

GENERAL AGREEMENT ON

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TARIFFS AND TRADE

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MINUTES OF MEETING

Held in the Centre William Rappard
on 9-10 February 1993

Chairman: Mr. A. Szepesi (Hungary)

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Prior to adoption of the Agenda, the Chairman, on behalf of the Council, welcomed Mali and the Kingdom of Swaziland as the 105th and 106th contracting parties, respectively.

1. Azerbaijan
- Request for observer status (L/7168)

The Chairman proposed that, as for other such requests that had been brought before the Council recently, the understandings regarding observers that had been noted at the May 1990 Council meeting in connection with the former USSR's request for observer status should also apply to the government of Azerbaijan if the Council approved its request for observer status. He then proposed that the Council take note of his statement, agree to his suggestion and agree to grant Azerbaijan observer status.

The Council so agreed.

2. Accessions
(a) Accession of the Czech Republic (C/W/725)
(b) Accession of the Slovak Republic (C/W/726)

The Chairman recalled that at their Forty-Eighth Session in December 1992 (SR.48/3), the CONTRACTING PARTIES had agreed that the Czech Republic and the Slovak Republic should accede to the General Agreement, pursuant to Article XXXIII, under the same terms as those previously applied by the former Czech and Slovak Federal Republic (CSFR), without carrying out any negotiations, and had also agreed on transitional arrangements for the interim period until the necessary procedures had been fulfilled (L/7155). The CONTRACTING PARTIES had also decided to invite the Secretariat to prepare draft Protocols of Accession for the Czech Republic and the Slovak Republic, as well as the corresponding draft decisions, which would both be submitted for approval by the Council at its first meeting in 1993 (L/7156). He drew attention to the draft decisions and Protocols of Accession contained in documents C/W/725 and C/W/726.

The representative of the Czech Republic said that the multilateral trading system as embodied in the GATT was an essential factor for economic development, and his Government was firmly committed to its strengthening. The Czech Republic was prepared to assume and fulfil the obligations incumbent upon the former CSFR in the GATT, including in particular those set up in Schedule X. These concessions represented a relatively high level of obligations under the GATT with tariffs bound at meaningful levels. His Government was pressing ahead with radical economic reforms and the transition to a market economy, in the course of which access to the Czech market would be further improved. As one of the successor States to the former CSFR, the Czech Republic would continue to participate fully in the Uruguay Round negotiations and would submit meaningful offers. His Government considered that the texts of the draft Protocol of Accession and the draft decision in C/W/725 appropriately covered the terms and conditions of its participation in the GATT, and it was ready to act in conformity with those texts. It also considered early accession to the GATT important and hoped that the Council would approve the draft texts in C/W/725 at its present meeting, and that the CONTRACTING PARTIES would adopt the relevant decision as soon as possible.

The representative of the Slovak Republic said that his country was determined to assume, and to continue to fulfil, all general and specific commitments arising from the General Agreement and its related instruments. The Slovak Republic would also continue to participate actively in the Uruguay Round. It hoped that the CONTRACTING PARTIES would take the appropriate decision to contribute to its smooth accession to the GATT.

The representatives of Poland, Uruguay, Hungary, Brazil, Romania, Mexico, Malaysia on behalf of the ASEAN contracting parties, Tanzania, India, Israel, Hong Kong, the United States, Peru, Egypt, Morocco, Japan, Cuba, and Tunisia welcomed and supported the requests for accession by the Czech Republic and the Slovak Republic. Several other representatives wished to be placed on record as also supporting and welcoming the two requests.

The representative of Poland noted that both the Czech Republic and the Slovak Republic were co-signatories of the Central European Free-Trade Agreement, and said it was essential that their mutual trade relations should continue to be based on GATT rules. The two countries' accession to the GATT under the proposed Protocols came at the time when they continued to advance and consolidate their market-based economic reforms. Poland believed that the two accession instruments properly reflected the recognition that new economic and trading environments were being established in both countries. Poland would regard a positive decision on the two requests as an indication of the general attitude of the CONTRACTING PARTIES towards other contracting parties currently undertaking economic reforms.

The representative of Hungary said it was important that the interim application of the General Agreement to the Czech and Slovak Republics, as agreed by the CONTRACTING PARTIES at their Forty-Eighth Session (L/7155), be ended as soon as possible, and that the two countries rapidly become contracting parties. Hungary believed it important that its trade relations with these two traditional trade partner countries continue to be based on GATT rules. It noted with satisfaction the sense of realism and pragmatism that had guided the CONTRACTING PARTIES in dealing with this issue. The draft Protocols reflected the willingness of the two countries to assume all the GATT obligations of the former CSFR, and was also a recognition of the deep economic and political changes that had occurred in those countries. Hungary expected that the same realistic and responsible approach would prevail when determining or redefining the terms of participation in GATT of other countries that had undergone a similar economic transformation and that had already established similar economic and trade régimes.

The representative of Tanzania hoped that the Czech Republic and the Slovak Republic would continue to show the same understanding as the former CSFR towards the aspirations of countries such as his.

The representative of Japan welcomed the undertaking by the Czech Republic and the Slovak Republic to accept the Arrangement Regarding

International Trade in Textiles (BISD 21S/3), as well as the Tokyo Round Agreements to which the former CSFR had been a party. Japan hoped that these countries would also accede to other Tokyo Round Agreements, including the Agreement on Government Procurement (BISD 26S/33).

The Council took note of the statements, approved the texts of the draft Protocols of Accession and of the draft decisions in C/W/725 and C/W/726, and agreed that the decisions be submitted to votes by the CONTRACTING PARTIES by postal ballot.

3. International Trade Centre UNCTAD/GATT

(a) Report of the Joint Advisory Group (ITC/AG(XXV)/134)

(b) Appointment of a new Executive Director

(a) Report of the Joint Advisory Group (ITC/AG(XXV)/134)

Mr. Hynninen (Finland), Chairman of the Joint Advisory Group (JAG), recalled that although the twenty-fifth session of the JAG had originally been scheduled to be held in April 1992, it had been postponed at the request of several governments which had felt that in view of the very substantive agenda such a meeting should only be held following the appointment of a new Executive Director. However, after extensive consultations, the Executive Heads of GATT and UNCTAD had decided to convene a short meeting of the Group on 26-27 November 1992. The main item at that meeting had been a review of the technical cooperation activities of the International Trade Centre (ITC) in 1991, based on its Annual Report.

In opening the Group's general debate, the Deputy Secretary-General of UNCTAD, referring to previous discussions of the UNCTAD's Trade and Development Board, had recalled the ITC's crucial rôle in providing assistance to developing countries, conveyed the Board's determination that the ITC should remain a joint UNCTAD/GATT operation, and had stressed that the problem concerning the post of Executive Director should be resolved urgently.

The Officer-in-Charge of the ITC, in introducing the Annual Report, had noted that 1991 had been a year of transition characterized by the expected departure of its Executive Director, the shift to a new medium-term plan and the final year of the UNDP's Fourth Programming Cycle and preparations for the Fifth. The transition had affected the entire organization and had been reflected in a lower than expected overall programme delivery. 1991 had also been marked by an increased emphasis on the business orientation of the ITC programme, an approach which had arisen from the changes taking place in developing countries as a result of structural adjustment and reform policies.

The Group had underlined the ITC's key rôle in assisting developing countries in their trade promotion and export development efforts, and had commended the ITC secretariat for discharging its responsibilities

efficiently during 1992 in spite of the prevailing difficult circumstances. The Group had also stressed the importance of filling as soon as possible the post of Executive Director and other vacant top-level posts, in order to allow the ITC to continue to provide steady support to developing countries' trade promotion efforts.

The Group had urged donors to the ITC's trust-fund, and the UNDP, to do their utmost to ensure an adequate flow of resources to the ITC, commensurate with developing countries' increasing trade promotion requirements. In this context, particular importance had been attached to the initiative for the establishment of a Global Trust Fund and Consultative Committee which would give the ITC the flexibility needed to deal with the changing needs of recipient countries. The Group had noted that extensive programming efforts should result in an enhanced share for the ITC of resources available under the UNDP's Fifth Programming Cycle.

The Group had reviewed the ITC's operational activities in 1991 under its eight sub-programmes and had noted that, since the beginning of 1992, the ITC had been working within the framework of the new Medium-Term Plan (1992-97) which had introduced a new structure for the sub-programmes. Several representatives had commended the ITC for providing effective support in 1991 to their programmes on export development and import operations and techniques.

The representatives of Argentina, Australia, Bangladesh, Bolivia, Brazil, Cameroon, Canada, Chile, Colombia, Cuba, Egypt, El Salvador, India, Israel, Jamaica, Japan, Malta, Morocco, Myanmar, the Philippines, Senegal, Singapore and Tanzania, among others, requested that their appreciation for the ITC's important and valuable work be placed on record.

The Council took note of the statements, and adopted the report in ITC/AG(XXV)/134.

(b) Appointment of a new Executive Director

The Chairman recalled that at its meeting on 4-5 November 1992, the Council had requested the Director-General to hold further consultations on the question of appointment of a new Executive Director of the ITC, and that some delegations had also referred to this matter at the Forty-Eighth Session of the CONTRACTING PARTIES.

Mr. Carlisle, Deputy Director-General, said that at the request of the Director-General, and on his behalf, he had held informal consultations on this matter on 29 January. No consensus had been reached, and it was his intention to hold further consultations in the near future.

The representatives of Switzerland, Norway on behalf of the Nordic countries, El Salvador, Bolivia and Denmark believed that the Executive Director post should be filled at the D-2 level for a period of two years with the possibility of subsequently upgrading it in the light of the results of the ongoing UN restructuration process and that a decision on this matter should be taken as soon as possible if the CONTRACTING PARTIES were to maintain their credibility.

The representative of Switzerland said that economic conditions had worsened considerably in the past year for all countries, and particularly for developing countries. Therefore, the ITC's cooperation activities had become even more important than in the past and the ITC faced increased responsibilities, as well as new requirements, in conditions made complex by the vital needs of countries receiving its assistance. The CONTRACTING PARTIES therefore had the responsibility to provide the ITC with the necessary financial and management means to perform its tasks and to indicate that they took this situation seriously and intended to find appropriate solutions. In doing so, they would be taking into consideration the concern expressed by the Committee on Budget, Finance and Administration in its report to be considered under Agenda item 4, and its urging to "all parties concerned to make a determined effort to resolve the situation" (L/7158, paragraph 14(iv)). In this connection, the Deputy Director-General's consultations on behalf of the Director-General should be concluded as soon as possible.

The representative of Norway, speaking on behalf of the Nordic countries, said that they attached great importance to the ITC's work and wished to see it continue to operate in a smooth and efficient manner. The prevailing situation, in which the ITC was left adrift without the appointment of a new management, was very unsatisfactory and had been allowed to continue for too long. If a solution were not found soon, both staff morale and general confidence in the ITC would be impaired, and financial contributions for new activities would be withheld, with implications for project timing and execution. The whole future of the ITC was at stake, and both developed and developing countries needed to assess the real value of that organization and determine its future course.

The Nordic countries believed it was inappropriate to hold another regular JAG meeting before the Executive Director issue had been settled and the ITC's operating conditions normalized. Moreover, since JAG meetings were normally occasions for pledging voluntary contributions, it was urgent to re-establish conditions favourable to the successful outcome of such a meeting. Although the Nordic countries recognized the circumstances that had led to the present situation, they believed that conciliatory action was needed and the status of the post of Executive Director settled rapidly in order to give the ITC the leadership it desperately needed, and to secure sufficient funding for 1994. The Nordic countries were disappointed that numerous consultations to bring about a solution acceptable to all had failed.

The representative of El Salvador said it was important to restore trust and confidence in the viability of the ITC. Indeed, countries which benefited from the ITC's projects, as well as donor countries, had to see the Centre as an efficient and effective body. El Salvador did not agree that appointing an Executive Director at the lower level suggested by the UN before the latter's restructuration had been completed would create a negative precedent and weaken the ITC. This line of reasoning would in fact delay the strengthening of the organization. El Salvador believed it was time for the CONTRACTING PARTIES to take a decision.

The representative of Nigeria said that the CONTRACTING PARTIES should not allow the present situation in the ITC to continue indefinitely. The ITC was increasingly assuming an important rôle in the export promotion drive of many economies, in particular those of developing countries. Nigeria would therefore insist that the ITC be headed at the Assistant Secretary-General (ASG) level, and that the United Nations should continue to be a partner in its operations, which would ensure the continuation or the possible increase of its present level of funding. The eventual selection process for a new Executive Director should be transparent.

The representative of Canada said that his Government would have preferred that a new Executive Director be appointed at the ASG level, as at present. However, Canada agreed with some others that the focus should now be on appointing, as soon as possible, an Executive Director that would be acceptable to the ITC's supporters and constituents. Confidence in the ITC needed to be restored, both within the organization as well as amongst countries benefiting from its programmes, donor countries and the international trading community in general. Canada believed that no further meeting of the JAG should be held until such an appointment had been made, so that the JAG would then be able to make its recommendations to the official ultimately responsible for implementing them.

The representative of Bolivia said his Government was concerned at the present situation in the ITC, and that it was of utmost importance to developing countries that the organization be returned to normalcy. Bolivia, for its part, had benefited from several of the ITC's programmes, which it believed were essential for developing countries. To prolong discussions on the appointment of a new Executive Director any further would be detrimental to those countries that wished to see the ITC strengthened and able to meet the increasing demands of the international trading system.

The representative of the European Communities said that while this was a matter on which the Community's member States might wish to express themselves in their own right, the Community regretted that even after a long period of discussions, this matter could not be resolved. This merely underlined the fact that the GATT did not seem to be able to manage its relationship with the UN over this issue, which was regrettable.

The representative of Malaysia, speaking on behalf of the ASEAN contracting parties, said that they appreciated the urgency of the situation facing the ITC, and would participate constructively in consultations to be held by the Deputy Director-General, which they believed should be held as soon as possible.

The representative of Denmark said that the ITC's work was extremely important, and that Denmark was deeply concerned at the present situation which affected staff morale as well as confidence in the ITC. It was also possible that financial contributions might be withheld if it was felt that money might be better spent elsewhere. While it would not be useful to hold a JAG meeting in the present situation, it should not be forgotten that the JAG was also a pledging forum. Denmark urged a conciliatory approach on this matter.

The representative of Zambia said that although his delegation shared many of the concerns expressed over this issue, it could not understand why others were not prepared to discuss the internal structure of the ITC. It was clear that the ITC had more expert manpower than some other organizations and the question arose as to why an institution with such an important volume of activities and financing should be downgraded, while other institutions with less expert manpower were being promoted.

The representative of Argentina said that Argentina attached great importance to the ITC's work, and agreed that a solution to the question of the appointment of a new Executive Director should be found as soon as possible. Argentina believed that contracting parties should give their full support to the Secretariat's endeavours in this regard.

The representative of Egypt urged the Deputy Director-General to try to secure a consensus on this issue, which he said appeared close, before the next Council meeting. This would perhaps permit the JAG to meet in April, as normally scheduled, and allow financial contributions to be made so that the ITC's programme of activities could continue unhindered.

The representative of India recalled that the CONTRACTING PARTIES, together with the UNCTAD's Trade and Development Board, had established the JAG as an important mechanism for the supervision of the ITC. India could not see how this mechanism could be suspended merely because some contracting parties were of that view. He suggested that the Director-General, in the course of consultations on the appointment of a new Executive Director, also consult, if possible, on whether regular meetings of statutory bodies could be suspended or delayed merely because some contracting parties had not been able to resolve their differences. India agreed that a solution to the present situation in the ITC had to be found as soon as possible. However, in doing so, a balance had to be struck between the ITC's short-term needs and its long-term interests.

The representative of Norway, speaking on behalf of the Nordic countries, reiterated their position that all parameters conducive to the successful outcome of a JAG meeting -- including the management parameters -- should be in place before such a meeting was held. This would be in the interests of all contracting parties, developing as well as developed.

The representative of Tanzania said that one could not continue to have dealings with an organization as important as the ITC without someone at its helm. Everything that had been said thus far had pointed to the urgency of this matter. He referred, as Switzerland had, to the report of the Budget Committee and the concerns expressed therein in relation to the ITC (L/7158, paragraph 14). All were aware of the difficulty of mobilizing financial resources given their many competing uses. In this regard, much greater effort would have to be made by all concerned to make it possible to evaluate more objectively the ITC's performance and expenditure, and to ensure that funds at its disposal were used in the most efficient manner. This would enable it to continue to be well-funded and successful in its operations. Tanzania believed that a decision on the appointment of a new Executive Director of the ITC should be taken without delay.

The Chairman said that the discussion had clearly shown the particular importance that Council members attached to the smooth and efficient operation of the ITC. He proposed that the Council take note of the statements, agree to invite the Director-General to pursue, as a matter of urgency, his informal consultations on issues related to the ITC, in particular on the appointment of a new Executive Director, and further agree to revert to this matter at its next meeting.

The Council so agreed.

4. Committee on Balance-of-Payments Restrictions
- Programme of consultations for 1993 (C/W/727)

The Chairman drew attention to the Committee's proposed programme of consultations for 1993 contained in document C/W/727.

The Council took note of the information in C/W/727.

5. Trade in Textiles

- (a) Report of the Textiles Committee (COM.TEX/73)
- (b) Report of the Textiles Surveillance Body (COM.TEX/SB/1799 and Add.1 and Corr.1)

The Director-General, Chairman of the Textiles Committee, introduced the Committee's report on its annual review of the operation of the Multifibre Arrangement¹ (MFA) as extended by the 1986 Protocol (BISD 33S/7), and as maintained in force by the 1991 Protocol (BISD 38S/113). This review had been conducted in December 1992, pursuant to Article 10:4 of the MFA which required it to conduct such a review once a year and to report thereon to the Council. Annexed to the Committee's report were the texts of the new Protocol maintaining in force the MFA and the 1986 Protocol, as well as the Decision by the Textiles Committee in this regard, both of which had been adopted at the above-mentioned meeting. Since the new Protocol had been opened for accession on 9 December 1992, 24 members had thus far acceded to it. In conducting its review, the Textiles Committee had had before it (a) a report by the Secretariat on recent developments in demand, production and trade in textiles and clothing (COM.TEX/W/245); and (b) a report by the Textiles Surveillance Body (TSB), which was also before the Council (COM.TEX/SB/1799 and Add.1 and Corr.1).

The report of the TSB covered the full six-year period of the 1986 Protocol, namely 1 August 1986 to 31 July 1992, and set out details of notifications reviewed by the TSB during this period along with its observations thereon, and a general overview of the operation of MFA IV.

With respect to the TSB's membership for the period beginning 1 January 1993, the Committee had decided that it would be composed of

¹Arrangement Regarding International Trade in Textiles (BISD 21S/3).

members designated by Brazil, Canada, the European Economic Community, Egypt, Finland, Japan, Korea, Malaysia, Romania (for the first six months, and thereafter a member of the International Textiles and Clothing Bureau), and the United States.

The Textiles Committee had also carried out the requirement of Article 10:5 of the MFA that it "meet not later than one year before the expiry of this Arrangement to consider whether the Arrangement should be extended, modified or discontinued". While this procedure had satisfied the mandatory requirement, there had been no discussions on the future of the Arrangement at that meeting.

The Council took note of the statement and of the report of the Textiles Surveillance Body (COM.TEX/SB/1799 and Add.1 and Corr.1), and adopted the report of the Textiles Committee (COM.TEX/73).

6. United States - Restrictions on imports of wool suits from Brazil - Communication from Brazil (DS37/1)

The Chairman drew attention to the communication from Brazil in document DS37/1.

The representative of Brazil said that Brazil and the United States had had a difference of views with regard to the application of a bilateral textile agreement concluded under the Multi-Fibre Arrangement (MFA)². It had not been possible to reach a bilateral solution on this matter, and the United States' application of a quantitative restriction on imports of wool suits from Brazil had led to a formal dispute before the Textiles Surveillance Body (TSB). Although the TSB had reviewed this matter at its meetings in July and October 1992 and had made recommendations on both occasions (COM.TEX/SB/1797 and 1808), the dispute remained unresolved. He noted in this connection that the MFA explicitly provided, in Article 11:9, that if problems continued to exist between the parties following the TSB's recommendations, these could be brought before the Council.

