GENERAL AGREEMENT ON

TARIFFS AND TRADE

RESTRICTED

C/M/263
9 June 1993

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COUNCIL
12-13 May 1993

MINUTES OF MEETING

Held in the Centre William Rappard
on 12-13 May 1993

Chairman: Mr. A. Szepesi (Hungary)

Prior to adoption of the Agenda, the Chairman, on behalf of the Council, welcomed Saint Lucia, the Czech and Slovak Republics and Dominica as the 107th, 108th, 109th and 110th contracting parties, respectively.

1. Croatia - Request for observer status (L/7209)

The Chairman drew attention to the communication from Croatia in L/7209 requesting observer status in the GATT. He suggested that, as for the other such requests that had been brought before the Council recently, the understanding 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 Croatia 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 Croatia observer status.

The Council so agreed.

The representative of Croatia, speaking as an observer, thanked the Council for having granted his Government's request. Since its independence, Croatia had become a member of nearly all United Nations organizations. The GATT was one of the few remaining international organizations with which Croatia wished to establish mutually beneficial relations, and he hoped that full membership therein would only be a matter of time. In the meantime, Croatia looked forward to becoming acquainted with GATT rules and to receiving appropriate technical assistance. Croatia had been confronted with serious economic difficulties and challenges, primarily as a result of continuing aggression and war; war damages estimated at US$ 22-24 billion were only a numerical manifestation of the enormous destruction of Croatia's economy, which otherwise had great potential. Croatia intended to intensify shortly its efforts to reconstruct and modernize its economy, for which international solidarity and assistance would be welcome. The process of privatization was progressing, thus opening the possibilities for expanded trade.

The Council took note of the statement.

2. Accession of Paraguay
- Report of the Working Party (L/7210 and Add.1 and Add.1/Corr.1)

The Chairman informed the Council that some contracting parties had requested postponement of consideration of this item until the next Council meeting and that Paraguay, while expressing its preference to having this item considered at the present meeting, had acceded to that request.

The Council took note of this information and agreed to postpone consideration of this item until its next meeting.

3. Customs union between the Czech Republic and the Slovak Republic - Joint communication from the Parties to the Agreement (L/7212)

The Chairman recalled that at its meeting in November 1992, the Czech and Slovak Federal Republic (CSFR) had informed the Council of a recently signed Agreement establishing a customs union between the Czech Republic and the Slovak Republic -- the two new States to be created after the dissolution of the CSFR in January 1993 -- and that details of the Agreement would be provided to contracting parties in the near future. He drew attention to a joint communication from the parties to the Agreement in L/7212, which provided the text of this Agreement.

The representative of the Czech Republic, speaking also on behalf the Slovak Republic, said that the Agreement on the customs union between the two countries, which entered into force on 1 January 1993, covered all trade and aimed at preserving and further developing their trade and economic relations. The Agreement had no transitional period since no tariff and non-tariff barriers had existed in the past between the territories of both States, and did not require Article XXIV:6 renegotiations because the two States had taken over the trade policy régime and GATT commitments of the former CSFR. As regards the Agreement on Mutual Relations and Cooperation in Agriculture, to which reference had been made in L/7212, the text thereof had been submitted to the Secretariat and would be circulated to contracting parties shortly as L/7212/Add.1. He expressed the readiness of both Governments to actively participate in the examination of these Agreements.

The Chairman proposed that the Council take note of the statement and agree to establish a working party as follows:

Terms of reference

"To examine, in the light of the relevant provisions of the General Agreement, the Agreement establishing a customs union between the Czech Republic and the Slovak Republic, 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 so agreed and authorized its Chairman to designate the Chairman of the Working Party in consultation with the contracting parties primarily interested.

4. Peru - Establishment of a new Schedule XXXV
- Request for extension of waiver (C/W/731, L/7211)

The Chairman drew attention to the request by Peru (L/7211) for an extension of the waiver granted to it in July 1992 (L/7067) for the establishment of a new Schedule, and to the draft decision which had been circulated to facilitate consideration of this item (C/W/731).

The Council approved the text of the draft decision in C/W/731, and recommended its adoption by the CONTRACTING PARTIES by a vote by postal ballot.

5. Committee on Balance-of-Payments Restrictions
(a) Consultation with Poland (BOP/R/206)
(b) Consultation with Turkey (BOP/R/207 and Corr.1)
(c) Note on the meeting of 2 April (BOP/R/208)

(a) Consultation with Poland (BOP/R/206)

Mr. Witt (Germany), Chairman of the Committee, said that at the consultation with Poland on 31 March and 2 April, the Committee had commended Poland for the significant progress achieved in the transition to a market-based trade and economic system since the introduction of its comprehensive and radical reform programme. The Committee had welcomed the major liberalization of Poland's trade and payments system undertaken as part of these reforms. It had noted with satisfaction that, after two years of sharp decline, Poland had seen a turnaround in economic activity in 1992. The Committee had also noted the difficulties encountered by Poland in its transition to a market economy, which included a substantial fiscal imbalance. As a result of an expected slowdown in export growth and an increase in imports, in part due to the negative impact of the 1992 drought, the external outlook had become more fragile. In the absence of policy action, this, in addition to envisaged debt servicing payments, would have created adverse pressures on Poland's official reserves. The Committee had understood that the economic programme adopted by Poland sought to remedy the fiscal imbalance, stabilize its reserve position and preserve momentum towards further progress in structural adjustment. However, concern had been expressed that there might be some backsliding in Poland's trade liberalization process.

The Committee had understood that the import surcharge of 6 per cent had been introduced as a temporary measure in view of a perceived imminent threat of further deterioration in the balance-of-payments situation linked to the drought conditions experienced in 1992, as well as in a situation of fiscal imbalance. The Committee had welcomed that the measure was transparent and price based, that its coverage would extend to all imports, and that it had been implemented in a non-discriminatory manner. It had also welcomed Poland's firm intention to eliminate the surcharge by the end of 1994. The Committee had recognized that the surcharge was applied in a manner consistent with Article XII and the provisions of the Declaration on Trade

Measures taken for Balance-of-Payments Purposes (BISD 26S/205). However, it had encouraged Poland to pursue its reform programme through economic measures which would expand, rather than contract, international trade. The Committee had therefore urged Poland to keep to the original timetable for reduction of the surcharge to 3 per cent, and looked forward to elimination of the surcharge by the end of 1994 or earlier.

The Council took note of the statement and adopted the report in BOP/R/206.

(b) Consultation with Turkey (BOP/R/207 and Corr.1)

Mr. Witt (Germany), Chairman of the Committee, said that at the consulation with Turkey on 1 and 2 April, the Committee had noted that the liberalization of Turkey's economy in recent years had contributed to buoyant export performance, an improvement in the balance-of-payments position and an increase in international reserves. It had welcomed and commended the widespread trade liberalization undertaken by Turkey since the previous consultation, including the abolition of the stamp duty, municipal tax and transport infrastructure tax on imports and the termination of payments to the Price Support and Stabilization Fund. Moreover, all quantitative import restrictions had already been abolished. However, in order to gain the full benefits of the liberalization and adjustment programme, the Committee had encouraged the continuation of the privatization process and had stressed the need for steady reduction of the fiscal deficit, continuity in and consolidation of fiscal and monetary policies, and greater discipline over the financing of State enterprises.

The Committee had recognized that Turkey was committed to a programme of progressive reduction and phasing-out of the Mass Housing Fund charge. It had noted that even in the newly introduced import régime, the combination of import duties with payments to the Mass Housing Found had led to total charges on imports exceeding GATT-bound levels for 12 per cent of tariff lines in Turkey's Schedule. While not querying the purpose of this measure, Committee members had questioned whether this was justified under Article XVIII:B. The Committee had recognized that the basic aim of the Mass Housing Found was not for balance-of-payments purposes and had therefore welcomed Turkey's readiness to notify shortly all tariff lines on which the combined incidence of the tariff and the Mass Housing Fund charge exceeded bound rates, and to implement the envisaged reduction. The Committee had taken note of Turkey's declared intention to disinvoke Article XVIII:B in the foreseeable future. He added that Turkey had recently submitted the list of products on which the combined incidence of the tariff and Mass Housing Found charge exceeded the bound rates.

The Council took note of the statement and adopted the report in BOP/R/207 and Corr.1.

(c) Note on the meeting of 2 April (BOP/R/208)

Mr. Witt (Germany), Chairman of the Committee, said that at the Committee's meeting on 2 April, it had been announced under "Other Business" that the consultation with Nigeria had had to be postponed at the request of that Government. The Committee had agreed that the consultation should now be held on 24-25 May. The Committee had also been informed that consultations with Israel and South Africa had been scheduled for 1-2 and 7-8 July, respectively. In view of the frequent postponements of BOP consultations experienced in recent years, the Committee had decided that this matter should be subject to greater discipline. Accordingly, the Committee had agreed that if in future, a consulting country wished to request postponement of its consultation, the request should be submitted to the Committee and that the consultation could only be postponed with the agreement of the Committee. Finally, at the meeting, one delegation had reiterated its interest in receiving a notification from the Philippines on import restrictions maintained under Article XVIII:B, as had been requested by the Committee in February (BOP/R/204).

The Council took note of the statement and of the information in BOP/R/208.

6. United States - Restrictions on imports of wool suits from Brazil

The Chairman recalled that the Council had considered this matter at its meetings in February and March, and in March had agreed to revert to it at a future meeting. It was his understanding that the Director-General wished to make a statement on this matter.

The Director-General recalled that at the February Council meeting, Brazil had requested that he use his "good offices" to seek a solution to this matter. In response, he had requested both parties, as a first step, to intensify bilateral talks with a view to finding a mutually satisfactory conclusion. These discussions had taken place and had continued until the past few days. As a result of these contacts, and the positive and pragmatic approach on both sides, he was in a position to inform the Council that this matter had now been resolved.

The Council took note of the statement.

7. United States - Anti-dumping and countervailing duty actions on steel

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

The representative of Brazil said that his delegation's views on the US anti-dumping and countervailing duty actions on steel had been

expressed at the February and March Council meetings, and he would not repeat them. Brazil was confident that it was still possible to resolve this matter without the need to have further recourse to the GATT dispute settlement procedures.

The representative of the European Communities said that the Community had entered into a consultation and conciliation process with the United States under the Subsidies Code[1]. The Community was not satisfied with the outcome, and reserved all its rights in this matter. It should not be surprising if the Community took a decision on the follow-up to this process in the next few days.

