documentation provided at that meeting (L/7044 and Annexes), the readiness expressed by these countries to provide all the information requested by contracting parties, as well as their favourable position on the question of the creation of a mechanism to examine the MERCOSUR in the CTD, demonstrated objectively the intentions of the MERCOSUR countries, and showed that there had never been a lack of transparency. If there was a preoccupation with transparency, Uruguay believed that this should not be a pretext to avoid a discussion on the overall issue. Uruguay could not accept the establishment of a working party under Article XXIV, and certainly not one on the terms suggested by the United States.

The representative of Peru said that the notification of the trade aspects of MERCOSUR under the Enabling Clause was fully consistent with the latter's provisions. The Clause explicitly stated that contracting parties could grant differential and more favourable treatment to developing



countries, inter alia, in the framework of regional or global arrangements entered into amongst developing countries for the mutual reduction of tariff or non-tariff measures. This was precisely the situation in the case of MERCOSUR, which was an integration effort stemming from the LAIA. With regard to the question of transparency, Peru had noted on several occasions that the MERCOSUR members had recognized their obligations in this respect, and had always made every attempt to notify contracting parties of all information that they felt should appropriately be conveyed to the CONTRACTING PARTIES. If enough information had not been received in the past with regard to agreements notified under the Enabling Clause, Peru believed this was not a general trend and was not a justification to deny the MERCOSUR countries the right to act under that Clause. Furthermore, Peru was very concerned that an attempt was being made to challenge this GATT provision, which was tantamount to refusing to recognize the different levels of development among GATT contracting parties. Peru did not believe that the provisions of Article XXIV were appropriate in this case. Nor did it believe that the establishment of the working party as requested by the United States was warranted. He noted from document L/7044 that the Treaty of Asunción contained twenty four Articles and a number of annexes. This was not then the Final Act of the MERCOSUR but rather the instrument to enable this Agreement to be set up and to evolve. As several previous speakers had indicated, a positive discussion on the MERCOSUR had been held in the CTD the day before, and a proposal had been made which Peru found both interesting and constructive. Peru hoped that it would be possible to proceed along the lines of that proposal.

The representative of India recalled that his delegation had presented its views on this issue at the meeting of the CTD the day before. In India's view, the Treaty establishing the MERCOSUR fell within the scope of the Enabling Clause. Paragraph 2(c) of the Clause quite clearly stated that the Clause applied to "regional or global arrangements entered into amongst less-developed contracting parties for the mutual reduction or the elimination of tariffs and, in accordance with the criteria and conditions which will be prescribed by the CONTRACTING PARTIES, for the mutual reduction or elimination of non-tariff measures on products imported from one another". This language suggested that free-trade areas were also covered. India believed that the choice between the Enabling Clause and Article XXIV for examining the MERCOSUR was a technical one. Some provisions in the Enabling Clause, such as paragraph 4 for example, could prove to be even more rigorous in the examination of this Agreement. Under that provision, contracting parties whose trade interests were affected by the formation of a free-trade area had a more comprehensive right of consultation than appeared to be the case under Article XXIV. India therefore believed that non-parties to the MERCOSUR would be able to protect their interests quite effectively in an examination of this Agreement in the CTD. With respect to the question of transparency that had been raised by the United States, this could also, in India's view, be effectively addressed under the provisions of paragraph 4 of the Enabling Clause. He noted that the parties to the Agreement had also indicated their willingness to comply with this requirement by providing detailed notifications. India therefore believed that it was appropriate for the MERCOSUR to be examined under the Enabling Clause in the CTD, and it had been surprised at the vigorous opposition of some contracting parties to

this. His delegation had indicated its readiness in the CTD meeting to participate in any further discussions or consultations on this issue with a view to arriving at a mutually acceptable and satisfactory solution. He reiterated India's readiness to participate in any consultations arising from discussions in the Council.