This case was urgent because Brazil's trade interests could be prejudiced further in the absence of a satisfactory solution. Brazil was also concerned that this case might establish a precedent for further abusive restrictions. As it had indicated in its communication (DS37/1), Brazil believed that the United States' persistent refusal to abide by the TSB's recommendations had led to a situation of the type foreseen in the relevant GATT provisions on nullification and impairment. Brazil's aim had been -- and remained -- to find a positive and mutually acceptable solution, but this should be done urgently. Brazil had therefore decided, at this stage, to refer this matter to the good offices of the Director-General, pursuant to paragraph 1 of the 1966 Decision on Procedures under Article XXIII (BISD 14S/18). It expected that this would offer a new opportunity for a mutually satisfactory solution. At the same

²Arrangement Regarding International Trade in Textiles (BISD 21S/3).

time, Brazil was conscious that it was breaking new ground and wished the Council to be seized of this matter. Brazil reserved its rights to take any other action pursuant to the dispute settlement provisions of the GATT.

The representative of Argentina said that his Government shared Brazil's concerns on this matter. The TSB's recommendations at its meetings in July and October 1992 had been precise and could not be open to ambiguous interpretations. Also, it was the practice, and indeed part of the spirit of the MFA's provisions, that such recommendations were duly taken into account by the parties. As all were aware, the TSB, after reviewing all information presented to it, had not been able to reach a conclusion on the existence of a real risk of market disruption in the United States due to the imports of wool suits from Brazil. The TSB had urged the parties to find a mutually acceptable solution, and had indicated criteria to be taken into account if such a solution were to involve a restraint level. The communication in DS37/1 made it clear that Brazil was not trying to impose its argument but rather to ensure compliance with the TSB's recommendations. Argentina reiterated its concern at this failure to respect multilateral rules, and at the lack of trade discipline, which promoted unilateralism and arbitrariness. He underlined that the competence of the TSB, which was responsible for ensuring compliance with the MFA, should be recognized, as also Article 11:10 of the MFA which stated that "Any recommendations and observations of the TSB would be taken into account should the matters related to such recommendations and observations be brought before the CONTRACTING PARTIES, particularly under the procedures of Article XXIII."

The representative of Chile said that Brazil, having complied with the requirements of Article 11:9 of the MFA, was fully within its rights in bringing this matter before the Council. The TSB had called on the United States to treat Brazil with equity in relation to other suppliers, and on both parties to review the situation with a view to finding a mutually satisfactory solution. However, given that the discrimination was still in place, it was now appropriate for Brazil to resort to the relevant GATT provisions concerning its rights and obligations, pursuant to MFA Article 1:6, also bearing in mind Article 11:10. Chile supported Brazil's action, and at the same time urged the United States to try to find a prompt solution that would take into account the interests of both parties.

The representative of Uruguay said that his Government had been following this matter with concern. Uruguay agreed with the TSB's recommendation that the two parties should hold consultations promptly with a view to finding a mutually acceptable solution. His delegation supported the statements by Brazil, Argentina and Chile.

The representative of Pakistan said that the MFA, a derogation from the GATT, had had rather loose disciplines. It had remained in existence for 19 years, far longer than the short-term arrangement it was supposed to have been. As recorded in the TSB's report (COM.TEX/SB/1799 and Add.1 and Corr.1), the result was a panoply of deep and widespread distortions in production and in international trade flows and practices. Worse still, foreign policy or domestic political considerations had, in several cases, taken precedence over economic considerations in the application of the

MFA. The non-observance of even the loose MFA disciplines could lead to further erosion of confidence in its viability. Pakistan therefore regretted that the TSB's recommendation in the matter at hand had not been accepted. One of the MFA's basic objectives was the "avoidance of disruptive effects in individual markets and on individual lines of production in both importing and exporting countries" (Article 1:2). Pakistan believed that the continued delay in the implementation of the TSB's recommendation could lead to further disruptive effects for the Brazilian producers concerned. It therefore hoped that the Council would recommend to the United States to take urgent steps to avoid causing further disruption to Brazil's industry by implementing the TSB's recommendation.

The representative of Hong Kong shared Brazil's concerns at the delay in reaching a mutually satisfactory solution regarding the United States' unilateral action on wool suits from Brazil. Hong Kong regretted that despite repeated efforts a solution in line with the TSB's recommendations had yet to be found. It urged both parties to renew consultations as a matter of urgency, perhaps through the good offices of the Director-General as suggested by Brazil, bearing in mind the TSB's recommendations, to which Hong Kong attached great importance, and also MFA Article 11:8.

The representative of Colombia said that this matter was closely linked to the application of the MFA's rules. Indeed, it affected the very basis of the multilateral trade negotiations, namely the objective of trade liberalization, which was extremely important in the textiles sector. The situation described by Brazil also showed the degree of frustration that could be reached with the lack of application of the objectives of the General Agreement. There should be an urgent collective solution to this problem. The United States' failure to implement the TSB's recommendations required that the Council act now to ensure that the United States complied with them. Colombia believed that one would now see more frequent recourse by developing contracting parties to the 1966 Decision pursuant to which Brazil had requested the good offices of the Director-General in the case at hand. Colombia believed this process should start immediately, and hoped that it would be concluded successfully.

The representative of India shared the concerns that had been expressed. India noted with regret that this issue continued to defy a mutually satisfactory solution despite several consultations between the parties concerned. In particular, India was concerned that the TSB's recommendations had not been accepted. He recalled that at its meeting in October 1992, the TSB had expressed concern that its earlier recommendation had been given divergent interpretations, and had suggested that equity considerations had to be respected. It was unfortunate that this had not happened. He drew attention to MFA Article 11:8, which called on participating countries to endeavour to accept in full the TSB's recommendations. Failure to abide by such recommendations would only serve to devalue the GATT itself, with unfortunate consequences for the multilateral textile trading system which, as all were aware, was not an ideal system in the first place. However, one had to ensure that whatever semblance of rules was left should not be destroyed.

The representative of Korea hoped that this matter would be resolved through bilateral consultations, having due regard to the TSB's recommendations. The importance of the TSB as a monitoring body for facilitating free trade in textiles could not be over-emphasized, and its recommendations should therefore be given due consideration.

The representative of Japan recalled that the TSB, at its meeting in July 1992, had recommended that the parties resume consultations promptly with a view to finding a mutually acceptable solution, keeping in mind the need for Brazil to be treated with equity in relation to other suppliers to the US market. Japan attached importance to multilateral discipline and multilateral agreements, including for textiles. It regretted that a mutually acceptable solution had not yet been reached, and urged both parties to urgently make renewed efforts towards this aim, in keeping with the TSB's recommendations.

The representative of the United States said that the United States was puzzled at Brazil's allegations in document DS37/1, and also as to the reason why this communication had been issued in the "DS" series. The United States did not agree with, and could not accept, Brazil's contention that it had not abided by the TSB's recommendations. In fact, it would assert that Brazil, not the United States, had failed to pursue negotiations as recommended by the TSB. Since Brazil had declared its intention to ask the TSB to examine this matter for a third time, the United States would propose that the Council defer further discussion thereon until the TSB had completed its review. Referring to remarks about good faith in negotiations and in the observance of the rules, he questioned Brazil's own good faith since there had never been any suggestion in any of their bilateral contacts that Brazil was going to use the present meeting as a forum to call for the invocation of the 1966 procedures regarding the good offices of the Director-General.

The facts of the matter in this case were that the United States had made four separate formal proposals in an attempt to resolve this issue. Brazil's only formal proposal had been that the United States rescind the restraint. All its other proposals had been described as informal, even when conveyed directly to the US negotiator, or as originating from Brazil's industry. In the period following the second TSB review of the case in October 1992, US and Brazilian officials had exchanged views informally on several occasions in Washington. The United States had made two new formal offers with respect to a restraint level for the product category in question, the last being on 27 November 1992. That offer had been repeated on 7 January 1993. Meanwhile, Brazil had responded in December 1992 with what was described as an informal industry proposal, which it had requested the United States to consider. Unfortunately, that proposal had not, in the United States' view, proved to be a feasible formula for resolving the issue. He emphasized that the United States had not as yet received any formal response to its last formal offer, unless Brazil wished to have its communication in DS37/1 considered as a formal response. The United States remained willing to discuss the issue further in an effort to reach a satisfactory conclusion. However, if Brazil now wanted to call into question the MFA procedures, TSB deliberations and other tenets of the GATT's established approach for addressing trade in

this sector, that would be a shame. The United States was not sure that Brazil would be happy with the alternative. The United States was prepared to discuss this matter for a third time in the TSB, which it believed was the appropriate forum therefor.

The representative of the European Communities said that the notion of equity in the textiles sector was a particularly difficult one, which did not lend itself easily to definitions, and certainly not by third parties. The Community wondered what the Council could do to resolve this matter that the TSB could not. On the basis of the discussion so far, it would appear to be not very much. The Council could give guidance and say that the matter would best be resolved through negotiation, like all textile issues. The Community believed that the TSB should consider this matter again and that at the third attempt a solution might actually be reached. In the Community's understanding, intensive discussions on this matter had been underway for a long while, and it saw no reason to suppose that this matter would not resolve itself eventually, as did other textile issues, although not always to the advantage of the importing country. There had often been cases in which the exporting country had ended up with a package that was not at all bad.

The Director-General said that it was the right of any contracting party to request the activation of any dispute settlement procedure, including the procedures relating to the Director-General's good offices. He had noted Brazil's request in this regard at the present meeting, as also the urgency of this case for Brazil. He also noted that the next meeting of the TSB was scheduled to be held on 22-23 February. This was of relevance to the issue at hand because Brazil had indicated its intention to raise this matter again in the TSB for the third time. Taking all these elements into consideration, he said that he would hold consultations with the parties concerned. In this connection, he would note from the present discussion that the Council appeared to be urging the two parties to hold intensive bilateral talks, as this was the first step to reaching a satisfactory conclusion on this matter.

The representative of Brazil noted that the Director-General had stressed the urgency of this matter and, by implication, how Brazil's request for good offices related to the possibility of bringing this question before the TSB again. Brazil hoped that the latter would not be necessary, and that the good offices procedure would be successful. The United States had questioned Brazil's good faith in bringing this matter to the Council. However, the United States' attitude in the TSB had clearly shown that it did not wish to respect the recommendations of that body. In particular, it had interpreted the TSB's recommendation on the need for Brazil to be treated with equity in relation to other suppliers as implying equity in general, and not with respect to the particular products concerned. Brazil would be pleased to submit formal proposals to the United States if it so preferred. However, the fact remained that Brazil had tried on several occasions to find a solution on the basis of the TSB's recommendations and had been frustrated in that endeavour. None of the previous speakers had indicated that it was inappropriate to bring the matter to the Council. While Brazil thanked the Director-General for his

willingness to start the good offices process soon, it wished that the Council should remain seized of this issue.

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

7. United States - Anti-dumping and countervailing actions on steel products
- Communication from Brazil (L/7174)

The Chairman recalled that recent anti-dumping and countervailing duty actions by the United States in the steel sector had been addressed by several delegations at the CONTRACTING PARTIES' Forty-Eighth Session in December 1992 (SR.48/1, page 9 and SR.48/3, page 5). He drew attention to a recent communication from Brazil on this matter in document L/7174.

The representative of Brazil said that his Government had requested on 27 January that the Council consider this matter at its present meeting because of its concern at final determinations announced by the United States a few days earlier in countervailing duty investigations on steel products from Brazil. On the same day, the announcement of new preliminary determinations by the United States in anti-dumping investigations affecting 19 countries had confirmed Brazil's worst fears that one faced a serious case of unjustifiable impediment to trade in general, which affected the operation of the General Agreement much beyond the specifics of each case. Nearly all of the most active steel trading countries were currently affected. Furthermore, billions of US dollars were involved, and trade flows and commercial relations between markets and enterprises had been seriously disrupted. A long list of steel products had virtually been banned from the US market as a result of the duties and of the well-known "chilling effect" of the investigations. Each of the numerous producers affected had particular reasons to complain as regards the unfairness of the many and unwarranted anti-dumping and countervailing actions, including the question of "de minimis" shares, negligible margins, double-jeopardy, change in methodology, trigger-happy use of the "best information available" criterion, rôle of development bank financing, obstacles to privatization and so on.

All producers had the common perception that the large number of actions had caused serious tension in the international trading environment. These actions had given rise to pressures for retaliation and established parameters of protectionism for other sectors and other countries. In terms of free and fair trade, this was violence, which would beget violence. It also courted catastrophe and disaster for trade. Several articles and editorials in the press had warned recently against the protectionist temptation. One could not fail to associate these clouds of protectionism with the present dismaying situation in the Uruguay Round negotiations. There was now uncertainty not only over the promises for an improved multilateral trading system but also over the rules that governed the GATT as it stood today. Brazil had noted the US Secretary of Commerce's declarations that these determinations followed mandated procedures and that they were not policy statements. But this was only

cause for limited relief, if at all. Although the United States was still in the midst of evaluating its policies, the blunt reality of the matter did not offer the United States' partners any breathing space. No-one could accept that domestic legislation and trade policy instruments should be used to harass more efficient foreign competitors. He quoted from an editorial in a US newspaper which had described the anti-dumping and countervailing duty cases as "an abuse of the unfair trade laws, a blatant attempt by US steel companies to blame everyone for their problems but themselves".

While Brazil did not wish to raise at the present meeting all its specific difficulties and arguments concerning the US actions, it would have a lot more to say at the appropriate occasion on the absurdly high anti-dumping or countervailing duty margins that had been found. Brazil was taking all the necessary steps under both the Anti-Dumping and the Subsidies Codes³ so as to fully exercise its rights thereunder. On 5 February, Brazil had formally requested consultations under the provisions of both Codes. It would keep the Subsidies and Anti-Dumping Committees informed of every significant step along the way, and submit to the appropriate fora all the technical and legal arguments in its quest for redress.

Brazil wished to emphasize the damaging effect of these measures on its privatization process. It had been widely assumed, on the basis of prior US decisions on privatization, and also on economic logic, that if government ownership in a state-owned entity were transferred to private shareholders at an arm's length market price, the equity subsidies would be extinguished. If a private investor took control of a state-owned entity and paid the market value for that entity that was higher than the minimum price recommended by independent valuation studies, and at a public auction, the prior equity subsidies became irrelevant and no longer benefited the company. However, the US Department of Commerce had taken a contrary view, finding that unless the equity subsidies had been paid back by the company to the government, the subsidies were not extinguished. Under the United States' interpretation, even if the government received the full value of the equity investment back from the new investors in the course of the privatization, the equity subsidies would still remain. Only if the government received the equity investment back from the company itself would the equity subsidy be extinguished. In effect, the new US methodology required a company being privatized to buy back all of its government shares before it was privatized, or the government equity subsidies would continue and would be valued according to the so-called "grant" methodology. This was an illogical and arbitrary approach.

In recent investigations, the equity infusion decisions, together with other factors such as determinations on the basis of development bank lending, and debt-for-debt operations, as well as, in the case of

³Respectively, the Agreement on the Implementation of Article VI (BISD 26S/71), and the Agreement on Interpretation and Application of Articles VI, XVI and XXIII (BISD 26S/56).

anti-dumping actions, the easy recourse to the "best information available" criterion, had resulted in the contrivance of very high artificial subsidy and dumping margins for recently privatized Brazilian steel mills, raising difficult questions as regards mills to be privatized in the near future. Clearly, this situation jeopardized the accomplishment of Brazil's entire privatization programme for the steel sector. It was relevant to note that 75 per cent of Brazil's steel product exports came from mills already privatized or in the process of privatization.

Privatization and liberalization went hand in hand in Brazil's economic reform process. Also, privatization and liberalization had had for a long time the unabated encouragement of international financial and economic bodies, the international community in general, and individual countries, including the United States. He recalled that during Brazil's trade policy review in October 1992 (see C/RM/M/29), the Council had learned that Brazil, while faced with acute economic problems not the least of which was foreign debt servicing, had nevertheless made sweeping changes to liberalize its market. After that review, and in fulfilment of what had been reiterated during that exercise, Brazil had liberalized its imports of informatics products, and had more recently passed legislation on deregulation of port services. Other measures were in preparation or under examination by Brazil's Congress. But the trade environment, far from becoming more favourable was becoming more hostile, and the incentive to proceed with liberalization was less and less perceptible. He recalled that at the conclusion of Brazil's trade policy review, the Council had "acknowledged that Brazil's ability to continue its liberalization and reform would be greatly facilitated by a supportive external economic environment" (C/RM/M/29, page 40).

The new protectionist wave, under the guise of anti-dumping and countervailing actions in the United States, did not offer Brazil any support for its privatization and liberalization efforts. A developing country that liberalized, opened its markets and contributed to a healthier trading system -- at the same time as it serviced a foreign debt, the volume of which was beyond its control -- was being reciprocated in the way one witnessed today. Almost half of the total value of Brazil's annual steel exports to the United States, now greater than US\$450 million, were affected by the United States' actions. The overall value of Brazil's steel exports to the United States had to be seen against the backdrop of the depressive element of the voluntary export restraint arrangements (VERs) in place for a decade until March 1992. Brazil also found intriguing, in the flurry of anti-dumping and countervailing actions and the consequent public statements by US officials, the notion that the actions would contribute to accelerating the negotiation of a Multilateral Steel Agreement (MSA). Brazil did not share that perception. Along with many other steel traders, Brazil had participated with determination, an open mind and good faith, at the invitation of the United States, in lengthy, costly, and time-and-effort consuming MSA negotiations. It had supported the notion of an MSA as a "GATT plus" agreement, although this would cause no small amount of pain and adjustment on its part. The possibility that this could become another instrument of unfairly managed trade detracted from Brazil's motivation to participate further in the

negotiations. It was also strange that these negotiations should be made to appear more attractive by threats of the unfair use of national trade legislation.

Brazil had asked for the Council's consideration of this matter in order to manifest its serious concern at the emergence of a disturbing development in steel trade, and to be advised by the Council on how to respond urgently thereto. Now more than ever, with the future of the Uruguay Round unclear, all needed to know how to prevent the further deterioration of trade and impediments to the fundamental objective of the GATT.

The representative of Argentina said that his Government was deeply concerned at the United States' decision to impose provisional anti-dumping duties on four steel products originating in 19 countries, including Argentina. This action did not appear to be justified economically, and was certainly inopportune as far as the consolidation of international trade disciplines through the GATT was concerned. It could also be seen as a possible element of additional conflict in the process leading to the conclusion of the Uruguay Round. The fact that this action had been taken by a new US Administration was not a constructive signal. Argentina hoped that the United States' next steps would indeed show that these determinations were not a policy statement but rather the result of mandated procedures, as had been stated by the new US Secretary of Commerce.

It would be superfluous to explain a process the intention of which seemed evident. Various measures had been adopted over more than a decade with the sole aim of providing unjustified protection to a sector that clearly suffered from structural difficulties which prevented it from competing effectively at the international level. He recalled that the United States had negotiated a VER with exporters for a ten-year period. Upon its expiry, and even though its provisions continued to be respected by the exporting countries concerned, the US steel industry sought additional protection by simultaneously initiating 84 requests for investigations into alleged dumping practices. As Argentina had stated on several earlier occasions, the massive initiation of such petitions in itself constituted an impediment to the normal development of trade, and this effect had been the subject of fairly exhaustive analyses. One calculation had shown that import volumes would fall by roughly 15 per cent between the year preceding the initiation of an investigation and the year following, as a result of its dissuasive effects. Clearly, there would be a more serious impact on future steel trade following the United States' recent preliminary determinations, which included a requirement to consolidate the duties by means of a certificate of deposit. Argentina was directly affected by the latter provision.