The representative of Poland said that his Government was concerned at the United States' failure to address in a meaningful and positive way the concerns expressed both in the Council and bilaterally as regards its actions on Poland's steel exports. Poland continued to be perplexed, in particular, by the arbitrary procedures based on the classification of Poland as an alleged state-trading, non-market economy country for the purposes of the investigation. Due to this "constructed reality" approach, the US authorities had disregarded essential and verifiable information provided by Poland's exporters, in order to maximize the dumping margin. Such manipulations deprived Poland's exporters of their rights to fair treatment under US anti-dumping legislation. This situation still continued to exist despite a number of bilateral contacts, including those undertaken at senior administrative levels. He called on the United States delegation to register these concerns and to assist in addressing them as appropriate.

The representative of Finland said that on 29 April, Finland had held consultations with the United States under Article 15:2 of the Anti-Dumping Code[2] on the latter's provisional anti-dumping measures on imports of cut-to-length carbon steel plate from Finland. In the consultations, Finland had pointed out some of the diverging views between Finland and the United States regarding the calculation of the preliminary dumping margins. Finland reserved its right to raise issues related to this case at a later stage.

The representative of Austria recalled that Austria had outlined its concerns with the the US anti-dumping and countervailing duty actions on steel at the February and March Council meetings and in the relevant Code Committees. Austria could not see any causal link between the difficulties of the US steel industry, which had already been protected for many years by Voluntary Export Restraints, and the very modest share of Austria's steel exports in that market. Moreover, the US procedures were so cumbersome and costly that they themselves

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[1]Agreement on Interpretation and Application of Articles VI, XVI and XXIII (BISD 26S/56).

[2]Agreement on Implementation of Article VI (BISD 26S/171).

constituted a non-tariff barrier. Exporters were, furthermore, continuously faced with disregard for evidence provided by them, and by the arbitrary use of the "best information available" criterion. Austria looked forward to a political solution in the framework of a Multilateral Steel Agreement (MSA) and expected that this would provide some guarantees and procedural remedies against the improper use of trade laws.

The representative of Australia said that the US anti-dumping and countervailing duty actions on steel were of great concern to a large number of contracting parties, including Australia. Several contracting parties were already pursuing or considering pursuit of their respective interests with the United States, either bilaterally or under the provisions of the Subsidies and Anti-Dumping Codes. Australia was considering its own options in this regard against the realization that some very important domestic US deadlines were approaching. Australia remained strongly supportive of a successful conclusion to the MSA negotiations, which it believed provided the best prospect for effectively resolving current frictions in steel trade on a long-term basis.

The representative of Korea said that his Government continued to view the US anti-dumping and countervailing duty actions on steel as unjustifiable, and hoped that the final determinations would be objective and GATT-consistent. Korea would continue to observe the situation closely and consider the options available to preserve its GATT rights.

The representative of Japan recalled that his delegation had expressed its views on this matter on earlier occasions, including at the February and March Council meetings. Japan believed that the US actions, which were hindering normal trade relations, could not be justified. Japan was examining its future course of action to defend its interests, including consultations under the Anti-Dumping Code.

The representative of Canada said that his country's exporters had also been affected by the US anti-dumping actions. Canada shared many of the concerns expressed by others regarding this action.

The representative of Sweden said that Sweden had held consultations with the United States under the relevant provisions of the Anti-Dumping and Subsidies Codes on 29 April. These had been useful even though their differences had not been resolved. Sweden assumed that the United States would take its concerns into account in the process leading to the final determinations, and would ensure that the anti-dumping and countervailing duty cases were concluded in full accordance with the relevant GATT rules. Sweden reserved its right to revert to this matter as necessary.

The representative of the United States said that since the March Council meeting, the United States had held consultations under the Anti-Dumping and Subsidies Codes with Finland, Mexico and Sweden, and had started conciliation in the Subsidies Committee with regard to the

Community's complaint. The United States believed that this was a constructive way of approaching this issue. With regard to the domestic deadlines referred to by Australia, he noted that the Department of Commerce would make its final anti-dumping and countervailing duty determinations on 21 June, and the International Trade Commission its final injury determinations by 4 August. He added that a number of contracting parties -- including Australia, Austria, Canada, Japan, Korea and Poland -- had not pursued formal consultations. The United States urged them to have recourse to the appropriate consultative mechanisms if they had complaints about the investigations.

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

8. United States - Taxes on automobiles
- Recourse to Article XXIII:2 by the European Economic Community (DS31/2)

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

The representative of the European Communities recalled his delegation's arguments regarding this matter at the March Council meeting. The Community remained convinced that the three taxes in question were incompatible with Article III:1 and 2. The Community had tried, without success, to resolve this matter through bilateral consultations with the United States, and had no choice other than to maintain its request for the establishment of a panel to allow it to argue its case. The Community hoped that the United States could agree to this request at the present meeting.

The representative of Sweden reiterated his Government's support for the Community's request. As his delegation had stated at the March Council meeting, Sweden's automobile producers were also affected by these taxes. Sweden, therefore, reserved its right to appear before the panel as a third party.

The representative of the United States said that the United States would not block a consensus in the Council to grant the Community's request at the present meeting, since panel review was an important GATT right. However, it would not be able to join in such a consensus. The United States would have liked an opportunity to develop further the information relevant to the Community's concerns in order to determine if a mutual understanding thereof could have proven beneficial to this dispute.

The representatives of Japan and Australia reserved their Governments' rights as interested third parties and to make a submission to the panel.

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

> "to examine, in the light of the relevant GATT provisions, the matter referred to the CONTRACTING PARTIES by the European Economic Community in document DS31/2 and to make such findings as will assist the CONTRACTING PARTIES in making the recommendations or in giving the rulings provided for in Article XXIII:2."

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

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

The Chairman recalled that this matter had been considered by the Council at its meeting in February. It was on the Agenda of the present meeting at Canada's request.

The representative of Canada said that, having taken the initiative in June 1992 to seek the Council's authority to enter into Article XXVIII negotiations, the Community now had an obligation to all interested parties to this dispute to bring those negotiations to a mutually satisfactory conclusion. Canada continued to regard the Community's compensation offers to date as insufficient. The lack of a satisfactory resolution to this dispute was preventing farmers in Canada, as in other countries, from making informed decisions regarding their future involvement in the oilseeds area. He asked if the Community could provide an indication of its future intentions, in particular as to when it intended to resume negotiations with interested third parties, such as Canada.

The representative of Argentina said that the oilseeds issue provided a clear picture of the weakness of the GATT system and of its dispute settlement mechanism in particular. The present situation had arisen as a result of the Community's lack of compliance with its international commitments and its continued disregard for GATT rules and principles. This was illustrated by the Community's non-implementation of the recommendations of the original Panel report[3], its not agreeing to adoption of the report of the members of the reconvened Panel (DS28/R), and the delaying process it had initiated since June 1992 following the CONTRACTING PARTIES' authorization that it renegotiate certain oilseeds concessions under

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[3] EEC - Payments and subsidies paid to processors and producers of oilseeds and related animal-feed proteins (BISD 37S/86).

Article XXVIII:4. In several bilateral meetings held since June 1992, the Community had made no firm compensation offers, in contrast to Argentina's reasonable and cooperative attitude. Accordingly, he reiterated that Argentina's exercise of its GATT rights in the future should not be seen as its preferred course of action, but rather as the only option left to safeguard its legitimate interests.

The representative of Brazil said that after almost a year since the Council's authorization to the Community to enter into Article XXVIII:4 negotiations, the negotiations were not only not concluded, but were paralyzed. Interested parties were still awaiting a definitive offer of compensation from the Community. Brazil, as principal supplier of soya cake and soya beans and as a party with substantial interest in sunflowerseed cake, had entered into these negotiations with the aim of achieving an equitable and mutually-satisfactory solution. He urged the Community to conclude the negotiations in a serious and constructive manner.

The representative of Uruguay associated his delegation with the previous statements. Uruguay held initial negotiating rights for various Community oilseeds concessions, and had participated in all the consultations and negotiations held since June 1992. Although the bilateral consultations had thus far been unsuccessful, Uruguay remained confident that there was a sufficient basis to conclude them. The process had been unduly prolonged without a valid motive, and the negotiations, therefore, had to be resumed immediately, not least for the sake of preserving the credibility of the GATT system. Uruguay urged the Community to work towards a rapid solution of the matter and to provide adequate compensation to the parties concerned.

The representative of India said that as a country with an interest in one oilseed item, and which had been negotiating with the Community on this issue, India was naturally disappointed that no mutually-satisfactory solution had yet been reached. India also had a systemic concern on this matter relating to the 60-day requirement for concluding the relevant negotiations under Article XXVIII:4. Given that nearly one year had elapsed in the present case, India encouraged the Community to intensify its consultations with all interested parties with a view to arriving at a mutually-satisfactory solution as soon as possible.

The representative of Pakistan joined in the previous speakers' expressions of concern over the long delays incurred in the settlement of this matter. He urged the Community to adhere to and respect the relevant GATT disciplines, which provided the only basis for reaching a mutually-satisfactory solution.

The representative of Sweden said that his own country's bilateral negotiations with the Community had been concluded at the beginning of the year with satisfactory results. However, Sweden deplored the fact that this had not been the case for all the parties concerned. He therefore urged that all bilateral negotiations be concluded

satisfactorily as soon as possible and that the results be implemented rapidly thereafter so that once and for all this whole issue could be closed.

The representative of Hungary said that for the sake of the good functioning of the multilateral trading system, a negotiated solution to this dispute should be found, and that the results of the Article XXVIII:4 negotiations should take into account the interests of all third parties, including Hungary.

The representative of the European Communities said that his delegation had noted the comments made and acknowledged that delays had occurred. Proposals for an agreement with the main party concerned in this dispute had been submitted to the Council of the European Communities, and a decision thereon was expected in June. Once that decision had been taken, the Community would pursue negotiations with the other parties, and hoped to conclude them rapidly.

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

10. EEC - Import régime for bananas
- Recourse to Article XXIII:2 by Colombia, Costa Rica, Guatemala, Nicaragua and Venezuela (DS38/6)

The Chairman recalled that the Council had last considered the matter of the European Economic Community's banana import régime at its meeting in March and had agreed to revert to it at a future meeting. He drew attention to a communication from Colombia, Costa Rica, Guatemala, Nicaragua and Venezuela in DS38/6 requesting the establishment of a panel to examine the Community's new banana import régime.