The representative of Finland, on behalf of the Nordic countries, welcomed the efforts by the MERCOSUR signatories to integrate their economies more closely and to form a common market. The Nordic countries were sure that this would complement the MERCOSUR countries' trade-liberalization efforts and thus contribute to the development of international trade. The Nordic countries had listened carefully to the statements on this matter at the present and past meetings, in both the Council and the CTD. They had also studied the information available on the MERCOSUR as well as the request by the United States for the notification of the Agreement under Article XXIV and for the establishment of a working party. The Nordic countries believed that Article XXIV was the legal basis for the examination of free-trade areas and customs unions, or an interim agreement leading to the formation thereof. The Enabling Clause, on the other hand, was meant to address other types of more limited preferential-trade arrangements between developing countries. Bearing this in mind, the Nordic countries attached great importance to assess whether MERCOSUR and other arrangements of the same type between developing countries should be notified to the GATT under Article XXIV rather than under the Enabling Clause. This issue merited a more thorough discussion and assessment by the CONTRACTING PARTIES. The Community's proposal in the CTD meeting the day before could serve as a means for a pragmatic solution to the matter. He made clear that the Nordic countries would expect the review on MERCOSUR to be thorough and comprehensive, fully reflecting all relevant GATT provisions, and that a possibility for an Article XXIV review at a later stage should not be pre-empted by any procedure to be agreed upon at the present stage. The Nordic countries were interested in participating in any consultations on the matter.

The representative of Switzerland said that, like others, Switzerland welcomed the integration efforts undertaken by the MERCOSUR countries. These efforts were in keeping with the general trend towards liberalization being undertaken in Europe. Such efforts constituted major developments in terms of the world trade structure, to which the GATT should pay full attention. Switzerland believed that the MERCOSUR Treaty should be notified and examined pursuant to the provisions of Article XXIV, for reasons which his delegation had spelled out at the CTD meeting the day before. He recalled that, in Switzerland's view, the fact that the MERCOSUR Treaty, which stemmed from another more general treaty -- the Montevideo Treaty of 1980 --, had been notified under the Enabling Clause should not prevent CONTRACTING PARTIES from examining it under the provisions of Article XXIV, since the new Agreement was more ambitious and different in its legal characteristics. He noted that the CTD's Chairman would be holding consultations on this question and, in particular, would take into consideration the Community's proposal, which all Council members would no doubt like to have examined with all the attention it deserved. His delegation therefore proposed that the Council should await the outcome of those consultations before turning its attention to this issue once again at a future meeting.

The representative of New Zealand said that his Government preferred the procedures of Article XXIV to be followed for notification and scrutiny of a regional trading arrangement. New Zealand agreed with the United States that the nature of the MERCOSUR Agreement seemed to warrant an examination under Article XXIV. However, New Zealand also recognized the desire of the contracting parties members of MERCOSUR to invoke the Enabling Clause in notifying their agreement. The important principle, in New Zealand's view, was that any such notification should enable effective scrutiny of a regional trade arrangement and provide mechanisms by which affected countries could consult on matters of concern. New Zealand commended the efforts of the MERCOSUR countries to subject their trading arrangements to full scrutiny. It urged the parties concerned to make further efforts to agree to a process which would bring about a comprehensive examination and transparent implementation of the measures involved.

The representative of Australia said that the question of the GATT notification and review of the MERCOSUR Agreement could not be divorced from the broader issue of the upsurge of international interest in regional cooperation and integration, including on the trade front. Australia's approach to the broader issue had been to acknowledge the legitimate rôle that regional trading arrangements could play within the GATT framework. Australia had sought, through its participation in GATT negotiations and working parties, to ensure that these arrangements complemented the multilateral system, and did not compete with or erode it. While Australia, like others, recognized some of the shortcomings of the Article XXIV review procedures, the latter remained important tools -- indeed the only ones available -- to examine the GATT consistency of free-trade areas and customs unions. Against the background of its long-standing interest in this area of GATT work, Australia was of the view that the MERCOSUR Agreement should be examined against Article XXIV principles, and its strong preference was for this to occur via the normal working party procedures under that Article.

The representative of Japan said that customs unions or free-trade areas constituted a derogation from the GATT's most important principle, the m.f.n. principle, and, as such, were matters of great importance. The MERCOSUR seemed to Japan to be an ambitious arrangement with potentially far-reaching implications. It was therefore appropriate to have a full and in-depth review of it in the GATT. For these reasons, and without going into legal details, Japan believed that the Article XXIV approach would be the most appropriate one. Japan had at the same time noted that the MERCOSUR countries had stated their readiness to provide maximum transparency. They had also mentioned that the same possibility of in-depth examination existed under the Enabling Clause as under Article XXIV. Japan found these statements interesting. There appeared, therefore, to be a large measure of common understanding as to whether one followed one approach or the other, and it seemed to Japan that the question before the Council was how to put these points of view on principle into more concrete or precise procedures and formulations in order to address the question of examining the MERCOSUR Agreement.