While some US government agencies were encouraging deregulation and the process of privatization in other countries either directly or through actions affecting the policies of multilateral lending agencies -- particularly when considering economic programmes of developing countries that were adopting exemplary structural reforms -- the US Department of Commerce took the view that the transfer of a business from the public to

the private sector did not imply the automatic cessation of the effects of subsidies granted to, or pricing policies adopted by, the firm while under government control. While Argentina could not understand the sense of these decisions, it was nevertheless affected negatively by their consequences. Without going into details at this stage as regards the technical aspects of the United States' determinations, or of their GATT consistency, Argentina found it difficult to understand how damage could be claimed against exports over a period in which VERs had been in force and which had been based on levels agreed with the US steel industry. Questions also arose as regards the manner in which the "best information available" criterion had been applied, and the fact that anti-dumping and subsidy investigations had been initiated simultaneously for several countries and products. Argentina hoped that the competent authorities in the United States would take their future decisions in conformity with the letter and the spirit of the GATT. It also hoped that a constructive approach would make it possible for steel trade to be governed by the general rules of the GATT.

The resumption of negotiations on an MSA should be based on these criteria in order to support the positive and early conclusion of the Uruguay Round. Argentina reserved the right to analyse carefully the GATT consistency of the US measures, and reiterated its appeal that the United States review in a constructive spirit its recent actions and the processes currently under way.

The representative of Austria said that his Government shared many of Brazil's concerns. Austria's exports of cold-rolled steel had also been affected by the United States' provisional measures. While Austria hoped these measures would indeed be provisional, their immediate effect on trade was undeniable. As of the present, imports of the product concerned from Austria had become unattractive to US importers, manufacturers and consumers. The share of Austria's exports of cold-rolled steel in the US market had been very small in the recent past, with only 700 tons being exported in the first six months of 1992. Austria could not therefore see any causal link to the alleged difficulties of the US industry, which had already been protected for many years by a VER until the end of March 1992. High costs had had to be incurred by Austria to prepare for and participate in the cumbersome US procedures in order to defend its case. There was no more reasonable proportionality between the impact of Austria's exports on the US market and the costs incurred for legal defence. According to the de minimis provisions in both the US trade laws and the GATT Codes, a case such as Austria's, involving only 700 tons of imported steel products, should not even have been initiated. This was a clear case of concerted misuse by the US steel industry of trade laws for the purposes of trade harassment and the restriction of competition. Austria expected the United States to correct this situation, which was not in conformity with the letter and spirit of the GATT. Unfortunately, the necessary rigour in the application of US anti-dumping law had not been applied.

He quoted from a recent article in the Wall Street Journal which said that in the past 19 years, both the US Congress and officials in the federal bureaucracy had repeatedly stretched the definition of dumping, and that the US Commerce Department was routinely finding 97 per cent of all

foreign companies it investigated guilty of dumping. The US procedures for investigation into alleged subsidization and dumping were already biased against foreign competition. The manner in which these procedures had been applied suggested that this bias was reinforced by almost systematic efforts to choose methodologies, calculations and estimates least favourable to a foreign firm. In the procedures, the exporter was continuously threatened by disregard for the evidence produced by him and by the use of the so-called "best available information" criterion.

While Austria reserved its GATT rights, it sincerely hoped for a political solution. It looked forward to the continuation of the negotiations on the MSA later in the month, in which Austria would actively participate with a view to finding a consensus on abolishing unjustifiable subsidies as well as tariff and non-tariff barriers. Austria also expected this agreement to provide some guarantees and procedural remedies against the improper use of trade laws. If the protectionist signals in the steel sector prevailed, other sectors and other countries might eagerly take up those signals and start a vicious circle that would be difficult to stop. The global economy would have to bear the consequences.

The representative of Mexico said that his country was among those affected by the US measures taken on 27 January. This action was in addition to countervailing duty measures announced a few weeks earlier, as also to the application of a definitive anti-dumping duty on steel cables as from 1 February. The range of products affected had been significant, and the anti-dumping and countervailing duty margins established exorbitant. As a result, Mexico's steel products were simply shut out of the US market. These facts were particularly unjust when one considered the unprecedented growth of steel exports from the United States to Mexico in the past years as a result of Mexico's economic liberalization. The US actions also came at a very delicate time for Mexico's steel producers which had been subjected to a very difficult internal process of structural adjustment aimed at stimulating the necessary reconversion of the industry, the privatization of which had only recently been completed. Even worse, over the period in which these adjustments had been effected, Mexico's steel trade with the United States had been limited as a result of the VER with that country, which Mexico had scrupulously respected.

It was not possible to try to shelter, with the help of remedies which could be legitimate when used in conformity with GATT rules, what was in effect an industrial policy implemented through "managed" trade. The US measures were an unacceptable means of pressure for the purposes of perpetuating protection for the domestic industry first provided over ten years earlier. The political argument given then had been that the industry had to be given a grace period to adapt to new international conditions. If the US industry had not achieved this over this period of time, it would never do so and the most competitive countries should not have to pay for this. The steel sector in general, just as any other sector, should be scrupulously governed by the rules of the GATT.

In the light of these investigations -- and in the light of an apparent avalanche of similar petitions in other sectors -- the United

States now had an unprecedented opportunity to show its vocation for free and fair trade. It also had a moral responsibility to show leadership in not further darkening the international economic environment and, to the contrary, to work with others towards the rapid conclusion of the Uruguay Round. Mexico therefore appealed to the US International Trade Commission to confirm its independence and not to accept the allegations of damage that the US steel industry could not with any seriousness continue to allege.

The representative of Sweden, speaking on behalf of the Nordic countries, said that they were seriously concerned at the current anti-dumping and countervailing duty investigations in the United States on imports of certain steel plates. The recent announcements of preliminary anti-dumping duties had had an immediate and negative effect on exporters in Finland and Sweden; in the case of Sweden this action came on top of previous countervailing duty findings for the same products. The preliminary duties would effectively shut out exports to the US market. Sweden would face additional duties of nearly 28 per cent, while Finland faced preliminary anti-dumping duties as high as 53 per cent. Such levels were prohibitive, and the companies affected would be forced to cease exporting to the United States. The Nordic countries found it difficult to understand how the United States could claim that these countries' small shares in its market, 1.6 per cent and 1.5 per cent respectively for Sweden and Finland, could cause injury to US industry.

They also questioned the methodology used in the determinations. The US Department of Commerce had to a considerable extent based its decisions on what it called "best information available". The companies concerned in both Sweden and Finland, had done everything to cooperate with the US authorities, and had submitted a multitude of facts within the short deadlines provided. Still, the Department of Commerce had uncritically relied on the petitioners' information, which had resulted in the extremely high preliminary dumping margins. The Nordic countries considered the recourse by the US steel industry to anti-dumping and countervailing duty laws unwarranted, extremely regrettable, and excessive, particularly in view of the fact that it had enjoyed considerable protection during the past decade. The massive and heavy duties imposed constituted a protectionist use of these instruments, and risked undermining decades of trade liberalization.

The Nordic countries were studying the US determinations in the light of the relevant GATT rules, and reserved the right to revert to this matter in the proper legal context. They were also concerned about the broader implications on the trading environment of these actions, which gave a negative signal at a particularly ill-chosen moment when all efforts were needed to re-install confidence in the multilateral trading system and to rapidly resume and conclude the Uruguay Round. The steel industry faced global problems which called for global solutions; these could not be solved by unilateral actions of this kind. The Nordic countries had for many years been actively involved in the efforts to negotiate an MSA. They still looked at this as a viable long-term solution and believed that efforts to conclude this agreement should be redoubled. However, this project needed to be approached in a spirit of mutual confidence and trust; the recent US actions would not make the task easier.

The representative of Poland said that many aspects of the recent US actions on steel affected Poland, among others, when seen in the context of the general objectives of the multilateral trading system. Certain specific features of these actions also had direct ramifications for Poland, with potentially serious consequences for its present and future status in the US market. Poland regretted that the United States had decided to launch a massive anti-dumping and countervailing initiative at a very precarious stage in the Uruguay Round, and when the credibility of the GATT system was again in jeopardy. This was not likely to inspire the confidence necessary to clear the remaining hurdles in the Uruguay Round's race against the clock. Furthermore, the US measures might further complicate the on-going talks on the proposed MSA. Indeed, it was difficult to see how the latter's more liberal market access provisions might work when even the system of bilateral quotas and export restraint arrangements, with all its hardships for suppliers, was not regarded as offering sufficient security against arbitrary allegations of dumping and injury, and consequently did not prevent trade disruptive measures based on such allegations.

As regards Poland's specific concerns, he noted that a prohibitive anti-dumping duty of over 75 per cent had been assessed provisionally on Poland's cut-to-length carbon steel plates. The alleged dumping margin had been provisionally determined with disregard for extensive and detailed information that had duly been provided by Poland's exporters in the course of the investigation, in favour of arbitrary criteria and methodology for calculating fair value on the basis of third-country prices. The US investigating authorities had even gone as far as to grossly misrepresent the very nature of Poland's economic system, by using procedures specifically labelled as designed for and applicable to treatment of imports coming from "centrally-controlled" and "state-trading", non-market economy countries. Early in the investigation, his Government had formally advised the US authorities that this approach would be totally unjustified and inappropriate, since it would ignore very fundamental political and economic facts and thus challenge Poland's bilateral and multilateral status. The Department of Commerce had apparently decided to turn a blind eye to obvious realities in pursuit of a short-cut to the predetermined end-result. Poland believed that this was a serious misuse of legitimate anti-dumping disciplines. Poland therefore reserved its rights under the Anti-Dumping Code and other relevant GATT provisions, and intended to continue its efforts to address the situation as appropriate.

The representative of Canada said that his Government, too, was concerned about the recent US actions which represented the latest chapter in what had become a long and consistent tradition of providing special measures of import protection for the US steel industry. Over the past twenty years, this had included trigger-price mechanisms, safeguard actions, VERs, onerous marking requirements, and special and very restrictive "buy American" requirements. The decision to initiate these investigations, coincidental with the expiry of five years of special protection when the import share of the US market had declined from 26.3 per cent in 1984 to 17.7 per cent in 1992, raised serious questions as to the standards being applied by the United States in decisions to initiate anti-dumping and countervailing duty investigations. He recalled that US initiation decisions had already been found by more than one panel

to be in violation of its GATT obligations. All needed to be concerned about the potentially adverse consequences of these measures for the trading system. Finally, this action by the United States was a further indication of why the Uruguay Round needed to be concluded as soon as possible.

The representative of Korea said that his delegation shared the serious concern and profound disappointment expressed by Brazil and others on the United States' preliminary decision to impose penalties on certain steel imports, which affected more than US\$300 million of Korean exports to the United States. In terms of successfully concluding the Uruguay Round, this action was, to say the least, very poorly timed. In addition, it would no doubt have an adverse impact on the MSA negotiations. If, as some expected, other countries soon followed the same path, there would no doubt be an avalanche of trade-dampening measures, putting the multilateral trading system in jeopardy. The United States had indicated that these measures merely followed through on action taken under the previous Administration. Korea found this explanation troubling. The new US administration was already in its third week and one had yet to see a sign that it was committed to the GATT-based multilateral system and to the Uruguay Round. The previous week, another decision had been taken by the new Administration to support the US telecommunications industry, and there was also talk that the United States would take further trade steps to support its automobile, oil, and semi-conductor industries. Korea was also concerned at the idea, floated in some official quarters, that the United States might withdraw from the Agreement on Government Procurement (BISD 26S/33). All of this did not augur well for the future of the GATT at this point in time.

One had reasons to doubt that the measures under discussion were purely commercial. Korea's suspicions were bolstered by the number -- eighty-four -- of the anti-dumping and countervailing complaints; by the timing of their filing, so soon after the expiry of the VERs; by the exorbitant margins determined, which in some cases exceeded 100 per cent; and by the difficulty in understanding how the US steel industry could have been dealt serious injury by the imported products given that VERs had been in place on steel imports for 10 years, until March 1992. Furthermore, in Korea's case, debatable information had been used in making anti-dumping determinations, while the countervailing action taken in November 1992 had been based on allegations which the US Commerce Department had already rejected in 1982 and 1984. As regards the anti-dumping action, Korea's steel industry had complained that the United States, by applying the so-called "best information available" criterion had relied principally on data supplied by its own steel industry rather than that supplied by Korea. If this were true, and if one accepted that the Commerce Department had simply followed a mandated procedure, then one could not but conclude that US anti-dumping laws had serious shortcomings. Korea would have further comments when the details of the US anti-dumping determination were available.

With regard to the countervailing action, it was surprising that the Commerce Department had based its determination on the benchmark interest rate that took into account even private curb market interest rates, which

was not at all reasonable. Also, in its preliminary countervailing decision, the Commerce Department had accused Korea's financial institutions of according preference to its steel industry. Korea was also accused of giving preference to its steel industry by selectively approving foreign loans. However, these two allegations had been rejected by the Commerce Department in 1982 and 1984, which meant that its recent determinations contradicted its earlier decisions. Korea reiterated its disappointment with the US actions and hoped that this matter would be resolved to the satisfaction of all parties concerned when the Commerce Department made its final determination. If this were not done, Korea would view that matter most seriously, and reserved all its GATT rights.

The representative of Romania said that his country had also been affected by the recent US anti-dumping measures. It appeared that the procedures applied by the US authorities were inconsistent with GATT provisions, and that the new, non-traditional criteria invoked might also raise a problem of GATT credibility. Moreover, the measures had come at a delicate time, when all were searching for ways to finalize negotiations in the Uruguay Round, and when a number of countries, including Romania, were engaged in negotiating an MSA. Furthermore, in Romania, as in other countries in transition, a restructuring process was well under way, including in the iron and steel industry, which needed stability and predictability in international markets -- principles that were consecrated by GATT and which might be jeopardized by measures such as those under discussion. The high level of anti-dumping duties preliminarily imposed had no justification and greatly affected Romania's reform programme. Meanwhile, the investigations themselves involved high costs which it could not afford. Romania reserved its rights under the GATT and the Anti-Dumping Code in order to protect its legitimate interests.

The representative of the European Communities said that if the United States had needed a message of the sentiment of the multilateral trading community on its recent actions in the steel sector, it was indeed getting it. The European Council, for its part, had already taken a position on this matter on 2 February. It had recalled and reaffirmed its conclusions of 6 October and 7 December 1992 about the numerous anti-dumping and countervailing actions filed in the United States against steel imports, and had denounced the latest decisions by the US Department of Commerce on 27 January subjecting imports of steel products from its main steel trading partners, including the Community, to prohibitive preliminary anti-dumping duties. The European Council had referred to the extraordinarily high level of anti-dumping and countervailing duties to be imposed without any justification whatsoever, and had said that this action would further aggravate the difficulties in the Community's steel markets, severely disrupt exports from a large number of member States and also cause deviation of trade in a global context.

The measures announced on 27 January were only the latest in a massive assault on world steel markets by the United States, which called into question the whole basis of trading with that country in this important sector. He recalled that in 1982, the Community and other steel suppliers had entered into VERs with the United States, which had run for ten years

and had been very advantageous for the US steel industry. Now, the United States was seeking to impose anti-dumping and countervailing duties assessed in relation to a period during which the VERs had been in force, irrespective of the fact that it had been accepted at that time that the VERs would settle any future questions of duties and of injury. The recent measures, by their number and by their substance, were totally unwarranted and wholly disproportionate. The US actions should be seen for what they were: an attempt to obtain double payment and, in effect, to make foreign suppliers pay for what were undoubted difficulties currently being experienced in the US steel sector. The Community appealed to the United States to reconsider these actions. It asked, in this connection, whether the simultaneous initiation of more than 80 anti-dumping and countervailing duty cases against so many countries could really be seen as the normal application of domestic trade laws. Furthermore, it questioned whether this was the right thing to do at a time when one was confronted with a world-wide recession which had had a chilling effect on economic activity in all countries. Instead of causing a contraction of world steel trade, the United States should be looking for a means of keeping trade flowing and, preferably, helping it expand.

As regards methodology, the Community believed that the United States had used unfair and unjustified procedures, by having, inter alia, set unreasonable time limits for responding to voluminous questionnaires that had proved to be extraordinarily burdensome and cumbersome. Many companies had found it impossible to furnish all the information requested, which had put them in a very disadvantageous position. In cases in which the respondents had had their information rejected, and in which findings had been based on the petitioners' allegations, the available information furnished by the importers had been taken as the "best available information". While this criterion was a necessity in exceptional cases, it appeared to have become the rule in practice. This meant that the United States often had the "worst" information available on which to base future actions. The Community therefore believed that the basis for the recent US measures was at least suspect, if not unfair.

As regards a multilateral approach to resolve this issue, although some might have doubts as to whether the GATT would be best served by sectoral trade agreements, the proposed MSA appeared to present the only reasonable way out of this conundrum. He recalled that negotiations had been underway, but had not resulted in any agreement thus far. The quickest path back to those negotiations would be the only way out of a situation that had become intolerable for the world steel community.

The representative of Malaysia, speaking on behalf of the ASEAN contracting parties, said that they shared the sentiments of the previous speakers regarding the recent US measures. While they appreciated statements by the US Administration that such measures were the result of mandated procedures, these had come at an unfortunate time and could only lead to trade friction to the detriment of world trade as a whole. These actions would also result in stifling the efforts to bring the Uruguay Round to an early and successful conclusion. The ASEAN contracting parties therefore urged the United States to exercise due restraint and to concentrate on efforts to create a more conducive international trading environment.

The representative of Japan said that the United States' recent anti-dumping actions on steel imports from 19 countries, including Japan, were viewed with concern in many countries as a signal indicating the possible direction of the new Administration's trade policy. As regards the preliminary affirmative determination made in 1992 on injury allegedly caused by imported steel products, Japan had registered its strong concern at the CONTRACTING PARTIES' Forty-Eighth Session. That determination was not warranted in the light of GATT provisions, for a variety of reasons. Steel trade between Japan and the United States, and indeed between the United States and the rest of the world, had been restricted for many years until March 1992. Japan's exports to the United States had been declining in absolute terms as well as in terms of its share in the US market. Furthermore, Japan's exports to the United States consisted of highly valued-added products which did not compete with US steel products. As regards the recent preliminary determination on dumping, Japan would want to examine carefully the data recently provided and, in due course, decide on future action to protect its GATT rights.

Japan reiterated its concern that a massive filing of petitions, as one was now witnessing, imposed an enormous, unprecedented burden on the parties that were targets of the action. While such petitions hindered trade by themselves, the preliminary determinations had further exacerbated the situation, and would significantly impact steel trade. These actions were not justified because the problems of the US steel industry were largely of domestic origin and related to competitiveness. Further effort was necessary by the United States itself, and the present state of affairs was unfair to foreign producers that were merely competing in the international market place. Such actions would not make a positive contribution to the collective efforts for the establishment of improved, freer rules on steel trade. Japan strongly hoped that the US authorities would make a truly impartial judgement in subsequent proceedings on this matter, in full accord with their GATT obligations. Japan reiterated its strong concern on this matter and reserved its GATT rights.

The representative of New Zealand said that New Zealand could not argue with the right of contracting parties to have recourse to countervailing duty action when the conditions for their application under the GATT and the Subsidies Code had been met. New Zealand was concerned, however, that countervailing duties should be applied in situations in which subsidies actually existed, and not against private entities which had no government involvement. New Zealand's industry still faced countervailing duty action despite the fact that there was no government involvement whatsoever, and had not been for a number of years. The whole point about privatization was to get the government out of the market. New Zealand had put its steel industry on the market on a fully commercial basis, and had let the market make the judgement as to what it was worth. Once that had happened, the companies concerned had had to survive by the disciplines of the market. New Zealand found it all the more ironic, therefore, that the US Department of Commerce should preliminarily determine the existence of a subsidy relating to allegations concerning a period prior to privatization. There was, of course, a legal issue involved here, namely what the GATT provisions had to say on this and how they applied precisely to this situation.

New Zealand shared the objective of reduced government involvement in such industries as steel. That was all the more reason why it could see no merit in an approach to countervailing duty investigations which treated privatization as if it had never occurred. That was the wrong message to give to decision makers contemplating more liberal trading arrangements, and was discouraging to those persisting with them. The cases in which this issue arose were the subject of ongoing deliberation in US domestic proceedings. New Zealand trusted that before the processes relating to these cases had advanced much further, wise counsel would prevail.