The representative of Costa Rica, speaking also on behalf of Colombia, Guatemala, Nicaragua and Venezuela, said that for the reasons set out in document DS38/6, their Governments requested the establishment of a panel to examine the Community's Common Market Organization in Bananas as adopted on 13 February 1993 (Regulation No. 404/93). Formal Article XXII:1 consultations with the Community on this matter had been held between 22 March and 19 April, and had not resulted in a mutually-satisfactory solution. He provided details of the earlier background to this issue, as had been stated by his delegation at the February Council meeting (C/M/261, item 8), to show that prior to the latest consultations, the Community had been provided ample opportunity to try and find a solution to this dispute. It was therefore unjustifiable for this matter not to be submitted for examination by a panel at this point in time. The Community's Common Market Organization in Bananas nullified or impaired benefits accruing to their Governments under the GATT and, furthermore, violated several of the Community's GATT obligations, inter alia, those in Articles I, II, III, V, VIII, XI, XIII, XVI and Part IV. He went on to provide comprehensive details of the nature of these prima facie nullifications of their GATT rights. Given the nature of the Community's new import régime, and the severe consequences that had already resulted following

its announcement -- such as the effects on investment programmes and development plans -- their Governments believed that this dispute had to be examined as a matter of urgency, pursuant to paragraph F(f)5 of the April 1989 Decision on improvements to the GATT dispute settlement rules and procedures (BISD 36S/61), even though it would only enter into force on 1 July. The fact that bananas were a perishable and therefore not easily storable product, together with the large reduction in Latin American banana exports that would occur in little more than seven weeks, further aggravated the situation. The substantial potential losses to their countries could be greatly reduced if the urgency of this matter were recognized, and the Community's régime brought into GATT conformity within a short period of time. For these reasons, they requested the establishment of a panel which would submit its report within the time period provided in the April 1989 Decision for cases of urgency.

The representative of Colombia said that the Community's new banana import régime had extended Community-wide the more protectionist aspects of the current import régimes of certain of its member States. Analyses from various sources, including the Community, concurred that the impact of the announced régime had led to a reduction of about 39 per cent in export prices on the Community market in the course of the present year, in addition to reducing the level of investment in the Latin American banana industry, as well as giving rise to negative social effects, which would be further aggravated from 1 July as a result of reduced access and discrimination against Latin American bananas. He cited statistics to show the damage that would result in Colombia. As Costa Rica had stated, the new régime was contrary to the principles of the General Agreement, and to the spirit and letter of the principles which in 1966 had guided the CONTRACTING PARTIES to include in Part IV the promotion of trade of developing countries as one of its major goals. The Community had been given every opportunity, without success, to bring about the necessary adjustment in the new régime to make it GATT consistent, and the Council therefore should establish a panel at the present meeting to examine this dispute, the report of which should be submitted in three months in accordance with paragraph F(f)5 of the April 1989 Decision. The reasons for this urgency were as follows: (1) the requesting developing countries depended on the production of bananas and their marketing in the Community; (2) the new régime would enter into force only 48 days from the present day; (3) the three-month period would represent for Colombia a minimum of US$25 million of losses of exports to the Community; (4) bananas and their very costly infrastructure had no viable substitute in the vast areas of production given over to the banana industry over the past decades; and (5) transactions on bananas -- a perishable product -- were negotiated four months in advance, which meant that the effects of the future régime would be felt already now through the present anticipation of the implementation of the restrictions.

The representative of Guatemala said that since consultations with the Community had not resulted in a mutually-satisfactory solution, the governments concerned had the undeniable right to request establishment of a panel to examine this matter. That request had to be attended to and the dispute resolved as a matter of urgency. Bananas -- a permanent and not a

seasonal crop in their countries -- provided employment both directly and indirectly to thousands of workers throughout the year. As Colombia had indicated, the heavy investment necessary to maintain the banana infrastructure could not be recycled for any other type of cultivation. Nor could the land involved be left fallow while waiting for a decision on this matter because a lot of investment would be lost -- a cost which Guatemala could not bear. It had to be borne in mind in this case that the requesting countries were developing countries which had resorted to the GATT dispute settlement mechanism to ensure that their rights were not flouted. Their request for urgent consideration of this issue would not be prejudicial to other contracting parties; its rejection would in fact mean the denial of their rights.

The representative of Thailand, speaking on behalf of the ASEAN contracting parties, said that a balanced and mutually-satisfactory solution to this matter had to be found. Granting the request for establishing a panel could contribute towards meeting this objective.

The representative of Mexico said that his Government fully supported the request of the banana-producing countries that a panel be established and that its report should be submitted within three months from the date of its establishment. The April 1989 Decision provided for this, and while it did not clearly stipulate the conditions under which the criterion of urgency was applicable, it was up to the Council to decide this matter. In Mexico's view, the urgency was fully justified for several reasons. First, this matter had already lasted a long while and the economies of the countries concerned had been negatively affected during that period. Second, only seven weeks remained before the entry into force of the Community's new régime, and the mere announcement of its introduction had already resulted in the cancellation of new investment plans and in an adverse effect on important segments of the population that worked in the banana sector. Third, bananas were a perishable product which meant they could not be easily stored until market access conditions improved. Finally, bananas entailed high fixed and storage costs. Given the crisis the product presently faced, its storage was impossible with the result that not only the product but also the investment therein was lost. For these reasons, it was crucial that the most expeditious procedures possible be followed to avoid any further damage to the Latin American banana-exporting countries. While Mexico understood the reasoning and motivation for the Community's approach, it called on the latter to follow a different approach in this instance.

The representative of Dominica underlined his country's dependence on agriculture and that bananas were the most important agricultural commodity produced -- by small farmers -- and exported, accounting for 92 per cent of agricultural exports. Furthermore, all of Dominica's banana exports went to the Community, under arrangements that had been in place for more than forty years. A complete dismantling of these market access arrangements, as was being sought by the Latin American countries concerned, would result in economic, political and social chaos for Dominica, as well as all twelve African, Caribbean and Pacific traditional banana-exporting countries to the Community to a greater or lesser extent.

He noted that although the Community had made proposals to replace the existing, long-standing arrangements in its banana-import régime, they would not enter into force until 1 July. Furthermore, regulations for the operation of the Community market under the new arrangements were still being discussed in Brussels. He wondered therefore what a panel would examine: a regulation that was not yet in force, or investment programmes and development plans decided upon autonomously by commercial interests? Dominica believed that a first requirement was that there be trade or impairment of trade under the new régime before a panel could legitimately be constituted. In addition, given that 69 developing countries -- of which 44 were contracting parties -- had preferential trading arrangements with the Community under the Lomé Convention, and therefore an interest in the matter, there would have to be sufficient opportunity for them to register their interest and participate in any panel examination of the Community's banana import régime. In the circumstances, therefore, the urgency provisions of paragraph F(f)5 of the April 1989 Decision would be inappropriate. He also wondered which procedure would be resorted to in examining the future banana import régime: existing procedures or future procedures to be established upon the conclusion of the Uruguay Round? For these reasons, Dominica considered it inappropriate to establish a panel to examine a trading régime not yet in force, and was opposed to the request by the countries concerned.

The representative of El Salvador reiterated her Government's support for the Latin American banana-exporting countries on this matter, whose economies were already suffering negative consequences following the announcement of the Community's proposed new régime. El Salvador believed that the settlement of disputes, however difficult they might be, was one of the main tasks of the GATT, and in particular their rapid settlement. El Salvador therefore considered that the Council at its present meeting should establish the panel that had been requested, and that the matter was one of urgency in the sense of paragraph F(f)5 of the April 1989 Decision.

The representative of Uruguay expressed his Government's support for the panel request. The Community's announcement of its new régime was already causing injury in the countries concerned, the banana exports of which would suffer a sharp decline through the implementation of that régime. Uruguay believed there was ample justification for urgency in resolving this dispute, as provided for in the April 1989 Decision.

The representative of Brazil said that his Government, too, supported the panel request. This matter was of concern for all contracting parties because of its implications for the multilateral trading system and the Uruguay Round. Besides its interest of principle in the matter, Brazil was concerned at the possible effects on Latin American trade should the Community's new import régime be implemented. Brazil had already participated as an interested third party in the on-going proceedings of the Panel on the existing régime, and noted that it had initial negotiating rights on bananas. For this reason, Brazil was interested in participating in any panel or negotiations regarding the modification of the Community's concessions for this product. He stressed that this case should be treated with the urgency foreseen in the April 1989 Decision. While Brazil

understood the difficult situation of the ACP countries, and the Community's sense of responsibility towards them, it believed that other developing countries should not have to pay the bill for historical responsibilities.

The representative of Chile said that on previous occasions Chile had expressed concern at the Community's application of restrictive trading practices that had severe effects on various economic sectors in developing countries. The Community's present policy appeared to be characterized by an increased protectionist trend which cast doubt on its commitment to its GATT obligations. Chile believed it was timely and necessary for the affected contracting parties to have recourse to the mechanisms under the GATT in defence of their interests. Chile therefore supported the Latin American banana-exporting countries' request for a panel. Since the Community's new banana import régime would enter into force on 1 July, it was urgent that this panel be established as soon as possible, and its work completed rapidly, pursuant to paragraph F(f)5 of the April 1989 Decision. At the same time, Chile urged the Community to make every effort to seek a consensus solution that would satisfy the interests of all parties concerned. Chile believed that a rapid procedure and the prompt approval of the panel's report would not only benefit the parties to the dispute, but would also strengthen the multilateral trading system.

The representative of Argentina said that his Government's interest in this matter was one of principle. It believed that GATT rules provided for the non-discriminatory application of trade measures, while at the same time meeting all the aims a contracting party might have in formulating such measures. Therefore, when contracting parties' interests were affected through the application of a discriminatory measure by other contracting parties, Argentina had to voice concern. In the case at hand, trade flows as well as specific rules regarding tariff bindings and other measures were being affected. Argentina therefore supported the request for a panel as well as the request that this matter be dealt with urgently pursuant to paragraph F(f)5 of the April 1989 Decision.