The representative of Austria expressed sympathy with the MERCOSUR initiative. Whether notification of this Treaty should take place under the Enabling Clause or under Article XXIV was not yet clear. More information in this context would be helpful so that contracting parties could make their own judgement. In view of the situation, and in a sense of compromise, his delegation supported the Community's compromise proposal in the CTD meeting the day before, which would leave the door open for a later examination of the Agreement under Article XXIV. Austria believed that contracting parties should await the results of the consultations to be held by the CTD's Chairman in this regard, and to revert to the question at a later stage. He added that if a working party were established, Austria would be interested in participating in it.

The representative of Hungary said that the MERCOSUR Treaty provided for the creation of an important and very promising sub-regional economic integration and trading entity. In light of the valuable information that had been provided by the MERCOSUR countries in the CTD meeting the day before, one could conclude that the Treaty was to be considered as an interim agreement leading to the formation of a customs union. Hungary noted that in the CTD a proposal was being discussed regarding the examination of the trade provisions of this Treaty. Without prejudice to the outcome of the consultations being carried out in that forum, and acknowledging the positive elements of the Community's compromise solution proposed therein, Hungary believed that the trade provisions of the MERCOSUR Treaty should be examined under the normal procedures of Article XXIV.

The representative of Singapore, on behalf of the ASEAN contracting parties, said that they welcomed the formation of the MERCOSUR as a means of furthering existing regional trade ties and promoting economic cooperation among its members. The MERCOSUR countries had the right, as developing countries, to raise this matter under the Enabling Clause. The reasons for this right had been expressed by Brazil and several others. The ASEAN contracting parties stood ready to participate in any future work in this regard.

The representative of Korea said that since this issue had been discussed intensively in the CTD the day before, he would not go into detail at the present meeting. In Korea's view, it was not particularly important whether the CTD or the Council reviewed the MERCOSUR, provided that each contracting party had all of its questions answered satisfactorily in the review process. The Community's compromise proposal in the CTD meeting appeared to be reasonable, and he wished to put on record that Korea was willing to go along with that proposal.

The representative of Cuba said that his Government believed that Brazil's and Argentina's statements in the CTD meeting the day before fully explained all matters related to the MERCOSUR. As several speakers had already stated, the Enabling Clause, which had been adopted after lengthy negotiations in the Tokyo Round, set forth the principle of differential and more favourable treatment for developing countries, including preferential tariff treatment for and among them. Cuba believed that the MERCOSUR Treaty fell within the purview of the Enabling Clause, and that

it should be examined thereunder and not under Article XXIV. Nevertheless, in the spirit of seeking a solution, Cuba believed that the Community's compromise solution in the CTD should be viewed with understanding.

The representative of the Czech and Slovak Federal Republic (CSFR) said that the MERCOSUR was a step in the right direction. It would undoubtedly contribute both to the development of mutual relations among its member countries and to their fuller integration into the multilateral trading system. The MERCOSUR would also have a number of GATT implications, and would have an impact on the trade of other contracting parties. As to the procedures for notification and examination thereof in the GATT, his Government had noted the Community's proposal in the CTD. Nevertheless, the CSFR was of the opinion that the MERCOSUR should be notified and examined under the provisions of Article XXIV which were more precise than the Enabling Clause and specifically designed to deal with agreements leading to the formation of customs unions.