The representative of Australia said that his Government had long been concerned at the possibility of the US steel industry using anti-dumping procedures as a trade-restricting measure. It was concerned at the spate of steel trade cases being initiated and therefore supported and welcomed the efforts by others to have the US practices and policies in this area examined in the Council. Australia believed that the origin of these actions was an effort on the US steel industry's part to gain additional protection, although this industry's real problems stemmed largely from domestic causes. The actions taken by the United States' integrated mills appeared to be aimed at deflecting essential reforms within the US industry, and placing the burden of adjustment on other countries. Australia believed that if assistance was warranted it should be provided by some other, more appropriate, means.

Turning to a more specific concern, Australia was very disappointed that preliminary dumping margins had been announced on certain non-corrosive steel products exported by one of its companies. It was difficult to see how Australia's steel exports could cause injury to the US industry, given their very minor share -- roughly one-third of one per cent -- of the US steel market. Australia was therefore carefully examining the details of this case before deciding whether further steps might be taken.

The ongoing US anti-dumping and countervailing duty actions on steel had a serious impact on world steel trade, and heightened global trade tensions at a time when efforts were being made to bring the Uruguay Round to a conclusion. The solution that Australia sought was a successful conclusion to the MSA negotiations, which would address the major concerns of both the international and the US steel industries, and restore confidence and predictability in the world steel market. While there were a number of even wider considerations for the multilateral trading system linked to this issue, which had been mentioned by previous speakers, Australia specifically supported the statements of those that had cited this issue as an important reason to conclude the Uruguay Round.

The representative of Hong Kong said that although Hong Kong had no direct trade interest in the matter, it was concerned with its possible adverse effect on the trade policies and relations involving 20 countries which, together, accounted for about 70 per cent of world trade. Hong Kong had consistently argued for stricter disciplines on anti-dumping actions, while respecting the right of a party to have recourse thereto. Its concern stemmed from the fact that fairly automatic domestic procedures, starting from the lodging of complaints by domestic industries to the imposition of provisional duties, made anti-dumping a very blunt instrument

and, to some, a very effective protectionist weapon. Indeed, the trade harassment effect began with the investigation of a complaint, long before any provisional duty was imposed. While Hong Kong was not an affected party in the actions under discussion, it had had painful experiences at the receiving end of a number of anti-dumping actions. These had reinforced Hong Kong's view that unless the whole anti-dumping philosophy and practice were reviewed at their root, perhaps in the next round of negotiations, one would witness a continuing proliferation of related actions, justified or otherwise, on an increased number of products and by an increased number of countries. Such actions would be a major source of friction among trading partners in the coming decade.

Hong Kong had been struck by the argument of some affected parties that it was not appropriate to take anti-dumping action against a product that had been subject to a quantitative restraint. Hong Kong and a number of other exporters had used this very argument when their restrained textiles products had been subjected to anti-dumping duties. However, that argument had been persistently and strongly refuted by both the United States and the Community at several meetings of the Anti-Dumping Committee. Hong Kong did not intend to start a debate on this point. It hoped, however, that when contracting parties next looked at the anti-dumping rules or a particular dispute, they would not lose sight of the fact that one could be a user of anti-dumping action in one case and a recipient thereof in another.

Some delegations had reserved their rights under the GATT regarding this matter. This underlined the importance of an effective multilateral dispute settlement mechanism which had been provided for in the Draft Final Act (DFA) of the Uruguay Round (MTN.TNC/W/FA), and would be one of the many benefits that would flow from a successful conclusion of the negotiations. This also underlined the importance of not changing the dispute settlement provisions in the DFA, particularly in the anti-dumping area, so as not to reduce the competence and effectiveness of a panel in reviewing the action taken by an importing country and in making appropriate recommendations. A primary function of the multilateral trading system was to review and settle trade disputes. The Uruguay Round would improve the present dispute settlement mechanism in the GATT. Hong Kong hoped that the controversies surrounding the present case would strengthen the resolve not to seek to change the DFA text for the worse. Hong Kong had a deep-rooted concern in the possible abuse of anti-dumping actions and hoped that this case, and indeed the recent spate of anti-dumping actions elsewhere, would make all reflect on the trade restrictive and harassment effects of this powerful instrument and its potential for abuse.

The representative of Hungary said that although his country had not been directly affected by the US measures, it shared a number of concerns expressed by previous speakers regarding the proceedings as well as the possible negative implications of these measures on international trade. Hungary noted with concern the basic disagreements which existed between the United States and a number of exporting countries regarding the proceedings in these cases, and in particular on the methodologies and criteria used and the level of provisional duties imposed. It had noted with particular concern Poland's statement which had highlighted the US

authorities' use of arbitrary criteria and methodology in calculating fair value on the basis of third-country prices. This methodology, which was designed to treat imports originating in non-market economy countries, seemed largely anachronistic and inappropriate.

The magnitude of the US measures might drastically reduce, or even shut out steel imports from the US market. The steel exports of the affected countries would possibly be re-oriented to other markets, causing a spill-over effect on wider international steel trade which might incite producers in these latter markets to seek protection against international competition. There were already signs that protective actions were being contemplated in other countries. Hungary shared others' concerns that, in addition to the damage caused to international steel trade, the US measures might compromise the confidence necessary for the conclusion of the Uruguay Round. These actions did not send the appropriate signals on the possibilities of improving the multilateral trading system and on the prospects for an early and successful conclusion of the Round. Hungary was convinced that an equitable and reasonable solution to the present problem in steel trade should be sought in the framework of the negotiations of an MSA. However, one had serious doubts as to whether the recent US measures could facilitate the task of the negotiators and lead to the conclusion of such negotiations.

The representative of the United States said that he failed to understand why so many delegations had felt compelled to address this matter in the Council. Anti-dumping and countervailing duties were explicitly provided for both in Article VI and in the Anti-Dumping and Subsidies Codes. Most of the statements at the present meeting had addressed what were preliminary determinations made in the course of entirely non-discretionary legal procedures that were fully consistent with the requirements of the General Agreement and the Codes. None of the governments that had failed to control the huge subsidies paid to their domestic steel industries should be surprised by these determinations. Similarly, none of the governments whose national steel producers -- many of them still government-owned -- had been the subject of determinations made in reaction to predatory dumping of steel in the US market should express astonishment thereat. His delegation wondered why all these statements had been made in the Council when, as far as it was aware, none of the delegations present -- with the single exception of the Community -- had requested consultations under a variety of established provisions. Many of the issues raised by the previous speakers -- such as those by Brazil -- seemed to the United States to be particularly suited to consultations between experts. His delegation, however, had not received information to the effect that Brazil had formally requested consultations with the United States.

The preliminary anti-dumping decisions announced by the US Department of Commerce on 27 January 1993, as well as the preliminary countervailing duty decisions announced on 30 November 1992, were fully consistent with the requirements of the GATT and the Codes. They had been made after fully transparent investigations, which conformed to GATT and Code requirements in all respects; the investigations had been conducted in response to petitions filed on behalf of the competing industry in the United States.

These decisions were comparable to recent preliminary determinations made by Canada on certain of the same products -- plate and hot-rolled sheets. He recalled that goods from some of the same countries had been investigated by Canada and similar dumping margins determined.

In each instance, the preliminary determinations reflected an attempt to determine the degree of dumping occurring in the domestic market of the importing country, based on the information available at that time. It should be understood that these decisions were only preliminary. Final determinations of dumping and subsidization would be made on the basis of a thorough analysis of verified information and the arguments of all affected exporters, importers and governments. If it was established that dumping and subsidization were not occurring, no final anti-dumping or countervailing duties would be imposed. Moreover, these determinations had not addressed the question of whether the dumping or subsidization was causing injury to the US steel industry. Injury determinations would be made by the US International Trade Commission (USITC). That process, like that of the Department of Commerce, was fully transparent and consistent with both the GATT and the Codes. As regards Argentina's allegation that these determinations were unjustified, he underlined that if, as a result of this investigation, the USITC decided that the US steel industry was not being injured by reason of dumped or subsidized imports, and if there were indeed other causes at the root of its problems, no final anti-dumping or countervailing duties would be imposed.

Any observer of world steel trade would note that the world market for steel at present was extremely soft. For this reason, many producers might be driven to dump, and their competitors in other countries, believing they were being injured as a result of such dumping and of subsidized exports, would be led to petition their governments to take anti-dumping and countervailing duty actions. It was particularly interesting to note in this connection that Mexico, which had complained about the actions taken by the United States, had just two days earlier made preliminary anti-dumping determinations in the steel sector against six US companies, with margins of up to 45 per cent.

He then referred to the implication by a number of previous speakers that the VERs which had been in effect for such a long time in this sector had somehow been the result of a safeguard action by the United States designed to protect its steel industry from rising imports. This had not been the case. In fact, the exporting countries concerned had requested VERs in 1982 because they could not accept the consequences of the then-impending duties by the US authorities. It now seemed that exporting countries might once again be preparing to ask the United States to agree to VERs in lieu of allowing the cases to progress to their final determinations.

He also referred to Brazil's view regarding the relationship between these anti-dumping and countervailing duty cases -- which had been initiated by the US private sector -- and the US Government's efforts to negotiate an arrangement to address conditions in world steel trade. While it might be Brazil's impression that the US Administration was somehow engineering these cases to build negotiating leverage in the MSA

negotiations, that was certainly not the case. The specific anti-dumping and countervailing duty actions might well serve to address dumping and subsidies at issue in the cases concerned; however, the most promising long-term solution to what was clearly a world-wide problem would be to complete the negotiations on an MSA in order to effectively discipline the use of government subsidies and other trade measures in the steel sector. The United States urged all countries involved in steel trade to rejoin it in this effort.

The representative of Brazil said that on 5 February, a note formally requesting consultations on this matter under the relevant provisions of the Anti-Dumping and Subsidies Codes had been handed to the US representative in Brasilia. A similar note, also dated 5 February, had been sent to the US Commerce Secretary by Brazil's Ambassador in Washington. It was regrettable that this information had not been transmitted to the US delegation in Geneva. With regard to the United States' view on the appropriateness of bringing this issue to the attention of the Council, the debate had clearly shown that this matter was of serious concern to a large number of contracting parties, and that it affected virtually everyone in one way or another. It was therefore entirely appropriate that the Council be seized of this issue. Brazil would, meanwhile, take up its specific concerns regarding the US actions in the appropriate bodies therefor and in bilateral consultations.

The representative of the European Communities said that the United States' statement had been totally unsatisfactory. To say that its recent actions on steel had resulted from mandated procedures which had to be allowed to run their course was to miss the point. Those procedures were leading to a situation where an entire industrial sector, by design or otherwise, was being seriously affected because trade flows were being jeopardized or even stopped. Precisely because markets were soft, and therefore could give rise to a situation where dumping would be more likely, there was all the more reason to be extraordinarily careful at this point not to destroy the whole base of the industry by massive anti-dumping actions. The Community also dissented from the view that the Council was not the appropriate forum in which to debate an issue as important as the trading environment affecting the steel industry. Simply because only the Community had thus far requested consultations on the United States' measures was no reason for the steel sector as such not to be the subject of discussion in the Council.

The representative of the United States said that he was unaware of any restrictions on the use of the anti-dumping or countervailing duty remedies in a way that would preclude their use in the steel sector. That, however, seemed to be the implication of many of the statements that were being made in this debate. There also appeared to be a suggestion that simply because of the massive nature of the cases being brought, one somehow needed to depart from the established way of doing things. One sensed from the debate that many delegations were making their points for the benefit of the Press or perhaps of their domestic political constituencies. He reiterated that the Council was not an appropriate forum for debating the technicalities of anti-dumping or countervailing actions.

The representative of Argentina said that the United States had given the impression that all the countries against which preliminary anti-dumping and countervailing duty determinations had been made in 1983 had requested the United States to agree to VERs on their steel exports instead of levying the duties thereon. In Argentina's own case, it was his recollection that bilateral consultations had been held at the United States' request, in which the possibility of concluding a VER had been raised. Argentina had rejected that suggestion then and, as it had turned out, the subsequent investigation by the US International Trade Commission had shown no injury to the US steel industry from Argentina's exports.

The steel industry was undergoing great structural difficulties throughout the world, and particularly in the United States. The US industry, either through VERs or the excessive use of dumping and subsidy investigations, was looking for the application of protective measures. Argentina believed that a political gesture needed to be made now so that a solution could be found. Failure to resolve this situation would have an impact not only on the GATT but also on the Uruguay Round. He said that although Article VI prohibited the actual application of both anti-dumping and countervailing duties on a product to compensate for the same situation of dumping or subsidization, the United States' simultaneous or successive anti-dumping and countervailing duty investigations were to a certain degree contradictory to those provisions. The United States' actions also violated the standstill and rollback commitments agreed to in Punta del Este. Argentina urged the United States to find a constructive solution to this problem which was of major concern to many contracting parties and had an impact on the overall future development of the GATT.

The representative of Japan said that his delegation shared the Community's views on the United States' statement. Regarding the latter's comment that many delegations' statements appeared to be aimed at the Press or at domestic political constituencies, he said that Japan's own statement had in fact been aimed at the US Administration. He suggested that the US delegation convey that statement to Washington and reflect upon it further.

The representative of Korea said that the clear message which the US delegation should convey to its authorities was that all participants in the Uruguay Round and all Council members were opposed to the kind of preliminary determinations on steel made by the US Department of Commerce, and that these views should be taken into consideration.

The representative of Brazil said that the United States' comment about statements on this issue being made with the Press or domestic constituencies in mind did not really call for a reply. Brazil believed that, given the seriousness of the matter and the implications of the US measures for the overall GATT objectives of world trade expansion and liberalization, it would be appropriate to keep this item on the Council's agenda until these measures had been reviewed by all relevant GATT bodies. The Council had a rôle to play in monitoring developments on this matter which had been shown in this debate to have a major impact on the operation of the multilateral trading system.

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

8. EEC - Import régime for bananas (DS38/1, 2, 3; DS32/4, 5)

The Chairman recalled that the matter of the European Community's import régime for bananas had been considered by the Council at its meetings in June, July and September 1992. It had also been addressed at the Forty-Eighth Session of the CONTRACTING PARTIES in December 1992. He drew attention to recently circulated communications from Colombia, Costa Rica, Guatemala, Nicaragua and Venezuela in DS38/1, 2, and 3, and DS32/4 and 5.

The Director-General recalled that in a communication dated 21 September 1992 (DS32/3), the Governments of Colombia, Costa Rica, Guatemala, Nicaragua and Venezuela had requested his "good offices in an ex officio capacity, in accordance with the provisions of paragraph 1 of the 1966 Decision on the procedures under Article XXIII (BISD 14S/18), in order to facilitate a satisfactory solution to the dispute over measures to restrict the import of bananas currently applied by some member States of the EC...". He had accepted this request after having received the assurance of the full co-operation of the Community in this matter. For the sake of transparency, this request had also been announced at the Council meeting on 29 September-1 October 1992. At the beginning of December 1992, he had suggested to both parties involved that the formal good offices procedure be suspended forthwith until 15 January 1993, in order to facilitate progress in this very complex case, and that meanwhile, he would pursue informal consultations with the parties involved to explore possibilities for a mutually-satisfactory solution. Both parties had agreed to this proposal. The suspension of the formal good offices had been announced at the Forty-Eighth Session of the CONTRACTING PARTIES (SR.48/2). In the course of the informal discussions, Ecuador, Honduras and Panama had joined in as observers and interested parties. Since then, he had met with the parties informally several times. However, following a decision by the European Council of Agriculture Ministers on 17 December 1992, concerning a new Community-wide banana import régime, the informal consultations had been terminated on 13 January 1993 at the request of the complainants. Thus, the suspension of the formal good offices had been ended automatically, and the two-month period for their completion had thus started running again as of 14 January and would terminate on 10 February.

The representative of Costa Rica, speaking also on behalf of Colombia, Guatemala, Nicaragua and Venezuela, recalled that in June 1992, their Governments had requested the Community to hold Article XXII:1 consultations (DS32/1) on its existing banana import régime, as well as on the proposal for a unified régime to govern imports of this product as from 1993. They had considered that the draft rules of 12 May 1992 drawn up by the European Commission on the common organization of the banana market from 1993 onward, contained elements that were contrary to the Community's GATT obligations. The Community had agreed to hold formal consultations on the existing régime and informal consultations on the future régime, arguing that no formal proposal on the latter had yet been made (DS32/2). Neither the formal nor the informal consultations had led to any positive results.

On 21 September, their Governments had requested the Director-General to use his good offices in this dispute, pursuant to the 1966 Decision. As described by the Director-General in his statement, he had agreed to this request and the process had later been suspended by agreement between the parties so as to permit a process of informal consultations, mediated by the Director-General, that might have facilitated a solution. Despite these countries' constructive participation in the latter process, no mutually-satisfactory solution had resulted. On 17 December, the European Council of Agriculture Ministers had taken a unilateral decision on the future common organization of the banana market, completely ignoring the on-going negotiating process and, more seriously, in violation of GATT rules. That decision had established a tariff quota under which 2 million tonnes of bananas originating from Latin American countries would be subject to a tariff of 100 Ecus per tonne, equivalent to a 25 per cent ad-valorem tariff at present price levels. The basic quota implied a 30 per cent reduction in these countries' export levels in 1992. Furthermore, a tariff of 850 Ecus per tonne, or an ad valorem equivalent of more than 200 per cent, was established for exports over the basic tariff quota level. In practice, this was tantamount to a quantitative restriction. Considering that these measures would not allow the Community to establish the desired level of protection, the Council of Ministers had further decided to set up an import licence administration system which was clearly in violation of the GATT, and would have a very trade-distortive effect.

The Community's lack of will to negotiate and its non-compliance with the process suggested by the Director-General had led the countries concerned to consider this form of mediation terminated. The formal good-offices procedures had then been resumed and would terminate on 10 February 1993. In conformity with the 1966 Decision, these countries had requested the Director-General to refer this matter to the Council (DS32/4). It was their understanding, pursuant to paragraph 5 of the 1966 Decision, that automatically "upon receipt of the report, the CONTRACTING PARTIES or the Council shall forthwith appoint a panel of experts to examine the matter with a view to recommending a solution".

Separately, on 28 January 1993 these countries had requested the Community to hold Article XXII:1 consultations (DS38/1) concerning the decision of 17 December 1992 on the future common organization of the banana market, because they considered this régime to be inconsistent with the Community's GATT obligations, in particular Articles I, II, XI, XIII and XXIV, and, furthermore, that it did not comply with Part IV. On 3 February, the Community had replied negatively to this request (DS38/4). Given this situation, and pursuant to the provisions of the April 1989 Decision on improvements to the GATT dispute-settlement rules and procedures (BISD 36S/61), they requested that the Council establish a panel at its present meeting to examine this matter as well.

In their view, it was clear that the Community had not respected the GATT in its decision regarding the future common organization of the banana market. It was equally obvious that the serious consequences of this measure on the Latin American countries concerned had been totally ignored. Not less than eight countries' exports would be seriously

affected, including those of Ecuador, Panama and Honduras. For some of these countries, bananas represented more than a third of total exports. Clearly, the economic and social deterioration in the banana producing regions of Latin America would be of tremendous magnitude. The Latin American banana-exporting countries had, on many occasions, expressed concern at the lack of results under the different dispute settlement procedures they had engaged in. Since the different phases had now been completed without a mutually-satisfactory solution, they trusted that recommendations by a panel would convince the Community to respect its GATT obligations.

The representative of Colombia said that banana-exporting countries had been waiting for thirty-one years for the Community to honour a commitment it had assumed at the end of the Dillon Round to bind at 20 per cent its common tariff for banana imports. Far from taking the necessary steps to bring its policy into compliance with its GATT obligations, the Community had chosen to go in the opposite direction. While it was true that some member States -- Germany, Belgium, Netherlands, Luxembourg and Denmark -- had ensured market conditions which respected the Community's commitment, others had maintained and refined highly restrictive régimes openly contradicting the bound tariff level. On 17 December 1992, the Community's Council of Agriculture Ministers, faced with the responsibility to establish rules for a common market organization for banana imports before the single market entered into force on 1 January 1993, had once more breached their commitment. Even for the basic quota established, the tariff rate would exceed the 20 per cent GATT bound rate. Moreover, new tariff and non-tariff measures had been adopted, which further violated the tariff-binding undertaking. The mere news of this decision had negatively affected the economies of the banana exporting countries concerned.