The representative of the United States supported the request for a panel, as well as the view that this was a case of urgency and that the panel should aim to provide its report to the parties within three months after its composition. In the United States' view, the case was urgent because of the commercial importance of the dispute to the Latin American complainants, its obvious importance to the ACP banana producers, and the benefit of having the result before the expected conclusion of the Uruguay Round in mid-December 1993. With respect to the last point, the Community had often said that the banana issue should be negotiated in the Round. The United States did not share the view that negotiation should be in lieu of dispute settlement; however, it believed that a prompt decision on the Community's obligations under the current GATT rules would be very useful to all participants prior to the conclusion of the Round. The United States hoped that the Council would establish a panel at the present meeting and that the case would be considered to be one of urgency.

The representative of Côte d'Ivoire said that before establishing this panel, one should perhaps read the report and the recommendations of the Panel established to examine the former régimes in the Community. Also, it should be noted that at the recent consultations, in which her country had participated, the Community had expressed its willingness to continue efforts towards a satisfactory solution to this problem. She reiterated the importance of bananas in her country's economy, and noted that all its banana exports went to the Community on the basis of long-standing arrangements. Côte d'Ivoire's economy would be endangered without the assurance of particular commercial outlets for its agricultural products. Côte d'Ivoire supported Dominica's statement and believed that the establishment of a panel would be inappropriate.

The representative of Bolivia supported the request for a panel and reiterated Bolivia's concern at the new régime announced by the Community which had caused serious injury to the economies of the Latin American countries concerned.

The representative of Jamaica said that his delegation wished to place on record its opposition to the panel request. The Community's new banana import régime, which would take effect in July 1993, was intrinsically linked with the internationally-recognized Lomé Convention and reflected the Community's determination to carry out its legal obligations vis-à-vis the ACP countries. The successive Lomé Conventions had been examined in the GATT in several working parties and had been found to be GATT consistent. In February, a further Working Party had been established by the Council to examine the current Fourth Convention, and Jamaica believed that questions arising from the new banana import régime should be examined within that context and not in a piece-meal manner. Since his delegation was opposed to the establishment of a panel, it would not comment on the question of the urgency of its proceedings.

The representative of Cameroon said that since the new banana import régime would only enter into force on 1 July, it would appear premature to reach any conclusions at the present time as to its negative conseqences on any country or group of countries. Moreover, available statistics showed without a doubt that, over the past five years, the Latin American banana-producing countries had constantly increased their share of the Community market to the detriment of other suppliers, particularly ACP ones. The state of the latters' economies was well-known, particularly following the recent drop in prices for many of their traditional export products. For these countries, the Community constituted, for historical and geographical reasons, the only outlet for their banana exports, in contrast to the Latin American countries. While their share in world production of bananas was very modest -- barely 2-3 per cent -- it was of great importance in terms of export earnings, often being their only means of survival. Cameroon was not convinced of the need for a new panel. The most recent consultations on this problem had shown that the Community was still willing to find a solution, and it was regrettable that this willingness had not been taken advantage of. Furthermore, it had already been suggested earlier that this matter should be resolved in the context

of the Uruguay Round, which her delegation believed should be pursued. Cameroon was, therefore, firmly opposed to the establishment of a new panel at present.

The representative of Australia regretted that the Article XXII:1 consultations on this matter had not resulted in a solution. Australia recognized the very important trade interests involved, and the need for an early resolution to minimize the present uncertainty as to what the Community's move to a tariffied régime would mean for the future access to its banana market. Australia, therefore, supported the request for a panel to examine the new régime. It also continued to believe that within the framework of tariffication a negotiated solution to this issue should be possible that would meet the legitimate concerns of the Latin American exporters, the ACP producers and the Community's own producers. Australia, therefore, supported the suggestions for an early conclusion to the panel's work on this subject, so that the Community's obligations with respect to bananas would be clearly seen in advance of the conclusion of the Uruguay Round negotiations.

The representative of Peru said that, like several previous speakers, Peru supported the request for a panel, and believed that this case was important enough to be considered as one of urgency pursuant to the April 1989 Decision.

The representative of Madagascar asked whether the General Agreement provided for the review of an economic or trade régime which was not yet in force. If this were not to be the case, her delegation would advise the parties to the dispute to continue their consultations with a view to finding solutions that would take the interests of all parties into account.

The representative of Trinidad and Tobago supported the statements by the ACP banana-exporting countries. Trinidad and Tobago considered the panel request premature and believed that more time should be allowed for consultations on this very important matter.

The representative of the European Communities said that his delegation had listened with attention to the previous statements regarding the Community's proposed new régime, which had not yet entered into force. He noted, in this connection, that the Panel established in February to examine the import régimes still in force had not yet concluded its work. The discussion on this item showed that one was confronted with a subject which, while very important for many economies, was very complex. For its part, the Community had sought in the past month to consult with the interested parties; it had explained its policy, and remained willing to continue to seek a negotiated solution. Under these conditions, the Community believed that the panel request was premature and was not in a position to accept it at this stage.

The representative of Costa Rica, speaking also on behalf of Colombia, Guatemala, Nicaragua and Venezuela, said that in not agreeing to the establishment of a panel at the present meeting -- against which no valid

argument had been made in the discussion -- the Community was once again refusing to find a solution to the dispute. While the Community had stated that the régime was not yet in force, he reiterated that their countries had already suffered serious consequences which, very shortly, would be further aggravated. This justified their request. The fact that the work of the Panel on the import régime still in force was not yet concluded was irrelevant, from a legal viewpoint, to the decision to establish another panel at the present meeting. Furthermore, in GATT practice, the date of entry into force of a particular measure did not determine whether or not a panel could be established to examine it. Their countries could not accept that the Community had sought a negotiated solution in the consultations, because the Community had done nothing more than present its already familiar position on the matter. Their governments, on the other hand, had on various occasions in various fora, attempted to find a solution before turning to the GATT's dispute settlement mechanism. All the stages in that process had been exhausted, and only after having requested Article XXII:1 consultations for the third time had these finally been held, and through which no mutually-satisfactory solution had been found. It was therefore unacceptable that their request for a panel at the present time was considered as being premature.

It was clear that this case had very serious implications for the multilateral trading system, since various interests were involved. The Community had to assume its rôle as a major trading partner and avoid placing weaker economies in a confrontational situation which would not have existed had it not introduced its restrictions on trade in bananas. For these reasons, he reiterated the request that the panel be established at the present meeting, and urged the Community to consider not only the strong legal arguments therefor but also the serious economic, social and political consequences of the new régime for their countries.

The representative of Ecuador, speaking as an observer, said it was not true that since the Community's new régime would actually enter into force only in some weeks' time, it had no legal existence. The legislative process within the Community had, from the legal viewpoint, been concluded. The Regulation on the Common Market Organization in Bananas had been published in the official bulletins and, even if not yet applied, it existed. He called on the Community, and others, to keep in mind the credibility of the system, and not to let another month pass by to do what would inevitably have to be done anyway, i.e., to establish a panel. Establishing the panel now would give credibility to GATT and the multilateral system. He expressed concern regarding the position taken by the ACP countries which appeared, in a way, to be a type of confrontation. Ecuador believed this was the wrong approach. The Community had to honour all its international commitments, including those under the Lomé Convention and the GATT. Increasing access for bananas from all sources would benefit the Community's consumers who would have more, better quality and cheaper bananas, which in the final analysis was what free trade sought to achieve.

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

11. 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 this item was on the Agenda pursuant to paragraph I.3 of the April 1989 Decision, and that in the course of informal consultations held in 1992 and the early part of 1993 it had been understood that it would continue to appear on the agenda in its present form. He drew attention to a recent communication from the United States in document DS23/8 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, referring to his Government's communication in DS23/8, said that the United States continued to work toward implementing the Panel's recommendations at both the federal and state levels. Since that communication had been circulated, one state -- New Mexico -- had passed legislation equalizing the tax treatment of in-state and imported wine produced by small producers. Two other states -- Massachusetts and Minnesota -- had introduced legislation in their legislatures that would address practices cited by the Panel report. Recent correspondence received from several other states had confirmed that they were actively considering how to alter their beer and wine practices. The process remained complex because of the numerous state governments involved. Therefore, while the United States was not in a position to announce more specific legislative changes at the present meeting, this in no way detracted from the diligence of its efforts in laying the groundwork for all of the necessary specific legislative changes.

The representative of Canada thanked the United States for the additional information it had provided. Although it was heartening to learn of progress in implementation, there were still a large number of measures that remained GATT inconsistent and still to be addressed. He hoped that the United States would be able to report full implementation in the near future. Canada wished to examine carefully the legislative changes notified by the United States at the present meeting to ensure that they conformed to the latter's GATT obligations. He reiterated that mere extension of preferential tax rates to foreign companies producing within the specified volume did not represent a GATT-consistent means of implementing the Panel's recommendations. Canada was concerned by this situation and, accordingly, would hold further bilateral consultations with the United States in the near future.

The representative of Australia welcomed the United States' report. Australia had a trade interest in this matter and, like Canada, looked forward to receiving further information regarding implementation prior to the next Council meeting.

The representative of Brazil said that his Government, too, welcomed the report by the United States. 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), he recalled that his Government's concerns had been set out in a communication dated 20 January 1993 (DS18/4), and had also been raised at the February and March Council meetings. While his delegation had little to add at the present meeting, he would reiterate that the discrimination found by the Panel continued to hamper Brazil's trade as each day passed, and that the United States continued to demand that discriminatory duties be paid, along with interest thereon, in clear contradiction of the Panel's findings. The situation, therefore, seemed to be as far from a satisfactory solution as it had been when the report had been adopted in June 1992.

The Council took note of the statements.

12. German unification: Transitional measures adopted by the European Communities
- Request by the European Communities for a waiver under Article XXV:5 (C/W/730 and Add.1, L/7199 and Corr.1)

The Chairman drew attention to the request by the European Communities in document L/7199 and Corr.1 for a waiver from the provisions of Article I:1 in order to apply until 31 December 1993 certain transitional measures adopted in the context of German unification, and to the draft decision in C/W/730 and Add.1, which had been circulated to facilitate consideration of this matter.

The representative of the European Communities said that this matter was already familiar to contracting parties. He recalled that the Community had been granted a waiver until December 1992 (BISD 37S/296) for the transitional measures adopted in connection with the consequences of German unification in 1990. The Community had indicated on several recent occasions that it would be seeking another decision by the CONTRACTING PARTIES to grant it a limited derogation to further cope with the consequences of German unification. He noted that lengthy consultations had been held on this matter and on the draft decision itself, and that the new waiver was being requested until 31 December 1993 for a reduced product coverage. He hoped that the Council would therefore be in a position to act on this request at the present meeting.