The representative of the European Communities said that it was not conceivable that the GATT was incapable of giving the right signal, of legitimizing the MERCOSUR initiative. A compromise should be found at all costs, because this would furnish the proof of the vitality of the GATT system. It was necessary for both sides to avoid sticking to their positions. While it was true, as the United States had said, that the Enabling Clause did not sufficiently cover the dimension of the MERCOSUR, the Community believed this was not a reason to follow Article XXIV procedures in this case. The Community had tried to find a compromise solution which would take account of the different perspectives. For example, his delegation had stated at the CTD meeting the day before that the Enabling Clause did not permit the modification of tariffs or quantitative restrictions, and that the MERCOSUR countries would face problems when they drew up a common external tariff. The moment of truth would come then, and they would have to accept that challenge. For this reason, the Community had requested in its proposed compromise to go beyond the specific obligations arising from the Enabling Clause in order to allow for a detailed and in-depth examination of the MERCOSUR. He said that if certain contracting parties maintained their position that the MERCOSUR should be examined under Article XXIV, this would result in there being no in-depth examination at all, which would be the wrong signal to send. He called on others to try to understand the various elements in the Community's compromise solution, so that one could provide the necessary political support to the MERCOSUR now, while conducting an in-depth examination later on the basis of the detailed information that had been requested from the MERCOSUR countries and in the framework of a working party to be established by the CTD. He noted that under the Community's proposal, any contracting party would be able to raise any relevant GATT provision in the course of the working party's examination. For those who insisted on the Article XXIV procedure, he said that it was not a panacea and recalled that experience with the examination of regional agreements thereunder had not proved to be conclusive. The Community's "elements for a compromise" had been carefully studied and put forward with a view to helping all to avoid acting with imprudence in this matter, which would be deplorable in the context of the important initiative of the four developing country members of the MERCOSUR.

The representative of Brazil said that, having listened to the Community's statement, he recognized that the MERCOSUR countries might find themselves under closer scrutiny than some others had been subject to under Article XXIV. He added that he was concerned to see the Enabling Clause under attack, and at the attempt being made to restrict its application in terms not foreseen in the Clause itself.

The representative of Argentina recalled that at the CTD meeting the day before, its Chairman had been asked to hold consultations, on the basis of a proposal by the Community, on how to proceed on the question of the examination of the MERCOSUR. Accordingly, he suggested that it might be best to leave the matter as it stood until the outcome of those consultations, which Argentina was certain would be entirely favourable.

The representative of the United States said it was apparent to him that there was no consensus on the United States' request. He noted that a great deal of the discussion had focused on the question of the legal rights of parties under either the Enabling Clause or Article XXIV. In a matter such as the one at hand, one could regrettably place too much reliance on a legal determination. From the United States' point of view, the important issue before the Council was the perception of contracting parties with respect to what was obviously a very important emerging regional agreement in Latin America. As he had stated earlier, his Government strongly supported and found merit in this arrangement, and applauded the governments in the region for seeking to create a more open regional trading arrangement, one which the United States hoped would be fully consistent with GATT principles and obligations. From all the statements by the MERCOSUR countries, this seemed to be the case. For the United States, it was ultimately a question of the magnitude and the importance of this undertaking, and the need to have it examined as closely as possible to ensure GATT conformity of the obligations thereunder. The MERCOSUR countries believed that they had the right to assert the Enabling Clause and that this would satisfy other parties' concerns. All would have to continue to work together to seek an appropriate vehicle for resolving their differences on this question. He had listened with interest to the Community's statement, and his delegation would be willing to discuss this matter with others in the coming weeks. He would report the views that had been expressed to his Government, and noted that many legitimate arguments had been made on both sides which needed to be given further consideration.

The United States recognized that although many regional agreements had been examined under Article XXIV, there had been very few cases in which consensus had been reached in the working party regarding specific provisions of those arrangements. In most cases, the working party reports had simply mentioned the various views of the participant. This being said, the United States believed that Article XXIV was a recognized GATT provision for examining regional agreements. He hoped to be able to have further discussions on this issue before the next Council meeting at which time the Council would have to revert to this matter.

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

11. Trade Policy Review Mechanism - Programme of reviews for 1992  
- Deferral of the trade policy review of the European Communities

The representative of the United States said that the normal schedule for the two-year cycle reviews under the Trade Policy Review Mechanism (TPRM) would have called for the Community's trade policies to be reviewed in 1992. He recalled that when the Community's 1990 review had been postponed, the CONTRACTING PARTIES had been assured that this was an exceptional case due to the efforts required to complete the Uruguay Round, and that the normal schedule for the Community's next review would not be affected. However, it now appeared that the Community had requested a postponement of its second review. This was unfortunate. The United States appreciated that both the Community's and the Secretariat's resources might be occupied in other areas until the year's end, and was anxious to hear from the Community on this. Obviously, if justice could not be done to the Community's trade policy review under the normal schedule, this would need to be taken into consideration.