He provided details of the elements on which the Community's new régime had been based, namely, transitory measures leading to its full implementation on 1 July 1993, tariff quotas for banana trade, associated tariff levels and an import license administration system. For Colombia, the new régime would mean a fall in export earnings of at least US\$ 100 million a year, a huge loss of directly and indirectly related jobs, substantial increase in production costs, and unpredictable social and economic consequences in regions of particular sensitivity. There would be similar effects in the economies of the other countries concerned.

The Latin American banana exporting countries requested that the CONTRACTING PARTIES interpret two provisions which had not been invoked before in dispute settlement proceedings, but which formed part of the GATT rules and had been designed to offer developing countries additional means for protecting their rights. The first was the 1966 Decision on Procedures under Article XXIII, which provided that "after a period of two months from the commencement of the consultations referred to in paragraph 3, if no mutually satisfactory solution has been reached, the Director-General shall, at the request of one of the contracting parties concerned, bring the matter to the attention of the CONTRACTING PARTIES or the Council, to which he shall submit a report on the action taken by him,

together with all background information" (paragraph 4). The Decision further provided that "upon receipt of the report, the CONTRACTING PARTIES or the Council shall forthwith appoint a panel of experts to examine the matter with a view to recommending appropriate solutions" (paragraph 5). The banana-exporting countries had requested the Director-General (DS38/2 and 3) to submit to the Council a report on the actions taken by him under the good offices procedure, noting that the two month period would expire on 10 February. It was now for the CONTRACTING PARTIES to decide on the interpretation and the scope of the term "forthwith" in paragraph 4, keeping in mind the need to resolve promptly situations that could cause severe damage to the trade and economic development of developing contracting parties. Colombia had already demonstrated the grave consequences which would result from the implementation of the Community's measures. For the Latin American banana-exporting countries, a decision at the next Council meeting would constitute an excessive delay. If the Council were to interpret the provision concerned in favour of developing countries, the Director-General's formal report should be made at the present meeting and the Council Chairman be authorized to initiate the necessary consultations in order to establish the panel the very next day after the expiration of the sixty-day period. It was vital for banana-exporting countries concerned to protect their right to the 20 per cent bound tariff before the measures recently adopted caused further harm to their economies.

The second provision on which Colombia sought an interpretation concerned paragraph C.1 of the April 1989 Decision on improvements to the GATT dispute settlement rules and procedures, which provided that the contracting party requesting consultations could directly proceed to request the establishment of a panel if the other party refused to accept the request. He noted that in a communication dated 3 February (DS38/4), the Community had rejected the request for consultations by the Latin American banana-exporting countries (DS38/1), arguing that the proposed régime could not be considered as a "measure" under Articles XXII:1 or XXIII:1. The banana-exporting countries concerned believed that Article XXII:1 consultations could be requested in respect of "any matter affecting the operation of the General Agreement". That Article did not make any reference to the term "measure". Consequently, it was for the CONTRACTING PARTIES to interpret in which manner a contracting party could exercise the right to "proceed directly to request the establishment of a panel". Colombia had no doubt as to the scope of the measures adopted by the Community's Council of Agriculture ministers, and knew that these were the basic components of the new banana-import régime. These measures were all of such gravity that the request for consultations on this matter was fully justified. His Government requested that the right to hold such consultations be re-established in full compliance with the provisions of the General Agreement.

The decisions to be taken in this dispute would be of great importance for the multilateral trading system, which was undergoing a disturbing credibility crisis. An increasing number of developing countries had acceded to GATT in the past few years and two important banana producers, Ecuador and Honduras, were in the process thereof. The CONTRACTING PARTIES' decisions would have far-reaching effects on the

economies of several GATT members and would, at the same time, send an unequivocal signal of political will to instil energy and credibility into the multilateral trading system at a time when new protectionist trends were increasingly visible.

The representative of the European Communities stressed that the Community had not taken an adverse position with respect to the Latin American banana-exporting countries. The Community was in the painful process of establishing a Community-wide régime for bananas. In this process, it had had to reconcile opposing contractual obligations with the GATT and with the ACP countries. While the Community recognized the difficulties for the Latin American countries, it had also to take into account similar difficulties in the ACP countries; it could not act against one group of countries in favour of another. The Community was trying to obtain the best possible solution, but there were limits on the amounts of bananas it could consume.

The Community was willing to continue an informal dialogue with the Latin American countries on the future evolution of its banana-import régime. However, it was not in a position to provide a fully-negotiated settlement on this matter which had an internal character. The Community's Council of Ministers was in the last resort responsible for taking a decision. The Latin American banana-exporting countries had recently presented a new request (DS38/2 and 3), which had raised an element of confusion. The Community recognized that in accordance with the 1966 Decision, on the termination of the conciliation phase at midnight on 10 February, the complaining party had the right to ask for the establishment of a panel forthwith. That would be a matter for the Council to decide at its next meeting, since the present meeting would end on 10 February, if not earlier. However, the countries concerned were now requesting a further panel on a different import régime that did not exist for the moment. This was a matter that the Community could only consult informally on. The Community was endeavouring to provide an appropriate and reasonable régime for all those that sought to benefit from the Community's considerable market.

The representative of Venezuela underlined the serious consequences of the Community's new import régime on his country's exports of bananas. The new régime was clearly in violation of the GATT, in particular Articles I, II, XI and XIII, and the provisions of Part IV. For reasons already stated by Costa Rica, the Council should proceed to establish a panel on this matter under the April 1989 Decision, and another panel to examine the current régime, under the 1966 Decision.

The representative of Nicaragua associated his delegation with the statements by Costa Rica, Colombia and Venezuela. The Community's future common organization of the banana market was aimed at limiting Latin American exports, and Nicaragua could not accept the Community's offer of informal consultations thereon. In informal consultations over the previous eight months, the Community had at no time shown any intention of reaching a solution. It had simply repeated that no negotiations could take place before a decision on its future régime had been taken. The suggestion that a negotiated solution should be found outside the GATT

framework was not new, and had already been made by the Community in the context of the Director-General's good offices. The Community had not suggested, however, the way towards such a solution. Despite the Community's lack of goodwill, and the fact that any extension of the dispute settlement process would in fact have been detrimental to it, the Latin American banana-exporting countries had agreed to the suspension of the good offices procedure proposed by the Director-General in order not to close the door on a possible negotiated solution.

The Community's response to these efforts and to the request for a dialogue had been simply to adopt, on 17 December, a new régime to govern banana trade. It had offered the possibility of further informal consultations, but which would only take place on the basis of the 17 December decision. The Community had also suggested that the Latin American countries' request for a panel be deferred to the next Council meeting. However, the deadline for the good offices procedure was the present day, 10 February, and the Council was fully empowered to establish the panel.

Nicaragua was concerned that the Community constantly tried to sidestep the dispute-settlement procedure by creating an artificial legal uncertainty. The 17 December decision by the Council of Ministers was fully applicable since a date for entry into force had been set, and the decision was not subject to any modification. Under such conditions, the Latin American banana-exporting countries had the right to request Article XXII:1 consultations. If the Community denied them this, they had the legitimate right to resort to the April 1989 Decision and request the immediate establishment of a panel.

The representative of Mexico said that while his Government could understand the reasons for the Community's position, it believed that trade liberalization should not be pre-empted to protect the preferential access of one group of developing countries, all the more so when the interests of other groups of developing countries just as highly dependent on this particular product were involved. Mexico reiterated its firm support for the Latin American banana-exporting countries' concerns, and for their specific request to the Council, as to both substance and procedure. Mexico was convinced that good faith on the part of all concerned, and greater political will, would lead to a satisfactory solution of the problem.

The representative of Brazil said that Article XXII:1 did not refer to formal or informal consultations, but only to "consultations". The banana régime currently in force in the Community treated a number of Latin American countries unfairly and the damage was serious. That régime was being changed, and it was clear that it was impossible to hold consultations on the present régime without considering changes to it that had already been approved by the Community. It was on the basis of this concrete situation that consultations should be continued. Given Brazil's potential interest in this matter, apart from its systemic interests, it supported the Latin American banana-exporting countries' request. Brazil also reserved its right, as a contracting party with initial negotiating rights for bananas and with potential trade interests, to participate in

any related negotiations, especially those which might stem from modifications introduced in the Community's commitments.

The representative of Chile said that Chile could not agree with the Community's reasons for rejecting the request for Article XXII:1 consultation. It supported the Latin American banana-exporting countries' request for a panel, pursuant to the 1966 Decision, to examine the existing banana régime. Chile also supported the second request by these countries for a panel to be established to examine the Community's new régime. Chile hoped that the Community would work toward a prompt and equitable solution for the banana-exporting countries.

The representative of Jamaica recalled the Community's contractual obligations to the ACP countries under the Fourth Lomé Convention. Article 1 of the Convention's Protocol V on bananas stated that "In respect of its banana exports to the Community markets, no ACP State shall be placed as regards access to its traditional market and its advantages on these markets in a less favourable position than in the past or at present". The Community had also undertaken to "seek to determine measures to be implemented so as to improve the conditions for the production and marketing of bananas, in order to enable ACP States to become more competitive, both in their traditional markets and in the market of the Community...". Finally, in Annex 29 of the Convention, the Community had committed itself to "(1) Ensuring that in the overall application of the Convention the competitive position of ACP States is maintained where their advantages in the Community market are affected by measures related to general trade liberalization; and (2) studying specific appropriate action to safeguard the interests of ACP States in any specific case".

Most, if not all, contracting parties were to one extent or another involved in various bilateral and multilateral agreements outside GATT which placed upon them obligations that they were honour-bound to fulfil. The ACP countries did not wish economic hardship on any country or group of countries, and especially not on those ACP countries that were major banana producers. These latter were developing countries, including least-developed and island developing countries, with fragile eco-systems and narrow agriculture bases prone to frequently-occurring natural disasters. He recalled that one of the premises underlying the Uruguay Round negotiations was that these would contribute to increased global trade and, consequently, economic growth and prosperity for all concerned. It would be ironic if, as a result of the negotiations, ACP governments would have to tell their banana producers that they had lost their markets and faced economic dislocation.

The situation was complex and required patience and understanding of the various elements concerned and of the fact that the ACP countries had certain rights which had to be honoured and respected. The Community was making painstaking efforts to find a balanced solution which would honour its obligations both to GATT and to its Lomé partners. Finally, it was his delegation's contention that the period of the Director-General's good offices was not yet completed, and that the request for a panel should be considered at the next Council meeting. Jamaica wished to be included in

any discussions that might be held between the Community and the Latin American banana-exporting countries.

The representative of Bolivia said that his delegation had listened with interest to the previous statements, in particular those of Costa Rica, Colombia and Venezuela. Bolivia was concerned with the manner in which this matter was evolving and particularly with the lack of a solution. It was difficult for countries like Bolivia, which had recently embarked on substantial trade liberalization programmes, to look forward to the future with optimism in the face of restrictions and obstacles being imposed by their partners in contradiction with the basic GATT principles to which all had subscribed.

The representative of Argentina said his delegation fully shared the Latin American banana-exporting countries' concerns and regretted the lack of willingness shown by the Community to find an acceptable solution to this problem. He urged the Community to review its new banana import régime, keeping in view the severe economic and social repercussions it would have on the countries concerned. Argentina also supported the request by the Latin American countries that two panels be set up for the examination of these issues.

The representative of Uruguay endorsed the statements made by other Latin American delegations with regard to the restrictive nature of the Community's new banana-import régime, its incompatibility with GATT rules, and the economic consequences thereof on the countries concerned. This régime discriminated against the affected Latin American countries and had no justification. Uruguay was also concerned by the negative effect that this situation could have on the Uruguay Round negotiations, particularly those on agriculture, as a result of the violation of the standstill commitments and the creation of a special régime for a particular product. Uruguay supported the request that a panel be set up immediately on the present régime, and another, pursuant to the April 1989 Decision, on the new régime.

The representative of Côte d'Ivoire shared the concerns expressed by Jamaica. Côte d'Ivoire was convinced that the Community would make every effort to fulfil its obligations under the Lomé Convention and thereby enable countries that were in very difficult economic and social conditions to leave poverty behind. In this respect, the banana Protocol had to be seen as a manifestation of the Community's solidarity in helping developing countries to grow.

As to the panel requests by the Latin American banana-exporting countries, she said that for the Council to establish a panel on the Community's new régime would set a precedent by examining a régime that was not yet in place. If, on the other hand, a panel were established to examine, a posteriori, the old régimes which were no longer in force, there would seem to be no point in doing so. Her delegation therefore found it somewhat difficult to accept the requests. It was more important to continue to seek a solution to these problems through the ongoing consultation process. Côte d'Ivoire wished to participate in any future GATT work on this issue.

The representative of Cameroon said that any measures which reduced Cameroon's market for bananas -- its main export product -- would have serious social, economic and political consequences for it, as for other ACP countries. The Community had to keep these elements in mind and formulate its new régime accordingly. Cameroon endorsed Jamaica's statement which fully reflected the concerns of the ACP banana-exporting countries. On the other hand, it had serious difficulties in accepting, at this stage, the establishment of any panel on bananas, because it would either be examining an old régime that was no longer in force, or a process which would be completed only in July 1993. Cameroon was convinced that a fair and equitable solution had to be found through consultations, and wished to participate in any future GATT work on this matter.

The representative of Senegal voiced his delegation's full support for the position of the ACP banana-exporting countries. While Senegal could sympathize with the Latin American banana exporters, it had greater sympathy for the ACP countries, whose producers were small farmers and family concerns whose very survival depended on their access to the Community market. The Community had a moral obligation to fulfil its responsibilities towards the ACP countries, whose preferences had already been seriously eroded as a result as the Community's offer in the Uruguay Round market access negotiations, particularly with regard to tropical products and natural-resource based products. Since the Community had clearly stated its readiness to continue consultations with the Latin American countries, Senegal felt that their request for the establishment of a panel was not justified at this stage. Senegal encouraged all parties to the dispute to continue their dialogue.

The representative of Morocco said that Morocco fully understood the underlying reasons for the Latin American countries' complaints, as also the no less legitimate interests of the ACP countries. Morocco recognized, too, the Community's conflicting obligations to the GATT and to the ACP countries, the latter obligations having never been declared inconsistent with GATT. Morocco would continue to encourage a dialogue, and welcomed the Community's readiness to continue consultations on this question in order to find a mutually-acceptable solution. Morocco was confident that such a process would lead to a solution that would preserve the interests of all parties concerned.

The representative of the United States sympathized with the difficult situation in which the Latin American banana exporters found themselves at this stage, and said it was important that their legitimate GATT rights be respected. The United States fully supported their request that, upon the expiry of the period for the Director-General's good offices, a panel be established to review the GATT consistency of the banana régimes now in force in some Community member States. It also urged the Community to fully respect current and emerging GATT rules in developing a replacement import régime for bananas.

The representative of Australia said that in this matter one had to bear in mind the organization of the Community's market as also the range of wider economic and non-commercial concerns that were involved.

Australia welcomed the fact that the Community had signalled its intention to go down the route of tariffication of its import régime for bananas in keeping with the agriculture text of the Draft Final Act of the Uruguay Round. Australia was concerned, however, that the Community did not intend to do so in a way that would maintain the current market access opportunities of the Latin American banana exporters, and that would be inconsistent with the Draft Final Act text.

Australia had always believed that it would be possible for the Community to tariffy bananas and implement changes to its régime in a way that took into account the interests of ACP producers, its own producers and the Latin American producers, by adjusting the parameters of that régime. Australia hoped that a process of further consultations would enable a satisfactory result to be achieved.

The representative of Cuba shared other countries' concerns as to the repercussions of the Community's restrictive measures on the Latin American countries concerned, the multilateral trading system itself and the Uruguay Round. Cuba also recognized the concern of those countries which enjoyed benefits under the Lomé Conventions, and the Community's responsibilities in this respect. Cuba urged the latter to use GATT procedures constructively in order to reach a solution acceptable to all parties.

The representative of Egypt said it appeared to his delegation that there was still room for further consultations to try to find a solution, and noted that the Community had stated its willingness to continue such consultations. This, of course, did not pre-empt the Latin American countries' right to the establishment of a panel, which, however, should be considered at the next Council meeting, and consultations pursued until then. It was his understanding that the Latin American countries did not want to pursue their interests at the expense of the ACP countries.

The representative of New Zealand said that his delegation agreed with Australia's statement. New Zealand had been one of many advocates of the principle of comprehensive tariffication in the Uruguay Round. For the Community, that necessarily meant, inter alia, tariffying its import régime for bananas, which it had now proposed. New Zealand hoped that others would follow this example, as comprehensive tariffication remained a crucial element of any agreement on agriculture in the Round. With regard to the Latin American countries' concerns about the size of the tariff quota and tariff equivalent, he underlined that no contracting party could come out of the Uruguay Round worse off than before, since that would defeat the whole purpose of the negotiations. New Zealand believed that a solution acceptable to all parties could be worked out and strongly encouraged continued efforts to that end. The Round was not yet concluded and was the appropriate context to address this problem. Continuing bilateral negotiations in the meantime would be preferable at this stage to other courses of action.

The representative of Tunisia said his delegation understood the concerns voiced by all parties involved, and that this situation had arisen from the fundamental problem of the management of sometimes

conflicting contractual obligations. The task of finding the best possible solution to safeguard the interests of all parties would be complex and arduous. Tunisia believed that in this case, the solution was a political one although the GATT could, of course, contribute to a solution. Tunisia encouraged all parties to continue their dialogue.

The representative of Panama, speaking as an observer, said that as a Latin American banana-exporting country, Panama fully supported the positions expressed by Colombia, Costa Rica, Guatemala, Nicaragua and Venezuela. Bananas played a paramount rôle in Panama's exports, and the Community's market represented 80 per cent of its total exports of this product. Its economy was therefore very vulnerable to any Community decision to restrict the imports of bananas. For this reason, Panama had followed with serious concern the Community's process which had led to the decision of 17 December. It had also followed closely the dispute-settlement process initiated by the countries concerned, since it fully shared their interests and concerns. As an observer to the GATT, an institution which it hoped to join in the near future, Panama wished to see it operate smoothly. For that, and for the GATT to maintain credibility, it was essential that the major trading partners respect their obligations.

The representative of Honduras, speaking as an observer, supported the earlier statements by the Latin American banana-exporting countries. The principles on the basis of which the Community had established its new banana-import régime were not at issue here; nor were the Community's obligations towards the ACP countries, since there was no question of opening up any discussion as regards the Lomé Convention. The Community, however, had the responsibility to take into consideration several elements in taking its decision. The decision had to be consistent with GATT provisions, in particular Article II. By raising the level of bound tariffs, the Community was clearly in breach of Article II. In this situation, the Community only had two possibilities: it could request a waiver, which was an implicit admission of the GATT inconsistency of the new régime; or it could offer compensation as required under Article XXVIII. So far the Community had not referred to any GATT provisions or to either of these two possibilities.

The Community had also not taken into consideration the possible expansion of the market as a result of promotional policies, nor that the Community would also be enlarged as other countries joined it. Furthermore, no measure had been contemplated which would encourage the ACP countries to diversify production and try and divert trade to other areas or partners. It seemed, as a result, that one was taking from one party in order to give to another; in the process, all would find themselves empty-handed. Honduras, therefore, supported the proposal by the Latin American banana-exporting countries. It believed that if only one panel was established, it would be sufficient to extend its terms of reference to cover both the Community's old and new régimes.