The representative of Argentina said that while his delegation would join in any consensus on this matter, it would recall the concerns it had expressed prior to the granting of the initial waiver in December 1990, that existing GATT mechanisms had not been applied and the procedures thereunder had not been used. This position was one of principle, and was without prejudice to the appropriateness of the measures adopted by the Community in the context of German unification.

The representative of Brazil associated his delegation with the concerns of principle expressed by Argentina.

The Council took note of the statements, approved the text of the draft decision in C/W/730 and Add.1, and recommended its adoption by the CONTRACTING PARTIES by a vote by postal ballot.

The Chairman said that the decision, when and if adopted by a vote by postal ballot, would be circulated as usual in an L/ series document, and would consolidate the information in both C/W/730 and its addendum. Furthermore, the effective date of the Waiver Decision would be the date of its adoption. As representatives were aware, when voting by postal ballot, contracting parties were customarily given 30 days in which to cast their votes. Accordingly, the effective date of this decision would be the date at which the requisite majority was obtained, but not later than the thirtieth day following the present Council meeting.

The Council took note of the statement.

13. International Trade Centre UNCTAD/GATT
- Appointment of a new Executive Director

The Chairman recalled that the Council had considered this matter at its meetings in February and March, and in March had agreed to revert to it at a future meeting. This matter was on the Agenda of the present meeting in the light of recent developments.

Mr. Carlisle, Deputy Director-General, said that at the request and on behalf of the Director-General, he had held another informal consultation on 4 May on two subjects related to the International Trade Centre (ITC), namely, the appointment of a new Executive Director and the scheduling of the next Joint Advisory Group (JAG) meeting. With regard to the first subject, he had informed participants that, in examining the UN Secretary-General's revised budget, the Fifth Committee of the UN General Assembly had agreed to request the Secretary-General "to pursue, as a matter or urgency, his efforts to agree with the Director-General of GATT on a prompt appointment to the post of the Executive Director of ITC at its present level". He had also informed the participants that it was the GATT's intention to move forward on this matter rapidly, in cooperation with the UN, and to consider all candidates objectively with a view to finding the best possible person for this post. He had expressed the hope that it would be possible to complete the selection process by not later than the end of June, so that a new Executive Director could be in place by late summer or early autumn. A number of participants had stressed that the selection process should be open and objective, and concluded as rapidly as possible. With regard to the second item, there had been a broad consensus that a full-scale JAG meeting should be scheduled some time in October or November. Some participants had expressed the desire to hold an additional JAG meeting in early summer, perhaps in June, to review developments in 1992 and 1993. Some others, however, had been opposed to an additional earlier meeting. Since there had been no consensus, he planned to hold further consultations on this matter. He added that immediately following this consultation, the

Secretariat had telephoned the office of the UN Secretary-General to ascertain the UN's views on the selection of a new Executive Director. Several more attempts at reaching the Secretary-General's office had been made since then, without success. He assured the Council that this matter would be given full attention, and that the selection process would be started as soon as possible.

The representatives of Peru, El Salvador and Colombia said that they considered the appointment of a new Executive Director to be an urgent matter, which should rapidly be resolved.

The Council took note of the statements.

14. Committee on Budget, Finance and Administration - Report of the Committee (L/7198/Rev.1)

The Chairman drew attention to the Committee's report in L/7198/Rev.1.

Mr. Kesavapany (Singapore), Chairman of the Committee, introduced the report on the matters considered by the Committee at its meetings on 29 March and 28 April. With regard to the position of the forty-five staff employed on Uruguay Round contracts, the Committee had agreed to extend these contracts to 31 December 1994 subject to the understanding that: (a) vacancies in the GATT would not be filled unless essential to maintain required skills and capabilities that could be met through redeployment of existing human resources; (b) this would not prejudge the overall level of the GATT budget which would be considered at the time of the normal budget process; and (c) a major review of the structure of the GATT would be presented to the Committee as soon as possible after the conclusion of the Uruguay Round.

With regard to the Director-General's Financial Report on the 1991 Accounts and the Report of the External Auditor thereon (L/7187), he recalled that at its 4-5 November 1992 meeting, the Council had endorsed the Committee's recommendations in connection with the Final Position of the 1991 budget (L/7077). These accounts, as well as the Council's recommendations, had been examined and reported on by the external auditor and formed the basis of the Director-General's and the External Auditor's respective reports on the 1991 Accounts. The Committee had recommended that the CONTRACTING PARTIES approve the audited accounts for 1991 and convey to the External Auditor their thanks for the valuable assistance provided. Turning to another matter, the Committee had also made recommendations for assessments on the following new contracting parties: Mali, Swaziland, the Czech Republic and the Slovak Republic. With regard to the Staff Pension Committee, the Committee had recommended that Mr. Peter Cheung (Hong Kong) be designated for the three-year term, beginning 1 January 1993, as the CONTRACTING PARTIES' representative on the ICITO/GATT Staff Pension Committee.

The Committee had also considered the question of a policy on the quality of air on the GATT premises, and had attempted to find a balance between the rights of smokers and non-smokers. The Committee had recommended that the Council approve the following policy: In a first stage, (i) with immediate effect, smoking would be prohibited in Rooms A, B, C, D, E, F, 64 and in other rooms designated as general meeting rooms; (ii) with immediate effect, smoking would be prohibited in the Council Room when used for meetings other than those of the Council. At the commencement of each Council meeting, the Chairman would request all delegations and staff to observe a "best endeavours" restraint on smoking. In a second stage, this policy would be reviewed six months later by the Committee in consultation with the Council Chairman and the Director-General. As regards smoking in other GATT premises, the Council would take note of the fact that the Director-General, in his capacity as Head of the Secretariat, was reviewing the matter in consultation with the Staff's representatives.

As regards the International Trade Centre, the Committee had examined and adopted the initial estimates for the Proposed Regular Programme Budget of the Biennium 1994-1995 on the understanding that the cost of the proposed additional post at the P.4 level would be met from existing budgetary resources.

The representatives of the United States, Korea, Hong Kong, Brazil, Australia, the Philippines and New Zealand supported the Committee's recommendation on a clean air policy on GATT premises. The Director-General expressed his support too and suggested that in his consultations with the Secretariat, the Committee Chairman also consider a possible policy on consumption of alcoholic beverages on GATT premises.

The Council took note of the statements, approved the Budget Committee's recommendations in Paragraphs 9, 23, 24, 25, 27, 28 of its report, and adopted the report in L/7198/Rev.1.

15. Trade Policy Review Mechanism - Procedures for review meetings - Communication from the Chairman (L/7208)

The Chairman drew attention to proposed changes in procedures for review meetings under the Trade Policy Review Mechanism, which he had circulated following consultations with delegations in the light of their experience gained from review meetings (L/7208). To the extent that the proposed changes affected the conduct of review meetings, it was suggested that they be brought into operation with the review of the European Communities to be held on 17-18 May 1993. They would remain in operation until further notice.

The Council took note of the statement and of the information in L/7208.

16. United States - Actions under the Trade Acts of 1974 and 1988

The representative of Brazil, speaking under "Other Business", said that on 30 April, the United States had identified Brazil, together with India and Thailand, as a "priority foreign country" under the "Special 301" provisions of the Trade Act of 1974. In respect of Brazil, the United States would now determine, within 30 days, whether to initiate an investigation of its intellectual property practices. According to the United States, Brazil had been identified because it "fails to adequately and effectively protect patents, trademarks, copyrights and trade secrets". Brazil believed, however, that the United States' dissatisfaction with its intellectual property policies should be addressed in the context of the international conventions in which both countries had assumed obligations. The United States' present action was another blow to the credibility of the multilateral trading system. Furthermore, its threat to resort to unilateral trade measures reinforced doubts as to its commitment to the GATT and to the Uruguay Round. In view of the possible adverse effects that the United States' unilateral action might have on Brazil's trade interests, Brazil was bringing this matter to the attention of the Council; it reserved its right to return to this matter should any unilateral measure by the United States affect Brazil's rights under the General Agreement and its related instruments.

The representative of Thailand said that the United States had once again identified Thailand as a "priority foreign country", and associated his delegation with Brazil's statement. According to the United States, Thailand had been so identified because of concerns regarding copyright enforcement, as well as deficiencies in a recently enacted patent law. The United States' announcement had stated clearly that future actions were being explored, including options for retaliation. He underlined that Thailand's legislation on intellectual property protection was consistent with the international obligations it had assumed as a party to relevant conventions. Thailand had also participated actively in the Uruguay Round negotiations on trade-related aspects of intellectual property rights (TRIPs), and had prepared itself for the eventual acceptance of the Uruguay Round package, including the TRIPs agreement, on the basis of the Draft Final Act (MTN.TNC/W/FA). Thailand was concerned at the United States' persistent linkage between its demands and the threat of trade retaliation. With its recent announcement, the United States had embarked on a course that could lead to possible GATT-inconsistent trade actions, which could only be seen as contravening the spirit and objectives of the GATT and the Uruguay Round. The announcement had also caused uncertainties for the trading community that could lead to a slowdown of trade between the two countries against the backdrop of a worldwide economic recession. The possibility of the United States retaliating against Thailand's exports in the near future had been confirmed by the announcement. Such unilateral action would raise questions as to the United States' commitment to a strengthened multilateral trading system and to the long-awaited conclusion of the Uruguay Round. Thailand urged the United States to refrain from taking any GATT-inconsistent measures; in the meantime, it reserved its right to raise this matter again in the Council if necessary.

The representative of India said his authorities regretted that the United States had once again designated India as a "priority foreign country". India's views on unilateral action by governments to determine others' trade policies were well known. As all were aware, TRIPs were the subject of negotiations in the on-going Uruguay Round. India wished to impress upon the United States that issues such as these should be resolved through multilateral negotiations, and that any unilateral action on its part was unwarranted.

The representative of the United States said that the so-called Special 301 provisions addressed intellectual property rights (IPRs), an area not yet covered by GATT rules and therefore not necessarily a subject for discussion at the present Council meeting. As to the suggestion that the United States had threatened GATT-inconsistent unilateral retaliation against the countries concerned, the 30 April announcement nowhere stated that a decision to institute an investigation had been made, let alone to proceed with retaliation against the three countries concerned. The announcement was mandated by the provisions of Special 301, and helped US officials plan for discussions to make progress on IPRs with other countries over the coming year. Under those provisions, the United States had to announce by 30 May whether or not to initiate investigations into the intellectual policies and practices of the countries identified as "priority foreign countries". Such investigations, he noted, normally took six to nine months to complete.