The situation at hand highlighted two problems with the TPRM process. One, which his delegation had outlined on an earlier occasion, concerned the instability of scheduling TPRM reviews on a voluntary basis. While the TPRM had been established only provisionally, the reviews themselves should be scheduled on a normal basis without the possibility of any contracting party objecting thereto. This would ensure that all contracting parties' trade policies would be subjected to the review process on a regular schedule. The second problem concerned the frequency of reviews for the four largest trading partners -- on a two-year cycle -- which presented a number of problems and constraints. Often there were not many trade policy changes in that two-year period, and the review was perhaps not as worthwhile as it might be with a slightly longer period in between. It would be useful if both points could be discussed at a subsequent Council meeting with a view to improving the TPRM during its provisional implementation.

The representative of the European Communities said that the Community would also have preferred to have had its trade policy reviewed under the normal schedule, and that the delay was unfortunate. Other major ongoing processes had put a strain on the Community's resources, and it had believed it appropriate to accept a short delay in order to do justice to the review exercise. While this delay had resulted in the Community's review being postponed from 1992 to 1993, it had in fact involved only a couple of months. Had the Community's review originally been scheduled for early 1992, there would not have been this unfortunate slippage from one calendar year to the next. The Community had been in close contact with the Secretariat, whose own resources had been under strain, in trying to come up with an appropriate date for its review. On the issue of the frequency of trade policy reviews for the largest trading partners, his delegation associated itself with the United States' remarks.

The representative of Chile supported the United States' concerns at the delay in the Community's trade policy review. The TPRM was a very valuable instrument which permitted one to examine at a multilateral level other countries' trade liberalization measures. For that reason, it was

important to establish a precise timetable which should be complied with. Chile believed that the two-year cycle of reviews for the four largest trading partners was appropriate. Although this schedule did imply a certain amount of work on these countries' part, Chile believed that, given their human and material resources, this was not as burdensome on them as it was on developing countries undertaking the same exercise. Chile believed the TPRM should be maintained, at least for some time, on its existing basis before one entertained the possibility of reviewing it.

The Chairman said he was already consulting on improvements to be made to the trade policy review exercise, and that some of the points made in the present discussion could be considered in that process.

The Council took note of the statements.

12. EEC - Import régime for bananas

The representative of Costa Rica, speaking also on behalf of Colombia, Guatemala, Nicaragua and Venezuela under "Other Business", informed the Council that, pursuant to their request in document DS32/1, these countries had recently held the first round of Article XXII:1 consultations with the European Community in regard to the latter's banana import régime, and that no satisfactory results had been obtained. The consultations had been aimed at examining the Community's present banana import régime, as well as the European Commission's proposed new régime that would affect this trade as from 1993. He recalled that Article XXII:1 provided an opportunity for broad-based consultations with respect to any matter affecting the operation of the General Agreement. However, on the basis of a restrictive interpretation of that Article, the Community had accepted formal consultations only in respect of its present régime, indicating that it would hold informal consultations in regard to its proposed régime. Without renouncing their rights under Article XXII:1, and in order to keep open the negotiating channels thereunder, these countries had agreed to participate in both types of consultations. As he had already stated, however, none of these consultations had led to any satisfactory results.

Nonetheless, these countries hoped that the relevant GATT provisions on dispute settlement would make it possible to find a mutually satisfactory solution to this matter. With this intention in mind, they had decided to continue their consultations under Article XXII:1 and to abide by the deadlines established therefor in the April 1989 Decision on improvements to the GATT dispute settlement rules and procedures (BISD 36S/61). He hoped that the procedures under the General Agreement would allow the Community to examine their legitimate concerns and to remove the illegal restrictions presently imposed on their banana exports. He also hoped that the Community's future import régime would move in the direction of removing the existing trade barriers and not, as had been proposed, establish new restrictions or extend the existing restrictions over the Community's entire territory.

The Council took note of the statement.



13. United States - Denial of MFN treatment as to imports of non-rubber footwear from Brazil  
- Follow-up on the Panel report (DS18/R)

The representative of Brazil, speaking under "Other Business", recalled that this Panel report had been adopted at the June Council meeting. His delegation had stated at that meeting that mere adoption of the report would not suffice, and that it was important for the United States to take the necessary steps to bring itself into compliance with the Panel's finding. Several other delegations had supported this view. The discrimination found by the Panel continued to hamper Brazil's trade as each day passed. The United States continued to demand payment of discriminatory duties, including interest thereon, and these charges continued to mount at a rate exceeding US\$1 million per month. Brazil had decided not to ask for this matter to be placed on the regular Agenda of the present meeting, in order to allow the United States time to take the necessary steps. To Brazil's knowledge, however, the United States had not thus far taken any action to bring itself into compliance with the Panel's finding. Although Brazil hoped it would not be necessary to place the question of the follow-up on this Panel report on the agenda of the next Council meeting, it reserved the right to raise this matter whenever appropriate.