The representative of Ecuador speaking as an observer, said that this matter was of concern to his country, the world's largest banana exporter. He asked why certain countries feared competition in this sector when that

principle was at the heart of the GATT system, which Ecuador was in the process of joining. He urged the Council to send a positive signal to a Summit of Latin American banana-exporting countries to be held on 11 February in Guayaquil, to deal with the crisis arising from the Community's decision.

The representative of Costa Rica, speaking also on behalf of Colombia, Guatemala, Nicaragua and Venezuela, thanked the delegations that had supported their position. The Community's response to their request for a panel pursuant to the 1966 Decision was regrettable and showed a total lack of willingness to respect the spirit thereof. These countries had in all good faith agreed on 1 December to interrupt the good offices procedure which would normally have terminated on 29 December, and would not have been in the present situation had they not accepted that. They urged the Community to reconsider its position and enable the Director-General to report formally at the present meeting on the result of his good offices, so that a panel could then be established.

They were also concerned at the Community's disregard for its GATT obligations in rejecting their request for Article XXII:1 consultations on the new régime. In June 1992, the Community had already rejected a request for Article XXII:1 consultations, arguing that a decision had not yet been taken on the future banana import régime. That decision had now been taken on 17 December, and this justified without any doubt their request. The Community could not pretend that its decision did not meet the conditions under Article XXII:1, when it would cut by one-third its imports of the single most important product from their countries. This was therefore clearly a matter "affecting the operation of this Agreement". In light of the seriousness of this situation, these countries requested that consultations be initiated on the interpretation of the rights granted by Article XXII:1, which should begin immediately with all parties concerned, and that this matter should be considered by the Council at its next meeting.

The Chairman said that although the good offices process would not end until midnight that day, the Director-General was prepared to present his formal report thereon to the Council now, at the request of the Latin American banana-exporting countries. He asked if this would be acceptable to the Community.

The representative of the European Communities said that a process was underway in the Community which involved the tariffication of its banana import régime. It was impossible and improper, in these circumstances, for the Community to submit that process to a formal consultation or negotiating process. He could not think of any precedent of a formal consultation being initiated on political indications rather than on statutory law, either under Article XXII or Article XXIII. One could not assume that a view taken at the political level by the Community on 17 December was the equivalent of statutory law. In those circumstances, the question of consultations on the emerging banana régime was not one which the Community was prepared to entertain. The Community would also caution against an arrangement whereby a panel procedure on the old régime would be extended to cover an emerging régime. It questioned, too, whether

consideration of the interpretation of rights under Article XXII at the next Council meeting was the appropriate thing to do.

As regards the question of the Director-General presenting a report on his good offices process now, before the formal termination of that phase at midnight, the Community's position was clear, namely that as long as one was in a conciliation phase, it was difficult to entertain the idea of simultaneously establishing a panel. At the same time, the Community was sensitive to the view expressed by many that if the complainants wished to proceed to a panel, a matter of hours should not be allowed to stand in the way. In the circumstances, he proposed a short recess in the present meeting to permit the Community and its member States to consult on the matter.

After a short recess, and following consultations among the member States of the Community, the representative of the European Communities said that the Community was acutely aware of the need for the dispute settlement mechanism -- and thereby the multilateral system -- to function as smoothly as possible, and would not stand in the way of a procedure under the 1966 Decision that had a high degree of automaticity attached to it. The Community could agree to the establishment of a panel in principle, it being understood that more time would be needed for determining the panel's terms of reference and composition.

The representative of Costa Rica, speaking also on behalf of Colombia, Guatemala, Nicaragua and Venezuela, said that while they were pleased that the Community had accepted the establishment of a panel to examine its present banana import régime, they were concerned at the change that had been introduced into the procedures under the 1966 Decision regarding the time period, i.e. sixty days, within which the panel had to submit its findings and recommendations. They could accept this substantial change on the understanding that another twenty days would be allowed to permit the determination of the terms of reference and composition of the panel. They would also accept this on the understanding that no precedent would be set which would take away the spirit of the 1966 Decision, which provided for a prompt solution, i.e., within sixty days.

The Chairman said that he sensed a basis for a consensus and a decision at the present meeting. He invited the Director-General to make his formal report to the Council pursuant to paragraph 4 of the 1966 Decision.

The Director-General said⁴ that apart from one meeting of an organizational nature, he had held two formal good offices meetings with both parties, on 3 November and 1 December 1992 respectively. The consultations had included an exchange of views on the various banana import systems of the member States of the Community, systems which had

⁴The text of the Director-General's statement was subsequently circulated as DS32/6.

been in place for a number of years and which were to be replaced by a new Community-wide régime on 1 July 1993. As he had informed the Council in his statement at the beginning of its discussion on this item, he had also carried out a number of informal consultations with the parties individually and collectively with the aim of exploring approaches towards a mutually satisfactory solution on the new import régime under consideration in the Community. The formal good offices were due to finish at midnight that day. However, since waiting for this deadline to be reached would not change the factual situation, he had decided, in consultation with the parties concerned, and without creating a precedent, to formally inform the Council now that his consultations, to his regret, had not led to a mutually-satisfactory solution. He added that the background information referred to in the⁵ 1966 Decision would be circulated to contracting parties shortly.

The representative of India said that any compromise which the Chairman might announce with regard to the time period stipulated in the 1966 Decision for the panel to submit findings and recommendations, would be without prejudice to the interpretation of the 1966 procedures on that issue.

The Chairman noted that, pursuant to paragraph 5 of the 1966 Decision, the Council had to proceed to establish a panel upon receipt of the Director-General's report. Accordingly, he proposed that a panel be established in principle, on the understanding that the sixty-day period for the submission of its findings and conclusions would only begin once its terms of reference and composition had been agreed, and that this would not be taken as a precedent for the interpretation of the 1966 procedures. Furthermore, as provided for in the April 1989 Decision on improvements to the GATT dispute settlement rules and procedure, the panel would have standard terms of reference unless the parties to the dispute agreed otherwise within the following 20 days.

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

The representative of Argentina said that in his understanding, the provision in paragraph 7 of the 1966 Decision that "the panel shall, within a period of sixty days from the date the matter was referred to it, submit its findings and conclusions..." implied that the panel had to be physically composed in order to review the matter. In other words, the sixty day period began from the moment the panel's terms of reference and composition had been agreed. In his delegation's view, therefore, there was no incompatibility or inconsistency between the twenty-day deadline in the April 1989 Decision for establishing terms of reference and composition, and the 1966 procedures. He would even add that no right of any contracting party was being affected.

⁵ Subsequently circulated as DS32/7 and 8.

The representative of the European Communities said that the Community could accept the Chairman's proposal, without prejudice to the provisions of the 1966 Decision. The proposed course of action represented an amalgamation between the 1966 Decision and the timetables established in the April 1989 Decision for determining terms of reference and the composition of panels.

The representative of the United States said that in his delegation's understanding, the Community had agreed to the Chairman's proposal on the establishment of this panel as an accommodation in this case. Given the agreement of the Community, the United States would not object to time limits for agreement on panelists and terms of reference. However, it should be clear that, as the Chairman had indicated, nothing that was agreed by the CONTRACTING PARTIES at the present meeting would constitute an interpretation of general application regarding the conjunction between the 1966 and 1989 procedures.

The representatives of Jamaica, Côte d'Ivoire, Senegal, Cameroon and Madagascar expressed their respective Governments' wish to participate in the work of the Panel.

The representatives of Japan, Brazil, the Philippines, Chile, Mexico, Cuba and Korea reserved their respective Governments' rights to be heard by the Panel as interested third parties.

The observer from Ecuador, speaking also for Honduras and Panama, requested the right, as banana-exporting countries in the process of accession to GATT, to participate as observers in the work of the Panel.

The representative of the European Communities said his delegation wished to make absolutely clear that although two matters had been referred to in documents DS32/4 and DS38/2, the Community had only agreed to the establishment of a panel to examine its existing régime.

The representative of Mexico said that his delegation shared India's view on the question of interpretation of the 1966 procedures.

The Chairman pointed out that the right to participate in panel proceedings as an interested party was reserved for contracting parties. He then recalled that Costa Rica, also on behalf of Colombia, Guatemala, Nicaragua and Venezuela, had requested that the Council also initiate consultations on the interpretation of rights of contracting parties under Article XXII:1. On the basis of the present discussion, he believed there was no ground to begin such consultations. However, if the contracting parties concerned wished it, this matter could be considered at the next meeting of the Council.

The representative of Costa Rica, speaking also on behalf of Colombia, Guatemala, Nicaragua and Venezuela, regretted that there was no consensus at this time for the Chairman to carry out consultations on an issue which they believed was of paramount importance, namely rights of contracting parties under Article XXII:1. This being the case, he requested that the Council consider this matter at its next meeting. He

also requested that, at that meeting, a decision be taken with regard to the establishment of a panel to examine the Community's new import régime for bananas on the basis of the decision by its Council of Agriculture Ministers on 17 December 1992.

The Council took note of the statements and agreed to revert to outstanding matters related to the Community's banana import régime at its next meeting.

9. United States Agricultural Adjustment Act
- Thirty-fifth annual report by the United States under
the Decision of 5 March 1955 (L/7163)

The Chairman recalled that under the Decision of 5 March 1955 (BISD 3S/32), the CONTRACTING PARTIES were required to make an annual review of any action taken by the United States under the Decision on the basis of a report to be furnished by the United States. At its meetings on 3 April and 16 May 1990, the Council had considered the thirty-first and thirty-second annual reports by the United States, as well as the report of a Working Party established to examine the twenty-ninth and thirtieth annual reports. At the May meeting, the Council had agreed to revert to these two matters at a future meeting. At its meeting on 18 March 1992, the Council had considered the thirty-third and thirty-fourth annual reports by the United States, and had agreed to revert to this matter at a future meeting. He drew attention to the thirty-fifth annual report which was before the Council in document L/7163.

The representative of the United States said that the report for the fiscal year 1992 conformed to the requirements set out in the Waiver Decision. It reviewed support programmes and supply situations for commodities subject to controls under Section 22 of the US Agricultural Adjustment Act, which included certain types of cotton and cotton products, peanuts, dairy products and sugar-containing products. The United States stood ready to convert its agricultural non-tariff measures, including its Section 22 quotas, to tariffs in the context of a multilateral agreement in which all countries undertook the same commitment. The United States was pleased that the Draft Final Act of the Uruguay Round (MTN.TNC/W/FA) had proposed universal tariffication of agricultural non-tariff measures because it strongly believed that tariffication was a key to initiating lasting reform of trade-distorting agricultural policies. The United States looked forward to implementing tariffication as part of the Uruguay Round package.

The representative of New Zealand expressed disappointment that the US Agricultural Adjustment Act was once again before the Council. New Zealand had hoped that a successful conclusion to the Uruguay Round would have eliminated the need for this Waiver. He recalled that New Zealand had been one of the few contracting parties that had voted against the granting of the Waiver, which had now clearly become an anachronism. What had been designed as a temporary measure should not still be in existence 38 years later. New Zealand, as many others, had consistently urged, and was doing so again, the United States to eliminate the barriers justified under the

Waiver. It was pleased that the United States had placed the Waiver on the table in the Round, although important work still remained to be done to ensure that the best outcome could be achieved. Tariffication of the non-tariff measures concerned remained the best means of securing their early elimination. It was essential, therefore, that the Round be concluded as quickly as possible so that this matter could be removed from the Council agenda.

The representative of Brazil said that the restrictive measures taken under the Waiver ran counter to the notion of economic competitiveness. The Waiver was a relic from the past which should be terminated as soon as possible.

The representative of Canada recalled that Canada, too, had voted against the granting of the Waiver. Its position on this matter remained unchanged. Canada believed that energies would be better spent in trying to resolve the outstanding issues in the Uruguay Round negotiations -- which included the removal of this Waiver -- than in considering annual reports about the application of that Waiver.

The representative of Argentina said that his delegation had noted the United States' statement and its indication that the Waiver might be eliminated through a successful conclusion of the Uruguay Round negotiations on agriculture. Argentina shared New Zealand's views, in particular as regards the duration of this temporary measure which in some ways had placed contracting parties that complied with their GATT obligations on a different level than that of the United States. It was necessary to eliminate this Waiver as quickly as possible, and the Round might be the best means to achieve this.

The representative of Uruguay agreed with New Zealand and Argentina. His delegation considered as a positive move the United States' indication that it would terminate the Waiver if an agricultural package specifically aimed at a real liberalization for the products in question was agreed in the Uruguay Round.

The representative of Australia said that, unlike New Zealand and Canada, Australia had, perhaps unwisely, not voted against the granting of this Waiver. While one could think of a number of important reasons to conclude the Uruguay Round, this Waiver was one of the foremost in terms of Australia's main preoccupations in the negotiations. As his delegation had stated on previous occasions, Australia hoped that this item would not be on the Council's agenda in the future. Australia recognized, however, that the United States had an obligation under the Waiver to submit annual reports, and that this would have to continue until a Uruguay Round package had been agreed upon.

The representative of the European Communities said that the Community shared others' concerns regarding the US Waiver.

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

10. Monitoring of implementation of panel reports under paragraph I.3 of the April 1989 Decision on improvements to the GATT dispute settlement rules and procedures (BISD 36S/61)

The Chairman recalled that at its meeting on 29 September-1 October 1992, the Council had agreed that this matter would continue to appear on the Agenda in its present form until further informal consultations thereon had been concluded. He announced his intention to resume these consultations in the near future. In connection with this Agenda item, he drew attention to a recent communication from the United States in document DS23/6 on the status of implementation of the Panel report on its measures affecting alcoholic and malt beverages (DS23/R).

The representative of the United States said that the report by his Government (DS23/6) was self-explanatory and had been submitted in accordance with paragraph I.3 of the April 1989 Decision. The United States would keep contracting parties informed of its continuing efforts to implement fully the recommendations of this Panel.

The representative of Canada welcomed the report by the United States. As Canada had reported to the CONTRACTING PARTIES at their Forty-Eighth Session (SR.48/2, page 21), it had indicated to the United States in consultations in October 1992 its expectation that the Panel's recommendations in this case would be fully implemented by the summer of 1993. Canada had been encouraged by the United States' response then that it intended to be in full compliance by that time. The majority of the GATT-inconsistent measures had been found to exist at the state level. Unfortunately, most state legislatures only met in regular sessions in the first three months of the calendar year, and legislation would have to be passed during that period to ensure compliance with the Panel's recommendations by the summer of 1993. The United States had had ample opportunity to consult with its state officials and implement the Panel recommendations, and it was therefore reasonable to expect it to meet this time schedule. In Canada's understanding, one state had passed legislation to bring an excise tax measure into compliance. This meant that at least 38 states as well as Puerto Rico had yet to introduce measures to bring themselves into compliance. Canada was disappointed that the United States had not provided greater details of the efforts it had made, and those it intended to make, to ensure that the Panel recommendations would be fully complied with. On several earlier occasions, Canada had made it clear that this was an important matter for its industry. Although the United States had characterized its GATT-inconsistent federal and state practices as having minimal trade-distorting effects, he would point out that 10 per cent of all beer produced in Canada was currently sold to the United States. From the perspective of those producers, the United States represented a very important market. Moreover, the US practices represented a significant barrier to entry and equal competition in its market. Canada therefore requested the United States to work diligently to ensure that its federal and state practices were fully in compliance with the Panel's recommendations by the summer of 1993.

The representative of Australia said that his Government, too, welcomed the United States' status report. Australia had a trade interest

in this matter and remained closely interested in the implementation process and in the Council's rôle in monitoring it. While Australia did not wish to go into arguments over the applicability of paragraph I.3 of the April 1989 Decision, it continued to believe that there was unfinished business with regard to other Panel reports such as on US import restrictions on sugar (BISD 36S/331), Korea's restrictions on imports of beef (BISD 36S/202, 234 and 268), and Japan's restrictions on imports of certain agricultural items (BISD 35S/163), and would welcome progress reports on their implementation.

The representative of the European Communities said that although the Community also welcomed the United States' status report, it did not believe that the information therein was satisfactory from the point of view of the interested parties, such as the Community, in respect of the wine and beer market. Much more needed to be done. However, the Community was pleased to see such a status report being provided for a Panel report which clearly fell under the provisions of paragraph I.3 of the April 1989 Decision.

The representative of Brazil expressed appreciation for the steps taken thus far by the United States in implementing the Panel report on its measures concerning alcoholic and malt beverages. Brazil urged the United States to continue those steps until the report had been implemented fully. It was concerned, however, at the precedent in this case of a contracting party expressing reservations not to implement parts of an adopted Panel report. While it understood the difficulties that might exist in connection with measures taken at the sub-national level, Brazil considered that this Panel had not established any precedent in considering state measures but had simply re-affirmed the United States' obligation under Article XXIV:12. Brazil hoped the United States would take all the necessary steps in the shortest time possible to implement this Panel report fully.

As regards the implementation of the Panel report on the United States' denial of m.f.n. treatment as to imports of non-rubber footwear from Brazil (DS18/R), his Government's concerns had been set out in a recent communication (DS18/4). He pointed out that one of the pillars of the GATT -- the m.f.n. principle -- was at stake in this dispute. The United States' reluctance to bring itself into conformity with this Panel report was difficult to understand since there was no need for further legislation or for a change in existing legislation in order to do so. The sole requirement was a simple administrative action. There was therefore no reason for delaying the resolution of this matter; continued refusal to do so not only prejudiced Brazil's trade interests, but also implied a contempt for the GATT's dispute settlement system and procedures. Brazil hoped that the Council could urge the United States to take all the necessary steps to comply with the Panel's findings without delay.

The representative of the United States, responding to Brazil's statement on the non-rubber footwear Panel report, recalled that the Panel had not required any action by the United States in the context of its findings and had not recommended that the United States either refund or refrain from collecting the countervailing duties assessed upon Brazilian

footwear imports and the interest thereon, which was the "solution" that Brazil appeared to be referring to. Brazil had also indicated that this was an easy matter for the United States to resolve because all that was required was a simple administrative action on its part. He noted, in this connection, that a new Administration had taken office in the United States which would review the case and decide how best to resolve it. It would not be helpful at this stage to engage in a debate over what, if anything, the United States was required to do in light of the Panel's conclusions. Once the new Administration had had time to consider this case and had decided how best to proceed, his delegation would provide details thereof to Brazil and other contracting parties.

The representative of Argentina, referring to the non-rubber footwear Panel report, expressed his delegation's support for Brazil's statement. The Panel's findings were sufficient to convince the United States to act rapidly and to abide by them. Speaking more generally, compliance with findings and recommendations of panel report was essential to the strengthening of the GATT as a whole. Such compliance should not in any way be linked to the results of the Uruguay Round. Argentina also believed that reports on the status of implementation of adopted panel reports should be provided in all cases.

The representative of Chile said that by agreeing to the adoption of the non-rubber footwear Panel report, the United States had implied that it would bring itself into compliance with the Panel's findings. While the United States had no doubt acted in good faith in agreeing to adoption of the Panel report, eight months had since gone by with no solution to the problem. Once again one had to conclude that the dispute settlement procedure was not a sufficient guarantee as regards the expeditious safeguarding of the rights of contracting parties. Chile shared Brazil's concerns and urged the United States to take the necessary measures to resolve this matter as soon as possible.

The representative of Mexico said that his Government, too, supported the findings of the Panel on the non-rubber footwear case, and did not understand why the United States had not brought itself into conformity therewith following the adoption of the report. It was essential that the United States remedy this situation as soon as possible.

The representative of Brazil expressed disappointment at the United States' explanation for not having implemented the non-rubber footwear Panel report. The absence of a progress report on the status of implementation of this Panel report meant that Brazil continued to be discriminated against. This implied that the United States had not made any strong and determined efforts in the past few months to comply with its GATT obligations in this regard. Brazil would continue to pursue its rights, and urged the United States once again to bring itself into compliance with the Panel's findings.

The Council took note of the statements.

11. EFTA - Israel Free-Trade Agreement
- Joint communication by Norway, on behalf of the EFTA states, and Israel (L/7129 and Add.1)

The Chairman recalled that at their Forty-Eighth Session, the CONTRACTING PARTIES had considered this matter and had agreed to refer it to the Council for further consideration. He proposed that the Council 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 - Israel Free-Trade Agreement, and to report to the Council".