The lack of adequate and effective protection of IPRs cost businesses in the United States and other countries many billions of dollars annually. The United States preferred to address the trade losses associated with the inadequate protection of IPRs in a multilateral setting such as the Uruguay Round. However, since the GATT did not yet cover IPRs, the United States was compelled to pursue its interests bilaterally with the source countries of counterfeit and pirated products and works; it could not put aside its bilateral efforts to improve protection until the Uruguay Round was concluded and the provisions of the TRIPs Agreement were in effect, because US businesses continued to suffer staggering losses in this area. His delegation rejected any suggestions that the United States had taken a decision to proceed with retaliatory action involving trade in goods covered by the GATT.

The representative of India said that while it was true that IPRs were not presently covered by GATT rules, it was not for any government to try by its own legislation to determine the trade policies of others. The only solution in the present circumstances was a multilateral agreement, and one was already engaged in a process -- in the Uruguay Round -- that would hopefully lead to such an agreement.

The representative of Brazil said that precisely because IPRs were not covered presently by the GATT, he did not wish to enter into a

discussion in this forum on losses suffered by US industry as a result of alleged infringements of what it considered to be its rights in this area. The United States had to comply with its obligations under the present GATT. Brazil had already felt the effects of earlier GATT-inconsistent unilateral action by the United States in this very area, and because the same process appeared to be starting once again, it was giving an early warning that it would resort to its GATT rights, and to the mechanisms the GATT offered, to defend itself.

The representative of Australia agreed with India and Brazil that the issue at hand was not whether IPRs were covered by the GATT or not, but rather the attempt by one contracting party to impose unilateral measures on its trading partners. Australia had always opposed, and would continue to oppose, such practices. As part of the "Special 301" actions announced on 30 April, the United States had placed Australia on a "priority watch list" for alleged trade restrictive aspects of its broadcasting policies. It had also expressed concern, under Title VII of the Trade Act of 1988, regarding federal procurement of information systems technology in Australia. Australia considered there to be no justification for the United States' claims, and supported Brazil, India and Thailand on the importance of resisting unilateral actions by individual contracting parties aimed at imposing trade solutions on others.

The representative of Japan said that previous speakers had expressed a very legitimate concern over the tendency on the part of a major contracting party to act unilaterally. He noted that the United States had also announced on 30 April that it would undertake a comprehensive review, under Section 306 of the Trade Act of 1974, of Japan's procurement of supercomputers. Procurement in Japan was carried out in an open, non-discriminatory and competitive manner, and in accordance with the Agreement on Government Procurement (BISD 26S/33). Japan therefore did not see any legitimate grounds for the United States to initiate a review on this matter.

The representative of Hungary shared the concerns expressed by previous speakers. His Government had been negotiating with the United States for several months on various aspects of intellectual property protection in Hungary, and had spared no efforts in trying to achieve a mutually satisfactory solution. However, in its recent announcement, the United States had given Hungary a three-month deadline in which to conclude these negotiations. Such an attitude would not make the negotiations any easier, and was all the more difficult to understand given the United States' policy and practice of support for Hungary's ongoing economic reform policies.

The representative of Argentina said that Argentina was also on the list of countries against which "Special 301" actions had been announced on 30 April, and shared the concerns expressed by earlier speakers. The question raised by the United States' action was whether or not a government could export its own legislation to the rest of the world. This kind of unilateralism was the exact opposite of what the GATT system was striving for, and was not the appropriate manner to

address trade issues. He hoped the United States would take due note of the concerns expressed at the present meeting on this issue.

The representative of the European Communities said that the Community's views on the "Special 301" provisions were well known. The Community stood by its conviction that multilateral approaches were appropriate. It therefore continued to believe that the Uruguay Round should be brought rapidly to a conclusion so as to provide rights and obligations in the TRIPs area and a multilateral basis for handling measures related to intellectual property.

The representative of Korea said that although Korea supported the necessity of strengthening the protection of IPR's and was itself working in that direction, it shared many of the concerns expressed by previous speakers. Korea was opposed to any unilateral approach in dealing with trade issues.

The Council took note of the statements.

17. EEC - Import licensing régime for orange juice

The representative of Brazil, speaking under "Other Business", said that in a Regulation dated 11 February (No. 314), the European Economic Community had reintroduced orange juice in the list of products requiring import licences. While licences -- valid for three months -- would be granted to any party that requested them, the request was to be made on a Thursday or Friday of each week and a deposit of Ecu 1.2 per 100 kilogrammes was required for them to be issued. The deposit would be reimbursed if the totality of the product was commercialized within the three-month period of the licence. According to the Community, this measure was designed to facilitate statistical control of orange juice imports, and was therefore of a surveillance nature. However, as had been stated in the Regulation itself, orange juice trade in the Community was characterized by strong competition from third parties that offered significant quantities of the product at lower prices.

Import control measures in the Community were not new, and nor was this licensing measure. At the March Council meeting, Chile had drawn attention to a similar measure that had been taken in respect of apples (C/M/262, item 9). In the course of that discussion, Argentina had indicated that the Community's "surveillance" system had been extended to plantains, pineapples, guavas, mangoes, mangosteens and avocados, and had questioned whether the Community's policy was compatible with its Uruguay Round commitments, and whether this was the type of atmosphere one wanted to create in the trading world. Brazil shared those sentiments. The Community's measures were the very opposite of the objectives one was striving for in the Uruguay Round, and indicated a strengthening of the protectionist tendency of the Community's already complex agricultural trade measures.

The representative of Chile expressed support for Brazil's concerns, and noted that Chile had similar concerns with regard to the Community's licensing system for apples, which it would raise under a separate Agenda item (see item 24).

The representative of Colombia shared Brazil's concerns, and said that an overall protectionist trend appeared to be evolving in the Community with regard to tropical products from Latin America.

The representative of Guatemala expressed his delegation's support for Brazil's concerns, and said that this measure was confirmation of a protectionist trend developing in the Community which threatened the trading system in general.

The representative of Argentina shared the previous speakers' concerns, and recalled that at the March Council meeting, his delegation had drawn attention to the Community's recent introduction of import licensing measures for a number of agricultural products. Argentina did not understand the rationale for these measures and believed it would be appropriate for the Community to provide a clear explanation of the reasons for which they had been introduced.

The representative of the European Communities said that the Community had an import licence system for almost all commodities in the agricultural sector. For some commodities no licences were required, while for others licences could be introduced but were not necessarily required all the time. The measure in respect of orange juice was not an obstacle to trade; it was merely a surveillance measure to enable the Community to see rapidly what quantities were entering its territory, as was its right, and was in conformity with the Agreement on Import Licensing Procedures (BISD 26S/154). While a deposit was indeed required for the issuance of a licence, he would note that the system did not work without such deposits; the amount required in this case was relatively small and was reimbursed when the licence was actually used for import. He reiterated that this measure was of a surveillance nature.

The representative of the United States said that surveillance and monitoring measures were of concern to his Government. Unfortunately, notwithstanding the Community's statement, experience had shown all too clearly that such measures had a tendency to turn into real trade restrictions.

The representative of Australia said he shared the United States' view. The Community's various import régimes, including surveillance and other arrangements, for agricultural and horticultural products were particularly complicated and could, at the very least, operate as significant trade harassment measures and often very specifically as trade-restrictive measures. They were damaging to predictability in exports of a range of such products to the Community. Australia hoped these measures could be dealt with effectively in the Uruguay Round.

The representative of Brazil said that with regard to the question of whether the Community's measure was already in breach of GATT or not, he would echo the United States' comment. Brazil hoped that this measure was not an "early warning" for further trade restrictions.

The Council took note of the statements.

18. Japan - New package of economic measures (L/7213)

The representative of Japan, speaking under "Other Business", said that on 13 April, his Government had announced a new package of economic measures as an additional economic stimulus which would not only ensure sustainable growth in Japan powered by domestic demand, but also contribute to the stable development of the world economy. The package, an outline of which had been communicated to contracting parties in L/7213, included measures designed to expand domestic demand as well as those aimed at increasing imports. He emphasized that the measures would be applied on a non-discriminatory and non-managed basis.

The representatives of Canada and Australia expressed their delegations' appreciation for the information provided by Japan, and noted the intention to apply the announced measures on a non-managed, m.f.n. basis.

The Council took note of the statements.

19. EFTA-Romania Free-Trade Agreement (L/7215 and Add.1)

The representative of Sweden, speaking on behalf of the EFTA contracting parties and Romania, under "Other Business", informed the Council that the text of a Free-Trade Agreement between the EFTA States and Romania, together with its Annexes and Protocols, had recently been submitted for circulation to contracting parties under Article XXIV:7(a)[4]. The Agreement, signed on 10 December 1992, had entered into force between Romania and Liechtenstein, Sweden and Switzerland on 1 May 1993, and was being applied provisionally by Liechtenstein and Switzerland. It would enter into force for the other EFTA States when the respective ratification processes had been completed. The Agreement covered trade in industrial products, fish and other marine products, and agricultural products. Within its framework, bilateral agricultural arrangements had also been concluded between each EFTA State and Romania. Its content and structure were similar to free-trade agreements recently concluded between the EFTA States and the Central and Eastern European countries, Israel and Turkey. The objective of the Agreement was to abolish tariffs and

[4]Subsequently issued as L/7215 and Add.1.

other restrictions on substantially all trade between the EFTA States and Romania. The Agreement also contained provisions dealing with, inter alia, public procurement, intellectual property rights, state aid and competition. Furthermore, the parties to the Agreement would work towards progressive liberalization in investments and trade in services. An evolutionary clause offered the possibility of extending the Agreement to areas not covered by it. The parties to the Agreement were at the Council's disposal for further information and consultation.

The Council took note of the statement.

20. EEC - Association Agreements with Romania and Bulgaria

The representative of the European Communities, speaking under "Other Business", informed the Council of the signing recently of two association agreements -- also referred to as "European Agreements" -- between the European Community and Romania and Bulgaria. Interim agreements, which took up the trade provisions of the "European Agreements", had recently entered into force and would be duly notified to contracting parties in the near future.

The Council took note of the statement.