The representative of the United States said that his delegation would continue to endeavour to obtain a mutually acceptable resolution of this matter.

The Council took note of the statements.

14. EFTA - Turkey Free-Trade Agreement  
- Working Party Chairmanship

The Chairman, speaking under "Other Business", recalled that at its meeting in April, the Council had established a Working Party to examine this Agreement, and had authorized him, in consultation with the delegations principally concerned, to designate the Chairman of the Working Party. He informed the Council that it had been agreed to designate Mr. Kesavapany (Singapore) as Chairman of the Working Party.

The Council took note of this information.

15. International Trade Centre (UNCTAD/GATT)  
- Appointment of a new Executive Director

The Chairman, speaking under "Other Business", said that since the June Council meeting, when he had last informed members of the situation regarding the appointment of a new Executive Director for the International Trade Centre, there had not been, as he had hoped, any positive developments. The Deputy Director-General, Mr. Carlisle, had tried to speak personally to the United Nations (UN) Under Secretary-General for Administration and Management, Mr. Thornburgh, but had not

thus far been successful. Indeed, a member of Mr. Thornburgh's staff had informed Mr. Carlisle several weeks earlier that there had been no change in the UN's position. While the outlook was not promising, he would wait a short while longer to see if the GATT and the UN could reach an understanding. As soon as the picture became a bit clearer, he would hold another round of consultations on this matter.

The Council took note of this information.

16. Dates of the Forty-Eighth Session of the CONTRACTING PARTIES

The Chairman, speaking under "Other Business", recalled that at their Forty-Seventh Session in December 1991, the CONTRACTING PARTIES had agreed in principle that the Forty-Eighth Session would be held in the week beginning 7 December 1992, and that the Council would fix the opening date and duration of the Session in the course of 1992, bearing in mind the possibility for the Chairman of the CONTRACTING PARTIES, in consultation with delegations, to fix the dates and the duration of the Session with greater precision in the course of 1992 in light of the Uruguay Round negotiations, and even to modify the dates if circumstances made this desirable.

On the basis of preliminary contacts with the Chairman of the CONTRACTING PARTIES, the Director-General and delegations, as well as with the authorities responsible for meeting room facilities in Geneva, he proposed, on behalf of the Chairman of the CONTRACTING PARTIES, that the Forty-Eighth Session be held on 2 and 3 December 1992, with the possibility of continuing on 4 December, if necessary. He asked Council members to convey this suggestion to their authorities and to inform him through the Secretariat -- as soon as possible, and at any rate before the summer break -- whether these dates were acceptable.

The Council took note of the statement.

17. United Nations Conference on Environment and Development (UNCED)  
- Note by the Secretariat (L/6892/Add.3)

The Director-General, speaking under "Other Business", recalled that in response to requests made by several representatives at the Council meeting on 29-30 May 1991, the Secretariat had prepared factual notes on the discussions that had taken place in the Preparatory Committee for the United Nations Conference on Environment and Development (UNCED), and which had been circulated as documents L/6892 and Add.1 and 2. He drew attention to a recently circulated Note by the Secretariat on the Conference itself, which, as all knew, had been held in Rio from 3-14 June. This Note, in document L/6892/Add.3, was presently available only in English; it would be distributed in French and Spanish as soon as official translations of UNCED documentation were received from the UNCED secretariat.

He also drew attention to the fact that in Agenda 21, which was one of the results of the UNCED, governments had made a number of recommendations that were directly relevant to the work of the GATT in the field of trade, environment and sustainable development. These recommendations were to be found in the document to which he had just referred. He drew attention to this matter because he believed that, after a certain period of reflection, the CONTRACTING PARTIES would have to consider how best to proceed on these recommendations.

The Chairman proposed, in light of the Director-General's statement, that the Council revert to this matter at a future meeting, and that he be authorized to undertake consultations on how precisely to deal with it.

The Council so agreed, and took note of the statements.