Membership

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

Chairman

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

The Council so agreed.

12. Fourth Lomé Convention (L/7153 and Add.1)

The Chairman drew attention to document L/7153, containing information on the Fourth ACP-EEC Convention of Lomé.⁶

The representative of the European Communities said that the fourth Lomé Convention followed and built upon the previous Conventions, and continued to establish a model of cooperation between developed and developing countries, which was important for the ACP countries. The Community was prepared to provide any clarification with regard to the Convention under the relevant GATT provisions.

The representatives of Argentina, the United States, Japan, Colombia, Canada, Brazil, Costa Rica and Venezuela thanked the Community and the ACP contracting parties for the notification of the Fourth Lomé Convention.

⁶The text of the Convention, previously made available in the Secretariat for consultation, was later circulated as L/7153/Add.1.

The representative of Argentina said that economic cooperation between countries at different levels of development was extremely important. With regard to the notification in L/7153, Argentina could not agree that the relations between the Community and the ACP States were "long standing historical tradition of a special and privileged relations, the validity and permanence of which have been explicitly recognized by the General Agreement", and that "the Lomé IV Convention, being a logical sequel to the previous ones, is consistent with the Contracting Parties obligations and fully complies with the objectives that govern and inform the GATT".

He recalled that in the Working Party that had examined the Third Lomé Convention, some members had considered it doubtful that the Convention could be fully justified in terms of the legal requirements of the General Agreement (L/6382, paragraph 21). The Working Party had noted that the parties to the Convention were prepared to submit reports on its operation, and to notify any changes which might be made to the Convention for review by the Council biennially. It had been understood in the Working Party that the Third Lomé Convention would not in any way affect the GATT rights of contracting parties. Argentina believed that these conclusions of the Working Party should also be on record, since there was a slight discrepancy between them and the language of the communication in L/7153.

The representative of the United States said that while his Government appreciated the basic objectives of the Convention, it reserved judgement as to its compatibility with the legal requirements under the General Agreement, and maintained that the Convention could in no way be considered as affecting the GATT rights of contracting parties. He recalled that during the discussion on the Community's banana-import régime under Item 8, the Community and some members of the Convention had referred to the evident conflicts between contractual obligations under the GATT and others under this Convention. His delegation wanted to make it clear that, for the purpose of Council discussions, only GATT contractual obligations had any relevance.

The representative of Japan said his delegation shared the views expressed by Argentina and the United States. Japan believed that in the Council, only GATT rights and obligations were relevant. Japan would be examining the Fourth Lomé Convention in this light.

The representative of Colombia said that as a developing country, Colombia supported development programmes and recognized the Community's efforts in favour of the ACP States, particularly for their economic and social development. Colombia was concerned, however, at the time-lag in notifying the Convention, which had been signed more than three years earlier and ratified by the Community two years earlier. This showed a lack of respect for the commitment agreed to in 1987, in the Working Party on the Third Lomé Convention, namely that any modifications to the Convention should be notified without delay, and that a report on its operation should be submitted for review every two years. Colombia had been amongst the members of that Working Party that had questioned the GATT consistency of that Convention. These doubts had not been dispelled, despite the statement in L/7153. Colombia would raise them again at the appropriate moment.

The representative of Canada said that there could be no doubt as to Canada's support for the general objectives of the Convention. Canada, however, wanted a confirmation that the signatories' willingness to provide details on the Convention would be exercised in an appropriate forum, which Canada understood to be a working party.

The representative of Brazil said his delegation was certain that, as in previous cases, the signatories to the Convention would agree to a full examination of the Convention in a working party as suggested by Canada. Brazil recognized that the continuous cooperation between the Community and the ACP countries embodied in the Lomé Conventions was valued in a positive way by the developing countries concerned. These Conventions were a concrete example of the implementation, although in a limited way, of differential and more favourable treatment for developing countries, and highlighted the importance of this principle in the multilateral trading system. Brazil looked forward to the opportunity for the clarification of the relationship between the Convention and the GATT, especially with regard to third countries.

The representative of Costa Rica said his delegation endorsed what had been stated by previous speakers, and in particular Canada's proposal.

The representative of the European Communities indicated the Community's willingness to participate in a working party. However, such a working party should not start at square one, but rather look at the new and relevant elements of the Fourth Convention. As to the delay in notifying the Convention, this had stemmed from delays in the ratification procedures of some member States. The Community had moved as quickly as possible in this respect.

The representative of India said he had assumed that this Convention would be subject to the normal practice of a working party examination. However, the Community had now put a caveat on the competence of the working party to be established. His delegation would have some reservations about putting any restrictions on the work of such a working party.

The representative of Australia expressed his Government's interest in this matter, and in participating in a working party thereon.

The representative of the European Communities reiterated that the Fourth Convention was a logical continuation of the three preceding Conventions and was, of course, submitted for examination in its entirety. However, any working party should not take up the elements of this Convention which had already been part of previous Conventions only to arrive at the same conclusions. The new elements in the Fourth Convention were essentially non-trade matters, such as investment issues, and had nothing to do with what a working party was likely to be able to examine in terms of current GATT provisions. To that extent, the terms of reference for a working party on something as broad as the Fourth Convention would need to be tailored carefully. The Community believed that consultations should be held to establish appropriate terms of reference.

The representative of Uruguay said his country was interested in this matter and supported the establishment of a working party. His delegation agreed with India with regard to the terms of reference of such a working party.

The representative of Venezuela expressed his Government's interest in participating in a working party on this matter. However, it was unclear to him from the discussion whether such a working party would be open-ended and have standard terms of reference.

The Chairman said that membership in the working party would be open to all contracting parties indicating their wish to serve on it. With regard to the Community's statement, he noted that under standard terms of reference, a working party would be asked to examine the Fourth Lomé Convention "in the light of the relevant GATT provisions". He asked whether the Community could agree with these terms of reference and have the Council proceed with establishing a working party.

The representative of the European Communities said that the Community could go along with the Chairman's proposed terms of reference, although it believed that the working party would reach the same conclusions on the Fourth Convention as had been reached on the Third in respect of the common elements.

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 GATT provisions, the Fourth ACP-EEC Convention signed at Lomé on 15 December 1989, and to report to the Council."

Membership

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

The Council authorized its Chairman to designate the Chairman of the Working Party in consultation with principally interested contracting parties.

13. ASEAN Free-Trade Area - Common Effective Preferential Tariff
- Communication from the United States (L/7175)

The Chairman drew attention to the United States' communication in document L/7175.

The representative of the United States said that his Government welcomed and supported the ASEAN countries' announced intention to create a free-trade area. The concrete steps towards that goal, such as the Common Effective Preferential Tariff (CEPT), were a significant development in the

multilateral trading system and warranted full review in the Council. In this connection, he noted that other countries were not subject to any lesser degree of scrutiny. The United States therefore requested that the ASEAN contracting parties fully notify to the GATT the new programme of tariff reductions under the CEPT, including providing schedules of the included and excluded products and timetables. The United States requested that this notification be presented in the Council because it believed that that body was best suited to examining fully the implications the new agreement had for all contracting parties. Pending receipt of this notification, the United States reserved its rights regarding the obligations of the ASEAN contracting parties under the General Agreement.

The representative of Malaysia, speaking on behalf of the ASEAN contracting parties, noted that they had submitted a progress report (L/7111) on the implementation of the ASEAN Preferential Trading Arrangement (PTA) to the Seventy-Third Session of the Committee on Trade and Development (CTD) (L/7124), pursuant to paragraph 4(a) of the Enabling Clause⁷. At that meeting, the ASEAN contracting parties had also provided information on the CEPT scheme, which was an improvement on the PTA. He recalled that the CTD had authorized its Chairman to undertake consultations on the matter, which they understood would be held soon. He emphasized that the CEPT was only an extension of and an improvement on the PTA, and noted that the Preamble to the Agreement on the CEPT clearly stated that it was designed "to effect improvements on the ASEAN PTA in accordance with ASEAN's international commitments". The CEPT should therefore rightly be examined in the CTD, which the ASEAN contracting parties continued to believe was the appropriate forum therefor. As for the ASEAN Free-Trade Area (AFTA), this was a long-term objective, the details for which, as well as for various other areas of economic cooperation, were still being worked out. He emphasized that at the present stage, apart from the CEPT, there only existed a plan for the ASEAN countries to negotiate a free-trade-area agreement over a given time span. As to the United States' specific request that the ASEAN contracting parties provide schedules of the CEPT, he said that these would be duly submitted to the CTD when they became available.

The representative of Brazil, speaking on behalf of the contracting parties members of the Southern Common Market (MERCOSUR), welcomed the ASEAN countries' initiative in establishing the CEPT, which would lead eventually to the AFTA. This kind of close cooperation was a powerful instrument to advance economic development among the participants, and would also be important in strengthening the multilateral trading system and in helping to further integrate these countries into the world economy. They strongly supported the right of the ASEAN contracting parties to have their preferential agreement notified under the Enabling Clause, for the same reasons as had been expressed by their own Governments when the issue of the examination of the MERCOSUR had been raised. This procedure would not in any way prejudice the possibility of third parties to broadly

⁷Differential and More Favourable Treatment, Reciprocity and Fuller Participation of Developing Countries (BISD 26S/203).

examine the AFTA and to fully exercise their GATT rights in that regard. Their countries looked forward to examining the AFTA in the Committee on Trade and Development.

The representative of India noted that the existing PTA, and the CEPT which was decided upon in January 1992, were the principal mechanisms by which the ASEAN countries aimed to achieve a free-trade area. India also noted that the ASEAN contracting parties had provided information on the CEPT scheme to the Committee on Trade and Development in November 1992. As paragraph 2(c) of the Enabling Clause permitted developing contracting parties to form regional or global arrangements amongst themselves for the mutual reduction or elimination of tariffs and non-tariff measures on products imported from one another, it therefore appeared that the Clause permitted the formation of a free-trade area among developing contracting parties. The Clause also contained provisions for the notification of such arrangements. At the same time, Article XXIV also provided for notification and consultations on customs unions and free-trade areas among contracting parties. What the Enabling Clause appeared to provide to developing countries was an option either to notify such arrangements to the CONTRACTING PARTIES under its provisions, or under those of Article XXIV. The ASEAN contracting parties had opted for the first option by informing the Committee on Trade and Development of the CEPT. India believed that notification of the CEPT under the Enabling Clause was consistent with the obligations of the ASEAN contracting parties. He noted that the Chairman of the CTD had been authorized to initiate informal consultations on the issues raised, and hoped that that process would lead to a resolution of this matter to the satisfaction to all parties concerned.

The representative of Colombia said that his Government had always maintained that preferential arrangements among developing countries under the Enabling Clause should be examined in the Committee on Trade and Development. Accordingly, Colombia believed that the ASEAN contracting parties had the right to have any such agreements amongst themselves examined in that Committee. Colombia requested that the United States participate in the consultations that the CTD Chairman would soon be holding, with the understanding that whatever outcome -- which he hoped would be in favour of a review in that Committee -- would not affect the rights of contracting parties under the General Agreement.

The representative of Mexico said that, given the trading importance of the ASEAN contracting parties for Mexico, and the importance of the CEPT, which had already entered into force, Mexico agreed with others that the CEPT should be examined carefully in the GATT. However, in view of the consultations that the CTD Chairman had been authorized to hold on the most appropriate way to undertake this examination, and without prejudice to the results thereof, Mexico believed it would be inappropriate for the Council to take any action at the present time.

The representative of Chile said that it was reasonable for the United States to be concerned that there should be full and detailed information regarding any preferential arrangements amongst the ASEAN countries. Chile believed, however, that these countries had been providing the necessary

information, and noted with satisfaction their willingness to provide all information, particularly the preferential tariff schedules, as soon as they became available.

The representative of Pakistan said that his Government believed that the CEPT scheme fell within the purview of the Enabling Clause as a "regional arrangement entered into amongst less-developed contracting parties". Accordingly, the ASEAN contracting parties would be satisfying all procedural and legal requirements by submitting a notification thereon in accordance with paragraph 4(c) of the Clause. As regards the AFTA, Pakistan accepted the ASEAN contracting parties' statement that this was a long-term objective, and that the details towards this objective, and on various other areas of economic cooperation, were still being worked out. He noted that the CTD Chairman was to undertake consultations on this issue, and hoped that these would facilitate a solution satisfactory to all.

The representative of Finland, speaking on behalf of the Nordic countries, welcomed the ASEAN countries' efforts to increase their economic cooperation with the ultimate objective of creating a free-trade area. The Nordic countries were convinced that the CEPT would be an important element in achieving this goal. The significance and importance of across-the-board preferential tariff schemes for free-trade areas had to be borne in mind when considering the treatment of the issue. The Nordic countries themselves had tried to be as open and transparent as possible with their own free-trade area arrangements. Together with other EFTA countries, they had been diligent in notifying such arrangements to the CONTRACTING PARTIES. They hoped and expected that the transparency requirements would be met by other contracting parties that were members of similar arrangements. On previous occasions, the Nordic countries had taken a pragmatic approach as to the forum for the review of any arrangements involving developing countries. However, any examination of the CEPT would have to be comprehensive and cover all the relevant GATT provisions, based on the information given that the scheme was broader in scope than the preferential arrangements intended to be covered by the Enabling Clause. The Nordic countries therefore supported the United States' request that the ASEAN contracting parties notify the arrangements under the CEPT in the Council.

The representative of Hong Kong welcomed the ASEAN contracting parties' assurances that they would duly notify the arrangements under the CEPT. Hong Kong welcomed, in particular, the statement that the CEPT was designed to effect improvements on the PTA in accordance with the ASEAN countries' international commitments. Hong Kong looked forward to a thorough examination of this scheme, and would participate fully in the consultations under the Committee on Trade and Development.

The representative of the European Communities said that one had witnessed for some time, and was witnessing again, a regrettable trend towards the creation of a second multilateral trading system. For the Community, there was only one multilateral trading system, and not two. In the matter at hand, one was dealing with an instrument that was designed to create something very similar to a common external tariff amongst countries

that were very close to a state of full development. Yet, one was told that this belonged to another set of arrangements that had nothing to do with the managing organ of the GATT, namely, the Council. The final decision might well be that this matter should be examined in the Committee on Trade and Development. But to say that the Council had no rôle in this matter seemed to him to be going in the wrong direction. For that reason, the Community believed that the United States' request for this notification to be made to the Council was appropriate if one intended to maintain a single multilateral trading system, as opposed to two systems for two sets of contracting parties.

The representative of Egypt said that his delegation's position was almost identical with that of Brazil and India. Egypt supported the ASEAN contracting parties' view that this matter fell under the Enabling Clause and that it should be reviewed in the Committee on Trade and Development.

The representative of New Zealand said that the ASEAN countries were important trading partners of New Zealand -- a link which it greatly valued. New Zealand had previously welcomed the AFTA and the arrangements being made towards it. Two elements needed to be considered here: one was whether and how the Agreement should be notified, and the second was which forum it should be examined in. New Zealand appreciated the ASEAN contracting parties' statement that they were prepared to provide full and detailed information on the CEPT, and recognized that some of the details were not available. However, in the interests of transparency, New Zealand urged the ASEAN contracting parties to submit a prompt and full notification of the CEPT so that it could be examined carefully. On the question of the forum in which it should be examined, New Zealand recognized the divergence of views, and hoped that this could be overcome so that the delays that had affected the examination of the MERCOSUR Agreement would not be repeated. New Zealand wished to participate in any consultations aimed at working out a satisfactory solution of this issue. It hoped that an early notification and examination of the CEPT, in whichever forum, was going to be possible.

The representative of Switzerland said that his delegation, too, welcomed the ASEAN contracting parties' efforts to establish a free-trade area which would promote their economic cooperation. Switzerland was aware that such an agreement would have repercussions on the multilateral trading system and, therefore, for other contracting parties. He noted, in this context, that the CEPT, which had come into effect on 1 January, was one of the pillars of this free-trade area and also represented an important contribution to the existing PTA. On the basis of the information available, Switzerland believed that the scope of the CEPT, as well as of other aspects of the Agreement, were no longer covered by the Enabling Clause. He underlined that the establishment of this free-trade area should rigorously respect the requirements of transparency so as to enable the CONTRACTING PARTIES to carry out as complete an examination as possible of the Agreement in question in light of the provisions of the General Agreement. For these reasons, his delegation also hoped that the ASEAN contracting parties would submit all relevant information to the Council.

The representative of Australia said that his delegation had listened carefully to the way in which the United States had phrased its request.

At the same time, Australia recognized that the CEPT was an evolutionary rather than revolutionary development, and that one was therefore looking at a deepening of existing AFTA arrangements. Australia noted that when the ASEAN arrangement had first been notified to the GATT in 1979, it had been the Council that had established a Working Party to examine it (C/M/123, item 12). That being said, and despite that precedent, Australia was flexible on the issue of whether a GATT review of the arrangements for the AFTA should take place under the auspices of the Council or the Committee on Trade and Development. Regardless of the forum, and in keeping with the importance that it attached to transparency, Australia's basic concern was that a detailed notification be provided and examination by a working party take place, given that a major derogation from Article I was involved.

The representative of Korea said that his delegation believed that all free-trade agreements required a thorough review to ensure their conformity with the GATT system. The CEPT scheme under consideration was similar to the MERCOSUR Agreement in that it was an agreement amongst developing countries. He recalled that the Council had spent considerable time in 1992 to devise a proper procedure for the review of the latter Agreement, and that the CONTRACTING PARTIES, at their Forty-Eighth Session, had agreed that their Chairman would hold consultations thereon to find a solution. He also recalled that at its Seventy-Third Session, the Committee on Trade and Development had agreed that its Chairman would undertake consultations regarding the AFTA. In view of the similar nature of the MERCOSUR and the AFTA, Korea hoped that the results of the two sets of consultations would be harmonized through close cooperation between the two Chairmen, so that the CONTRACTING PARTIES could be presented with a uniform approach to the matters under consideration. The results of those consultations would provide useful guidance for the resolution of the matter before the Council.

The representative of Morocco supported the ASEAN contracting parties' efforts in bringing about the integration of their economies, and welcomed their willingness to meet their GATT obligations with regard to notification and examination. Morocco believed that the appropriate forum for such an examination was the Committee on Trade and Development.

The representative of Japan said that the ASEAN countries' initiative in establishing the AFTA was a positive one, which would contribute to the development of the countries concerned, and also to the development of the global economy. Japan believed, however, that from the GATT's point of view, the important element was to have a multilateral review of such arrangements without delay. For this reason, Japan suggested a pragmatic approach to the question of where and how such a review should be undertaken, so long as it could be done effectively and quickly.

The representative of Malaysia, speaking on behalf of the ASEAN contracting parties, thanked those delegations that had supported their view that this matter should rightly be discussed in the Committee on Trade and Development, as also those that had taken a flexible position thereon. He emphasized that the ASEAN countries were not in the process of establishing a common external tariff, but rather a common effective

preferential tariff -- the CEPT -- and that there was a difference between the two concepts. The ASEAN contracting parties believed in transparency, as the best way to promote not only intra-ASEAN economic cooperation, but also the ASEAN countries' cooperation with third countries. With regard to the question of providing tariff schedules and other information, he said that in many cases in the past, free-trade agreements had been notified to contracting parties long after they had been signed or agreed upon. As far as the CEPT was concerned, he said that in March, all the ASEAN countries involved in this programme would exchange lists, following which the ASEAN secretariat would be able to make a consolidated submission that would then be made available to the public, including to the contracting parties. He reiterated that as soon as the final information was available, it would be notified to the GATT. He pointed out that there was already a CTD decision on how to proceed on the question of where this matter should be examined. He would urge all parties to work on this basis and to let the CTD work out the best way to find a solution. The ASEAN contracting parties, for their part, would provide as much transparency as possible.

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

14. German unification: Transitional measures adopted by the European Communities
- Report of the Working Party (L/7119)

The Chairman recalled that at their Forty-Sixth Session in December 1990, the CONTRACTING PARTIES had established a Working Party to examine transitional measures adopted by the European Communities following German unification. At their Forty-Eighth Session in December 1992, the Chairman of the Working Party had informed the CONTRACTING PARTIES that the Working Party had recently completed its work and that its report would be available for consideration by the Council at its first meeting in 1993. The report of the Working Party was now before the Council in document L/7119.