21. Austria - Article XIX actions on cement and fertilizers

The representative of Hungary, speaking under "Other Business", said that his delegation wanted to raise the matter of restrictions applied recently by Austria on the basis of Article XIX on imports of some cements and fertilizers. The measures were described in L/6899/Add.7 and L/7204. Austria had taken similar measures on cement in 1991 which had been raised in the Council in October 1991. Furthermore, on 1 February 1993, Austria had certain set quotas on cement imports, pursuant to Article XIX. The recent measures on cement extended the scope of application of the restrictions to all imports of cement except those from the Community and the EFTA member States. The restrictions on fertilizers also applied to all countries except the Community and the EFTA member States. However, the products in question were traded internationally within limited areas, and the measures thus concerned only Central and Eastern European States. The measures on cement, for example, affected only Hungary, while those on fertilizers affected the exports of Hungary, Poland, Romania, the Slovak Republic and the Czech Republic. Hungary's concerns related to both substantive and procedural aspects of these measures. In neither of these cases had the Austrian authorities given relevant information which could justify the application of Article XIX safeguard measures. From Austrian sources, it had been implied that the measures had been taken on the basis of invoices required under a so-called automatic licensing, the basis of which was to monitor imports from Central and Eastern European countries. The latter system was discriminatory and applied only to Hungary, Poland, Romania, the Slovak Republic and the Czech Republic. Furthermore, Austria had provided no information

regarding the conditions of importation. Austria had indicated that the measures were necessary due to production and export subsidies on cement and fertilizers in Eastern and Central European States. The only reference to prices in Austria's notifications concerned the objective of the measures which was to prevent imports at prices lower than those for similar Austrian products. This did not fulfil the conditions of Article XIX. In fact, the price of fertilizers was higher for Hungarian than for Austrian products. Prices for cement in Austria were higher than in Hungary or Germany. Nevertheless, Austrian cement producers were in a price cartel. Neither injurious prices nor harmful levels of imports had been shown, and no injury or threat of injury had been indicated. In the absence of such elements, no causal effect had been, nor could it be, established.

Regarding procedure, there had been no prior consultations, and no critical circumstances justifying the failure to consult. Hungary hoped that consultations with Austria, to be held the following week, would make possible an agreement in the sense of Article XIX:3(a). He said that his delegation would like to hear Austria's views on the legal justification under the General Agreement for maintaining the discriminatory licensing system applied to imports from Hungary and from four other contracting parties, and to know whether Austria was considering eliminating this system and, if so, when. Hungary reserved all its rights under the GATT.

The representative of the Czech Republic said that his delegation, too, was concerned about the recent Austrian measures and shared the views expressed by Hungary. Austria's notification of the measures contained no reference to critical circumstances which would justify the measures. His delegation doubted to what extent the measures could be interpreted as provisional. The Czech Republic had reserved its rights under the GATT and had requested consultations with Austria in order to examine all relevant data justifying the introduction and application of the measures. His delegation hoped that the sequence of this type of safeguard measure had stopped, and that Austria was now in a better position to resist protectionist measures generated by its industries. Such measures were in contrast with the promising increase in exports of Austrian goods to other markets, which had resulted in a huge surplus for Austria in its trade with the Czech Republic in 1992.

The representative of the Slovak Republic associated his delegation with the comments of the previous speakers. The Slovak Republic was also concerned by the safeguard measures taken by Austria under Article XIX. The notifications submitted by Austria were not sufficiently detailed to enable proper examination of this case. Prior to the consultations which had been formally requested by his delegation, Austria was requested to supply all information which could justify the serious injury or threat of injury caused by increased imports from his country of the items concerned, as well as a proof of a serious distorting effect on prices in the Austrian market.

The representative of Poland said his delegation agreed with a number of legal, procedural and substantive points raised by Hungary and the Czech and Slovak Republics. Poland's concerns related both to the form and substance of Austria's action. Austria's notifications under Article XIX failed to provide a substantiated justification of import restrictions in terms of the specific criteria established in Article XIX. In particular, the notifications lacked any statistical illustration of alleged injury, and any analysis of the linkage between imports and the state of the domestic industry. Furthermore, the restrictions had been applied without prior consultations. Poland was a marginal supplier of some of the products covered by Austria's measures. Also, Poland's market position was adversely affected by certain specific features of Austria's import régime, such as the licensing scheme. It was hard to imagine how such insignificant import penetration in the sectors covered by the restrictions could be associated with the state of the domestic industry. He recalled that Austria was an important trading partner for Poland, and a net beneficiary of Poland's open trade policies. In 1992, Poland's exports to Austria had declined by about 11 per cent. These facts underscored Poland's concern over what appeared to be a disturbing trend of protectionist initiatives from domestic industries being transformed into administrative actions.

The representative of Romania said that Austria's recent measures appeared to be inconsistent with GATT rules and principles, including non-discrimination. Romania urged Austria to reconsider these measures, and reserved its rights to take appropriate future action, if necessary.

The representative of Austria said that regarding cement, the absolute necessity for a quick Article XIX measure could be demonstrated by just a few figures. Imports from Hungary in 1991 had been some 6,300 tonnes, and in 1992, 2,500 tonnes. In the first weeks of 1993 the application for automatic licences for imports of cement from Central and Eastern European countries had risen dramatically. Applications for more than 700,000 tonnes had been received, of which imports from Hungary accounted for more than half. This was 180 times as much as the 1992 imports of cement from Hungary. Automatic licences concerning imports from some other Central and Eastern European countries, not members of GATT, had accounted for 235,000 tonnes, whereas almost no imports from those countries had taken place in earlier years. Austrian cement production was roughly 5 million tonnes per year. Domestic consumption was forecast to fall by 3.4 per cent in 1993 and by 4.5 per cent in 1994. The 700,000 tonnes of imports from Central and Eastern European countries for which import licences had been requested, would amount to some 14 per cent of Austrian domestic production in 1993. This sudden increase in imports from less than one per cent to 14 per cent, at very low prices and at a time of decreasing demand, clearly caused or threatened serious injury to domestic producers. The global quota of 100,000 tonnes for the first-year period from 15 April 1993 to 15 April 1994 would give Hungarian exporters an opportunity for sales on the Austrian market which would by far exceed Hungary's traditional share of cement imports into Austria.

As to fertilizers, the Article XIX measure for two types of fertilizers had been necessary in order to avoid a total breakdown of the only producing enterprises in Austria. Domestic consumption of chemical fertilizers in Austria showed a significant downward trend. Imports of fertilizers from neighbouring or otherwise geographically close countries had more than doubled over a six-year period and, in 1992, had held a market share of 35.5 per cent and 18.2 per cent respectively for the two types. This situation had led to a low capacity utilization and to heavy job losses in the Austrian fertilizer industry, and also to strong increases in unsold stocks. At the beginning of the current year the Austrian authorities had been submerged by a high tide of applications for automatic import licences. If such increased quantities were imported at very low prices into an already saturated market, this would not only threaten serious injury to domestic producers, but would put their very existence at risk. Therefore, Austria had had to act quickly. The level of imports resulting from the quotas, while still putting considerable competitive pressure on the Austrian industry, at least permitted its continued operation until other ways could be found to avoid serious disruption. Consultations with Hungary were scheduled for 17 May 1993 in Budapest where both cases would be explored fully with a view to reaching a mutually satisfactory longer-term solution. Regarding the statements by the Czech and Slovak Republics, he said that Austria had asked both delegations to propose dates for consultations, but had not yet received replies. Austria had also offered to consult with Poland, and in these consultations would provide the necessary statistical figures.

He said that it was in the interest of Austria and its partners to preserve the diversified structure of the Austrian economy and to avoid that entire branches of industry were abruptly closed down. Austria was ready to bear a fair share regarding the expansion of export opportunities for the economies in transition, in order to facilitate their early full integration into the European and global markets. However, the respective absorption capacity or the Austrian market was limited. Austria was willing not only to live up to its obligations under GATT and under a free-trade arrangement, but also to abide by its political commitments to assist economies in transition in the rapid completion of their reform processes. However, Austria had to reserve its right to make use of existing safeguard clauses in cases where the very existence of important sectors of its economy was in jeopardy.

The representative of Japan said that there were two aspects to Austria's recent Article XIX actions. First, whether the conditions stipulated under Article XIX had been met and, second, if so, what was the proper course of action for Austria. It seemed to Japan that Austria's recent actions were once again a selective application of Article XIX measures. Japan believed that the m.f.n. principle was the very basis of the GATT multilateral trading system and that there should be no departure therefrom in the application of Article XIX. As Japan had stated at the October 1991 Council meeting, the invocation of Article XXIV did not permit the discriminatory application of Article XIX action.

The representative of Korea said that like Japan, his country was concerned about one particular aspect of these measures, namely the exclusion of a certain group of countries from the application of these measures. This issue had been extensively discussed in the Council in October 1991. Korea continued to view Austria's selective introduction of safeguards as a violation of its m.f.n. obligation under the GATT.

The representative of Hong Kong recalled that Hong Kong had expressed concern over Austria's selective application of Article XIX in respect of cement imports at the Council meeting in October 1991. It was Hong Kong's view that all safeguard measures under Article XIX should be applied on an m.f.n. basis and that Article XXIV could not be invoked to justify an exemption from this requirement. This was an important matter of principle bearing on the fundamentals of the multilateral system.

The representative of India shared the views expressed by Hong Kong, Japan and Korea.

The representative of Austria said that his delegation rejected the interpretations submitted by the previous speakers. The linkage between Articles XIX and XXIV:8(b) had been discussed many times. Austria continued to believe that its view on this linkage was correct. The problem of Article XXIV and its various exceptions was under consideration within the Uruguay Round.

The representative of Hungary said that even according to Austria, the quantities of imports from Hungary in absolute terms had dropped. The increase in the quantity of imports recorded at the beginning of 1993 was in no way connected to the effective development of imports actually registered. Article XIX:1 spoke of effective development in imports. There was no reference to imports which might be, or which could be, imported, but rather which were imports. Thus, in the cases at hand, it seemed that the conditions of Article XIX had not been met.

The representative of the Czech Republic said that the statistics on Austrian imports were very aggregated, and that one had to take into account all the possible consequences and interlinkages of this data. Regarding the interlinkages of Articles XXIV and XIX, he pointed out that the Czech Republic was a free-trade partner with Austria.

The Council took note of the statements.