Mr. Carlisle, Deputy Director-General, Chairman of the Working Party, said that the report described briefly the Working Party's work and its conclusions. The information provided to it by the Community had been annexed to the report.

The representative of the European Communities said that his delegation had no particular comments with respect to the substance of the report. He noted that the Working Party had completed its mandate. The Community was not, at this juncture, in a position to pronounce itself on the follow-up to the waiver that had given rise to the Working Party. He could only say that the Community would probably be requesting the Council at an early date to consider the follow-up requirements, if any.

The Council took note of the statements and adopted the Working Party's report in L/7119.

15. Committee on Budget, Finance and Administration
- Report of the Committee (L/7158 and Corr.1)

The Chairman, in his capacity as the former Chairman of the Committee on Budget, Finance and Administration, introduced the report of the Committee in document L/7158 and Corr.1. With regard to the International Trade Centre (ITC), the Committee had continued its discussion of the Financial Report and Audited Financial Statements for the biennium ending 31 December 1991, and of the Report of the Board of Auditors that it had begun in October 1992. Two further reports had also been considered: the Report of the Advisory Committee on Administrative and Budgetary Questions and that of the United Nations' Secretary General on the Administrative System of the International Trade Centre. The Officer-in-Charge of the ITC and other ITC officials had responded to the questions and concerns raised by members of the Committee. The Committee had taken note of the Officer-in-Charge's statement, which had been annexed to the Committee's report, and of the reports discussed. The Committee had agreed to ensure that questions on the ITC, with possible new developments, should be taken up by the Committee at its next meeting; to strengthen the future rôle of the Committee in the preparation of ITC budget estimates; to investigate the possibility of establishing direct contact between the Committee and its counterpart UN body with regard, inter alia, to ITC budget estimates; and to reiterate the concern of the Budget Committee to the Council concerning the vacant senior management posts in the ITC and urge all parties concerned to make a determined effort to resolve the situation.

With regard to the question of the CONTRACTING PARTIES' representative on the ICITO/GATT Staff Pension Committee, the Committee had recommended that Mr. John Clarke and Mr. Munir Ahmad be designated as member and alternate member, respectively, for a further term of three years beginning on 1 January 1993. However, since Mr. Clarke had recently informed the Secretariat that he would now be unable to undertake another three-year term, the Committee's recommendation in paragraph 25 of the report would need to be withdrawn and the matter reconsidered by the Committee at its next meeting.

The Council took note of the statement and that the Committee's recommendation in paragraph 25 had had to be withdrawn, and adopted the Committee's report in L/7158 and Corr.1.

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

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

by consultations, open to all delegations and conducted so as to ensure transparency of the process.

At the Council meeting on 4-5 November 1992, the previous Chairman had announced that his successor would carry out such consultations. Now that the consultations had been completed, he announced that Mr. Witt (Germany) had been proposed as Chairman of the Committee on Balance-of-Payments Restrictions, Mr. Kesavapany (Singapore) as Chairman of the Committee on Budget, Finance and Administration and Mr. Tironi (Chile) and Mr. Potocnik (Austria), respectively, as Chairman and Vice-Chairman of the Committee on Tariff Concessions.

The Council approved the appointments.

17. North American Free-Trade Agreement (L/7176)

The representative of Mexico, speaking under "Other Business", said that the North American Free-Trade Agreement (NAFTA) between Canada, Mexico and the United States had been signed on 17 December 1992. The Agreement provided for the liberalization of trade in goods and services, as well as investment flows. It established provisions for dispute settlement, the protection of intellectual property rights and took account of the growing concerns linked to the protection of the environment. For Mexico, this treaty was a natural component of the far-reaching economic adjustment programmes it had been putting into place over the preceding decade. The signatories had ensured that it fully respected the requirements as well as the spirit of the General Agreement, as best illustrated by the unprecedented cooperative and open nature of the accession clause.

The representative of Canada said that the Agreement built on, and substantially improved, the existing free-trade agreement between Canada and the United States. The GATT being an essential element and the cornerstone of Canada's international trade policy, its negotiators had perceived the NAFTA, from the outset, as an integral part of the GATT-based global trading system designed to be consistent with the objectives and requirements of Article XXIV. The NAFTA and the GATT were, thus, inter-dependent and complementary instruments, both contributing to the liberalization of North American trade. The NAFTA also drew on progress made in the Uruguay Round in establishing generic rules for a world that involved trade not only in goods but also in services, and encompassed capital, knowledge and technology. It also represented an important step in the development of a healthy and productive relationship between developed and developing economies.

The representative of the United States said that this Agreement was unquestionably a development of historic significance, which could be expected to contribute in an important way to the future development of North American economic and trade relations. It was also fully consistent with the GATT and entirely complementary to the efforts being made in the Uruguay Round. The United States would be working with its two NAFTA partners towards finalizing the conditions under which the Agreement would be implemented.

The representative of Japan welcomed the communication from the parties concerned in document L/7176. Japan believed this Agreement was an important development which warranted a multilateral review, comprehensive in nature and in depth, and expeditiously effected. He recalled that at the Council meeting on 29 September-1 October, his delegation had suggested three principles on the basis of which this Agreement should be examined, which he reiterated. Japan would examine this Agreement in more detail and might submit more specific questions and comments with regard to it in the near future.

The representative of Brazil hoped that the NAFTA would stimulate growth in, and increase trade flows to, third countries, particularly in Latin America, and that it would contribute to the strengthening of the multilateral trading system. Brazil would examine the impact of the NAFTA on its own trade and, at the appropriate moment, would make more specific comments in that respect. Particular provisions of the NAFTA raised important concerns such as, for example, the rules of origin in the automotive sector which, in Brazil's view, could operate as an import substitution mechanism for autoperparts at the regional level. For this and other reasons, Brazil hoped that a thorough examination of the NAFTA would be undertaken.

The representative of Korea said that, as a large trading partner of the three countries concerned, Korea placed great importance on this Agreement and was keen to examine its details. Korea hoped that a working party would be established as soon as possible to examine the Agreement. Korea would actively participate therein.

The representative of the European Communities said that the Community considered this Agreement to be important and would reserve its more substantive comments until the Council considered the matter again for the purposes of establishing a working party for its examination. The Community hoped this would be soon.

The representative of Malaysia, speaking on behalf of the ASEAN contracting parties, said that they were interested in this very positive development in a part of the world in which they had substantial trading interests. They hoped that the NAFTA would be outward-looking, that notifications thereon would be transparent, and that the Agreement would contribute positively towards strengthening the multilateral trading system.

The representative of Hong Kong shared the views expressed by the Community and Japan.

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

18. Procedures for the derestriction of GATT documents

The representative of the United States, speaking under "Other Business", recalled that at the Forty-Eighth Session of the CONTRACTING

PARTIES in December 1992, the outgoing Council Chairman had suggested that contracting parties devote attention to revising the procedures for the derestriction of GATT documents (SR.48/1, page 3). Similar suggestions had been made at the Forty-Sixth and Forty-Seventh Sessions. The United States believed that this suggestion should be acted on, since the procedures needed to be modernized. In order to enhance public awareness of the GATT and its operation, its activities should be much more transparent. Although certain types of documents such as negotiating positions, working documents and some tariff offers warranted restricted distribution, at least for some period of time, others such as minutes of regular meetings, panel reports and informational notifications, should be made available publicly either immediately or after only a very short delay. Many aspects of this matter needed to be addressed. The United States believed that, as a first step, the Secretariat should prepare a factual background note setting out the current practices, the problems related thereto, and suggestions on how to address these problems. This note, which he hoped could be prepared expeditiously, could then provide the basis for informal consultations to be held by the Council Chairman with all interested delegations.

The representative of Canada agreed with the United States that public awareness of the GATT needed to be increased. In rethinking the GATT's document derestriction procedures, however, one would need to ensure that some aspects of its work, such as the dispute settlement mechanism, should not be prevented from functioning efficiently. Canada could agree to the Secretariat preparing a background note as the first step in the examination of these rules.

The Council took note of the statements and agreed that the Secretariat should prepare a background note on the procedures for the derestriction of GATT documents.

19. United States - Taxes on automobiles

The representative of the European Communities, speaking under "Other Business", said that, pursuant to the Community's request in May 1992 (DS31/1), Article XXIII:1 consultations had been held with the United States regarding the latter's taxes on automobiles. Since these consultations had not been successful, the Community intended to request the establishment of a panel on this matter at the next Council meeting.

The Council took note of the statement.

20. Negotiations under Article XXVIII:4 concerning the modification of certain concessions included in the European Communities' Schedule LXXX-EC

The representative of Argentina, speaking under "Other Business", recalled that the Council had authorized the Community in June 1992 to renegotiate its oilseeds concessions pursuant to Article XXVIII:4. Since then, Argentina had held a number of meetings with the Community.

Argentina was frustrated at the delay in the negotiations and with the absence of any results therein. This resulted from a lack of willingness on the Community's part to agree upon a reasonable compensation for the injury suffered by his country, whose negotiating rights in respect of soyabeans, soyacake and sunflower seed cake had been recognized by the Community. While the members of the reconvened Panel on the Community's oilseed régime (DS28/R) had recognized continued impairment of the Community's oilseeds tariff concessions, the Article XXVIII:4 negotiations on the rebalancing of these concessions had been going through a period of lack of definition, delaying tactics and dubious proposals.

Argentina had adopted a reasonable position and had shown a willingness to compromise. However, it had not yet received any firm offers. Argentina wished to conclude, on an amicable basis, a dispute which it had not provoked, but the Community appeared to prefer a delaying tactic. He appealed to the Community to show a sense of responsibility, and to respect its commitments under the multilateral trading system, as well as under Article XXVIII:4 which it had itself invoked as a means of resolving this matter. Short of a satisfactory response, Argentina would feel forced to use its GATT rights and the procedures aimed at the respect of these rights. After nearly eight months since the Council's authorization of the Article XXVIII:4 procedure, Argentina now had well-founded doubts as to what the Community's intentions really were. Should this situation continue, Argentina would initiate Article XXVIII procedures with a view to determining the consistency of the Community's oilseeds régime with its GATT obligations and the amount of impairment caused to Argentina.

The representative of Canada associated his delegation with Argentina's concern over the lack of progress in the Article XXVIII negotiations with the Community. Canada had also been participating in this process in the hope of reaching a mutually-satisfactory solution, but its efforts had been largely without effect. Canada's experience in this case had been that the more it attempted to make an effort to refine its demands for compensation in response to the Community, the more the latter retreated and the less it offered. If this process were to be followed to its logical conclusion, one would end up with having to accept a zero-compensation offer from the Community. The latter's offer appeared to be more in the form of generosity on its part than in response to Canada's legitimate claim for compensation for the damage caused by the subsidy programmes concerned. If the Community was really serious about concluding the Article XXVIII negotiating process it had requested, it had to return to the negotiating table with offers that were commensurate to the task.

The representative of the European Communities acknowledged that the Community had thus far failed to find an appropriate compromise between what it could offer and what was expected of it. However, it was not closing any doors and hoped to be able to reach a satisfactory conclusion. The Community would resume the negotiating process at an early date and, although it recognized that the difficulties were considerable, wished to resolve this matter as quickly as possible.

The representative of Uruguay said that his Government was also concerned at the continuation of a process that had still not been resolved

several months after its initiation. His delegation had participated in the Article XXVIII negotiations with the Community as principal supplier for three of the oilseeds products concerned. While one contracting party with a substantial interest in the matter had reached an agreement with the Community, the same was not true for Uruguay because the latter had not yet done everything that could reasonably be expected towards making an offer of adequate compensation as required under Article XXVIII:4(d). Uruguay urged the Community to make further efforts and to show the necessary flexibility to reach an appropriate solution. The maintenance of the subsidies régime for the oilseeds products concerned clearly created an imbalance in the equilibrium of contracting parties' rights and obligations, and the purpose of compensation was to redress that balance as far as possible. He also wished to reiterate the importance for Uruguay of the trade in agricultural products which was at stake in this negotiation. Uruguay was prepared to negotiate in a constructive manner. It hoped that the Community was prepared to act accordingly and to show the necessary political will that would make it possible to conclude the negotiations as soon as possible.

The representative of Brazil said that his country, like Argentina, Canada and Uruguay, had actively participated as an interested party in these negotiations. At the end of 1992, an acceptable basis for the conclusion of the negotiations appeared to have been at hand. It was unfortunate, therefore, that the Community was still not in a position to submit an adequate compensation offer. If the Community sought to maintain its subsidies régime on oilseeds, albeit with modifications, it should recognize the need to redress the balance of rights and obligations under the GATT and expeditiously proceed to remove the problem which still stood in the way of an agreement. Should the present situation continue indefinitely, Brazil reserved the right to resort to the relevant GATT provisions to ensure adequate compensation for the prejudice inflicted on its trade.

The representative of India said that India had also been negotiating with the Community, in good faith, because of its trade interests in some of the products concerned. India had noted the Community's statement at the present meeting that it had not closed any doors, although it shared the feeling of some others that one was going backwards. India hoped to see an early resolution of its bilateral concern in this matter.

The representative of Pakistan expressed Pakistan's frustration at the pace and the lack of progress in these negotiations. While Pakistan had undertaken consultations with the Community in a spirit of accommodation, the solutions proposed by the latter for compensatory adjustments had unfortunately ignored altogether Pakistan's interests as a holder of initial negotiating rights. Obviously, Pakistan could not accept any such solution. He hoped that the Community would stand by its GATT obligations and ensure that the confidence of a large number of weaker contracting parties in the continued efficacy and credibility of the GATT system was maintained. The Community would also thus spare the contracting parties concerned the need to invoke GATT procedures to protect their rights.

The Council took note of the statements.

21. Central European Free-Trade Agreement

The representative of Poland, speaking also on behalf of the Czech Republic, Hungary and the Slovak Republic, under "Other Business", said that the four countries had signed the Central European Free-Trade Agreement (CEFTA) on 21 December 1992. In so doing, they had reaffirmed their strong commitment to the principles of market economy and free trade which constituted the basis for their relations, and reiterated their belief in the importance of economic integration within a wider European marketplace. In the Agreement, the four Governments had expressed their full trust in the benefits of free trade for the economic growth and welfare of their nations. The Agreement, which was expected to take effect on 1 March 1993, covered trade in industrial and agricultural products and provided for the gradual elimination of tariff and non-tariff barriers to substantially all trade among the signatories. The liberalization process, to be completed over eight years, would be based on the principle of symmetrical mutual concessions. The Agreement was based on full recognition and respect for the principles and rules of the multilateral trading system of the GATT. Upon completion of the respective national constitutional procedures giving effect to the CEFTA, the Agreement would be duly notified under the relevant GATT provisions.

The Council took note of the statement.

22. Office of the Director-General

The Chairman of the CONTRACTING PARTIES, speaking under "Other Business", recalled that at the Forty-Eighth Session of the CONTRACTING PARTIES in December 1992, his predecessor, noting that the present Director-General's term of office expired on 30 June 1993, had announced that pursuant to the procedures for the future appointment of a Director-General (BISD 33S/55), his successor would begin consultations early in 1993 regarding the appointment of a successor to the present Director-General. He informed the Council that he had initiated these consultations, and would keep it informed on the progress thereof. He would remain available for advice and views on this matter at all times.

The Council took note of the statement.

23. United States and European Economic Community wheat export subsidies

The Chairman, speaking under "Other Business", recalled that this matter had been raised by Australia at the Council meeting in September 1992. While there had been agreement at that meeting that the best possible solution to the problems posed by competitive export subsidization of wheat by the United States and the European Economic Community would be an early and successful conclusion of the Uruguay Round, there had also appeared to be a desire to engage in informal consultations on an urgent basis with a view to exploring avenues of addressing these problems. The then Chairman had agreed to hold such consultations and had informed the Council at its November meeting that he had initiated the

process by engaging in a preliminary exchange of views with some of the delegations directly concerned. At the Forty-Eighth Session of the CONTRACTING PARTIES in December 1992, the issue of wheat export subsidization had been addressed again by a number of contracting parties.

He said that in his informal contacts, Australia and some other exporting countries had reaffirmed their strong interest in continuing the process of informal consultations, since the export subsidy policies complained of still remained in place. These delegations believed that, given the current situation of record stocks in this sector, the potential for further market destabilisation remained as high as ever. He intended, therefore, to continue the consultation process, and to ensure the involvement of other interested delegations.

The representative of Australia welcomed the Chairman's intention to continue consultations on this important matter. He referred to a recent statement by the US Agriculture Secretary who had strongly reaffirmed the United States' intention to use farm export programmes "full-tilt" until a global trade reform deal was struck under the GATT. This was a serious mistake at a time when the world trading community was looking for indications of the United States' evolving trade policy under a new Administration and of its commitment to the Uruguay Round. The US decision was rather chilling, particularly because there was no timetable in sight for concluding the Round -- even if a November 1992 agreement between the two major subsidisers had provided a basis for moving toward a conclusion -- and one was faced in the interval with actions arising from the decision. The issue was very serious, given that the nature of the subsidy programmes in question, which had originally been specific, was now to be made more general. Considerable damage was being done by such programmes, and Australia therefore looked forward to and supported the Chairman's consultations.

The representative of Argentina echoed Australia's concerns regarding recent US actions which, instead of creating a propitious atmosphere for concluding the Round, perpetrated a subsidy war. It was important for the Chairman to continue consultations on this matter in order to create an atmosphere conducive to a successful outcome of the Round. Argentina strongly supported such consultations.

The representative of Brazil supported Australia's and Argentina's statements. Brazil shared the concerns as regards the worrying prospects for concluding the Uruguay Round. Brazil supported the Chairman's consultations as a matter of utmost importance.

The representative of Chile recalled that at the September 1992 Council meeting his delegation had expressed concern generally over recent US export subsidy actions, and particularly in relation to peach exports. Chile shared others' concerns over such practices and looked forward to participating in the Chairman's consultations.

The Council took note of the statements.

24. Austria - Mandatory labelling of tropical timber and timber products and creation of a quality mark for timber and timber products from sustainable forest management

The Chairman, speaking under "Other Business", recalled that the Council had considered this matter at its November 1992 meeting. The debate had demonstrated inter alia the outstanding importance attached by contracting parties to the issue of inter-relationship between trade and environment and highlighted the possible wider implications of individual national measures introduced in this area. While there had not appeared to be any consensus on how to proceed further, the then Chairman had undertaken informally to see what might be done. He informed the Council that both he and his predecessor had had a preliminary exchange of views with the delegations primarily concerned. This issue had also been raised at the November 1992 meeting of the International Tropical Timber Organization (ITTO). Furthermore, high level bilateral and plurilateral contacts had been established on this matter between certain ASEAN countries and Austria. While these contacts were to be pursued in the future, the ASEAN contracting parties and Austria would continue informal consultations on the matter under the GATT too. He intended to assist the parties concerned in promoting this process and hoped to be able to report on any developments related to these informal consultations at a future Council meeting.

The Council took note of the statement.

25. Accession of Ecuador
- Working Party Chairmanship

The Chairman, speaking under "Other Business", recalled that at its meeting on 29 September-1 October 1992, the Council had established a Working Party on the Accession of Ecuador and had authorized him, in consultation with primarily interested contracting parties, to designate its Chairman. He informed the Council that Mr. Manhusen (Sweden) had agreed to serve as Chairman of the Working Party.

The Council took note of this information.

26. Free-Trade Agreements between Finland and Estonia, Latvia and Lithuania
- Working Party Chairmanship

The Chairman, speaking under "Other Business", recalled that at their Forty-Eighth Session in December 1992, the CONTRACTING PARTIES had established a Working party to examine this matter, and had authorized the Council Chairman, in consultation with the parties principally interested, to designate its Chairman. He informed the Council that Mr. Seade (Mexico) had agreed to serve as Chairman of the Working Party.

The Council took note of this information.