22. Australia - Assistance to the Baltic States on GATT matters

The representative of Australia, speaking under "Other Business", informed the Council of recent initiatives undertaken by his Government regarding the provision of technical assistance to Estonia, Latvia and Lithuania on matters related to the GATT. These initiatives were intended as goodwill gestures on Australia's part to assist the Baltic States with their transition to market economies.

The Council took note of the statement.

23. Free-Trade Agreements between Switzerland and Estonia, Latvia and Lithuania (L/7223 and Add.1)

The representative of Switzerland, speaking under "Other Business", informed the Council that his Government had recently submitted for circulation to contracting parties, pursuant to Article XXIV:7, the text of the Free-Trade Agreements between Switzerland and Estonia, Latvia and Lithuania[5]. These Agreements were being applied provisionally since 1 April 1993 and would enter into force definitively once the ratification process in Switzerland had been completed. The Agreements aimed at the progressive establishment of free-trade areas between Switzerland and each of the three Baltic States in the sense of Article XXIV. From the time of their provisional entry into force, these Agreements prohibited tariffs, quantitative restrictions and other non-tariff measures on substantially all trade between Switzerland and each of the other parties. The Agreements also contained a certain number of rules concerning, inter alia, public procurement, intellectual property, state aid and competition. An evolutionary clause offered the possibility of extending the cooperation under the Agreements to other areas including the progressive liberalization of investment and trade in services.

The Council took note of the statement.

24. Venezuela - Actions on imports of cement from Mexico

The representative of Mexico, speaking under "Other Business", informed the Council that his Government had requested Article XXIII:1 consultations with Venezuela on two actions regarding Mexico's cement exports. One concerned a High Court decision to freeze customs clearance formalities for a shipment of 5,000 tonnes of cement from Mexico, of which the Council had been informed in November 1992. The other concerned a subsequent decision by the legal authorities to conduct an anti-dumping investigation into imports of grey Portland cement from Mexico. Given the willingness that Venezuela had shown, and the excellent relations that existed between their two countries, he was hopeful that a mutually-satisfactory solution would be reached soon.

The representative of Venezuela said that his Government had responded favourably to Mexico's request for consultations, which would be held as soon as a date and place had been agreed. Venezuela was convinced that the consultations would result in a mutually-satisfactory solution.

The Council took note of the statements.

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[5]Subsequently issued as L/7223 and Add.1.

25. EEC - Import régime for apples

The representative of Chile, speaking under "Other Business", recalled that his delegation had raised this matter at the March Council meeting, and had indicated that formal consultations thereon had been initiated with the European Economic Community. Unfortunately, these had not resulted in a mutually satisfactory solution. The Community had agreed to convey Chile's views to the relevant authorities, and to convene a further meeting as necessary. Chile had not thus far received any reply and, in the meantime, the situation had deteriorated further. While the Community had not yet imposed any quantitative restrictions, it had, between 7 April and 6 May, successively raised countervailing duties on imports of apples from Chile on more than six occasions, from 1.84 to 16.97 Ecus per 100 kilograms -- a rise of more than 800 per cent. Countervailing duties were generally reserved, under the GATT, to duties that compensated for subsidies which caused injury. However, this was not the situation in regard to the duties applied by the Community, because Chile did not subsidize its fruit exports. The Community's countervailing duties, in fact, were aimed at implementing its system of reference prices which in practice operated as a kind of "minimum customs value" that the Community applied arbitrarily and unilaterally to imports that threatened domestic production. Chile believed that this type of duty was inconsistent with several GATT provisions, including Articles I, II and VII. The Community had indicated in consultations that its surveillance measures were not aimed at restricting trade. In practice, however, trade was being restricted through the discriminatory measure of minimum import prices. Chile once again urged the Community to remove all trade restrictive measures that were GATT inconsistent. It reserved its right to resort to all the means under the GATT to defend its legitimate rights.

The representative of Brazil recalled that under Agenda item 17, his delegation had expressed concern at a protectionist trend that appeared to be developing in the Community with regard to imports of agricultural products, particularly from countries in the southern hemisphere. In the case at hand, Brazil believed there was prima facie evidence that the Community's surveillance measures resulted in trade restrictive effects on the imports of apples, a product in which Brazil too had trade interests. Brazil supported Chile's concerns, and hoped that the Community would refrain from putting any restrictions on this product.

The representative of Mexico said that his delegation supported Chile's concerns, as well as the more general concerns related to the Community's surveillance measures. While Mexico did not export apples, it exported other fruit that the Community had included in a recent Regulation (No. 638/93) under which these products could be subjected to an import licence régime at any time. Two products among these -- mangoes and avocados -- were of particular export interest to Mexico. Mexico was concerned that products which until now had entered the Community's market without any barriers other than tariffs, were being included under new regulations that could lead to the possible

imposition of measures thereon with adverse effects on trade. At a time when all, including the Community, were working collectively in the Uruguay Round towards greater trade liberalization, particularly in the agricultural sector, Mexico urged the Community to ensure that its liberal trading régime was maintained in the products and sectors in which it had previously existed.

The representative of Australia said that as was the case with the issue raised by Brazil under item 17, the matter under consideration was another example of the general creeping protectionism resulting from the Community's operation of its import régime for a whole range of horticultural products. As Chile had explained, there was first a system of surveillance, automatic licensing and security deposits; the next step was the application of countervailing duties under the minimum import price system; and finally, there was the imposition of quotas. All of this was in circumstances of bound tariff conditions of access to the Community market, and in a season in which most of the products coming from the southern hemisphere faced no competing domestic production in the Community, which therefore had no possibility of mounting a viable case for Article XIX action. Despite the assurances given by the latter at the March Council meeting, history appeared to be repeating itself in the case at hand, with the measures in force already beginning to have an adverse impact on Chile's apple exports. Australia appealed to the Community to dismantle the whole mechanism of régimes that had this increasingly restrictive effect on its imports of horticultural products, and to stand by its commitments with regard to bound tariffs.

The representative of Argentina said it was difficult to understand why the Community was putting in place a whole range of measures to restrict market access. While not yet having reached a final position on the effects of the measure raised by Chile, Argentina was nevertheless convinced that it did not increase market access and did not respect the spirit and rules of GATT. Argentina therefore supported Chile on this matter.

The representative of Colombia reiterated his delegation's concerns at the protectionist trend that was evident in the Community with regard to fruit imports from Latin America. While the Community had stated that its surveillance mechanisms would not hamper trade, Chile had just shown that its apple exports were undoubtedly being affected. This was a source of concern, and Colombia fully supported Chile's statement.

The representative of New Zealand said that Chile had brought to the Council's attention a problem which was not new, but was of concern to a number of contracting parties, including New Zealand. While the Community's surveillance mechanism was meant ostensibly to provide information regarding imports into its territory, it readily had the potential to become something more pernicious. There was no guarantee that history would not repeat itself in the case at hand. New Zealand believed the only way to resolve the problem was to eliminate such measures, and one was trying to do that with the Community through the

Uruguay Round. This once again highlighted the pressing need for progress in the Round.

The representative of Guatemala said that security of market access was an important matter and that any measure that could result in restricting trade between contracting parties should be rejected. Guatemala therefore supported Chile on this matter.

The representative of the European Communities said that he had noted the comments made and would report thereon to his authorities. However, his delegation was neither prepared nor willing to discuss substantive issues related to this matter at the present meeting under "Other Business". He voiced his frustration at again seeing a slippage in the way that Council business was conducted. Substantive issues had to be raised under the regular part of the agenda. Yet, once again the Council was spending more time on items under "Other Business". While there were reasons for putting items on the agenda very urgently because the matters concerned had arisen only a day or two before a Council meeting, this was not the case as regards the matter under discussion. The measures referred to by Chile had been in place for a sufficient time to have had them inscribed on the regular part of the agenda if the intention had been to discuss substance. Therefore, he would limit himself to these remarks. He was convinced that his authorities were prepared to continue discussion of the matter, either bilaterally or multilaterally, but not under "Other Business".

The Council took note of the statements.

26. Appointment of a new Director-General - Announcement by the Chairman of the CONTRACTING PARTIES

The Chairman of the CONTRACTING PARTIES, speaking under "Other Business", recalled that at its meeting in February, he had informed the Council that he had recently initiated a process of consultations regarding the appointment of a new Director-General, in accordance with procedures therefor (BISD 33S/55). As of the present, three formal candidates for the post had been put forward: Mr. P. D. Sutherland (Ireland), nominated by Ireland and supported by the European Economic Community, and Messrs. J.A. Lacarte-Muró (Uruguay) and L.F. Jaramillo (Colombia), both sponsored by the governments of the Latin American and Caribbean Group of countries (GRULAC). It was his intention to intensify these consultations in the coming days, and he hoped to be able to conclude them as soon as possible, and in any case by the end of the month.

The Council took note of this information.

27. Procedures for the derestriction of GATT documents

The Chairman, speaking under "Other Business", recalled that at the Council meeting in February, the United States had requested that the Secretariat prepare a factual background note on the current

practices with regard to document deristriction, the problems related thereto, and suggestions on how to address those problems. It was his understanding that this note would be made available shortly. He intended to hold informal consultations on this subject with interested contracting parties as soon as the note had been distributed.

The Council took note of this information.

28. Items under "Other Business"

The representative of Switzerland, speaking under "Other Business", said that many of the items that had been placed on the Agenda of the present meeting under "Other Business" had concerned matters of substance that were of interest not just to the parties concerned, but rather to all contracting parties. In order to hold a balanced and substantive debate on such matters, it was in the interests of all Council members to come prepared. This, however, could only be possible if these items were notified to the Secretariat sufficiently in advance to be placed on the airgram convening the Council meeting, and not if they were only raised at the beginning of the meeting itself[6]. Many of the matters raised under "Other Business" at the present meeting had been known for a while, at least longer than the ten calendar days' convening notice for meetings that was the established practice. He hoped that an attempt would be made in future to place all items of general interest on the airgram. Otherwise, the Council would be unable to hold balanced and effective debates on a number of items at its meetings that were very often comparable in terms of substance and principle to items on the regular part of its agenda; he hoped others would agree that this was not what one was seeking in the Council.

The Chairman announced his intention to hold informal consultations in the near future to review various procedural aspects of the Council's work, including how to handle the "Other Business" issue. The consultations would, as usual, be open-ended.

The Council took note of the statements[7].

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[6]A note by the Secretariat on the practice relating to the issuance of airgrams convening Council meetings was circulated in 1991 (BISD 38S/76).

[7]See also the Community's statement under Item 25.