GENERAL AGREEMENT

ON TARIFFS AND TRADE

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COUNCIL
10 November 1994

MINUTES OF MEETING

Held in the Centre William Rappard
on 10 November 1994

Chairman: Mr. M. Zahran (Egypt)

Subjects discussed: Page

Prior to the adoption of the Agenda, the Chairman, on behalf of the Council, welcomed Slovenia as the 124th contracting party and Fiji, Grenada and Slovenia as Council members.

1. Georgia
   - Request for observer status (L/7545)

The Chairman drew attention to the communication from Georgia in document L/7545 in which that Government had requested observer status in the Council, and had provided a description of its current economic and trade policies. He proposed that the Council agree to grant Georgia observer status.

The Council so agreed.

2. Sudan
- Request for observer status (L/7549)

The Chairman drew attention to the communication from Sudan in document L/7549 in which that Government had requested observer status in the Council. He proposed that the Council agree to grant Sudan observer status.

The Council so agreed.

The representative of Sudan, speaking as an observer, expressed his gratitude to the Council for having granted it observer status. As contracting parties were aware, the request of Sudan to accede to the World Trade Organization (WTO) had been considered by the Preparatory Committee and a working party had been established. The request of Sudan for observer status came as a step to familiarize itself with the procedures and activities of the Council and other GATT bodies, and to pave the way for full participation of Sudan as a member of the WTO. Sudan assured contracting parties of its total cooperation to enhance and promote the work of the Council in a positive manner.

The Council took note of the statement.

3. European Economic Community
(a) Import régime for bananas
- Panel report (DS38/R)

(b) Member States' import régimes for bananas
- Panel report (DS32/R)

The Chairman recalled that the Council had considered these matters at its meeting in October and had agreed to revert to them at a future meeting. They were on the Agenda of the present meeting at the request of Guatemala. He said that according to his information, the positions of governments concerning this important question remained at the present time unchanged and that it would consequently not be possible for the Council to reach a consensus on this matter at the present meeting. For the sake of preserving the efficacy of Council deliberations and in line with past Council practices, he proposed that following Guatemala's statement the Council take note of that statement and that the positions expressed on this matter by delegations which had spoken at the October Council meeting, as well as by those which had addressed this question in previous Council meetings, remained unchanged. He would offer the floor only to those representatives which might wish to announce a change in their position as previously recorded or those that had not so far addressed this matter and wished to put their position on record.

The representative of Guatemala, speaking also on behalf of Ecuador, Honduras, Mexico and Panama, said that since March 1994, when the recommendations of the Panels had been known, Guatemala had called the attention of the Council members to the legal nature of the banana import régime applied by the Community. Guatemala had flagged its very serious concern with the Community's insistence on imposing on its member States mechanisms which were incompatible with the provisions of the General Agreement and with the future World Trade Organization (WTO). These mechanisms had clearly been condemned by both Panels. It had also been clearly shown that the banana import régime of the Community was harmful for both producers and consumers. This had been further confirmed over the past months by the fact that neither the ACP producers nor the Community's consumers had drawn any benefit from this régime which was in violation of GATT rules. At the present meeting Guatemala wished to reiterate its offer, extended on various occasions to the Community, to establish a dialogue without any prerequisites to arrive at a fair solution for all parties concerned. This would contribute to ensuring that the Community did not continue to seek and apply mechanisms which were GATT-incompatible. Once again, Guatemala wished to urge contracting parties to adopt

the recommendations of the Panels and urged the Community to comply with these obligations as soon as possible. It requested that this item be included on the agenda of the next Council meeting.

The Council took note of the statements and that the positions of delegations that had expressed their views in previous meetings remained unchanged, and agreed to revert to this matter at its next meeting.

4. United States - Restrictions on imports of tuna
   - Recourse by the European Communities and the Netherlands
   - Panel report (DS29/R)

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

The representative of the European Communities recalled the statements made by the Community in previous Council meetings and requested the adoption of the Panel report. He also wished to reiterate that the Community had no difficulty with the aims being sought by the United States but had serious difficulties with the discriminatory nature of the measures taken.

The representative of Venezuela recalled that his delegation had given detailed arguments on previous occasions regarding the need for the Council to adopt the Panel's recommendations. Venezuela urged the United States not to hinder the adoption of this Panel report in view of the importance that the Council had attached to this subject in previous meetings. Venezuela hoped that at this meeting it would be possible to favourably resolve the matter through the adoption of the Panel report.

The representative of the United States regretted that his delegation had not completed the review of the Panel report in consultations with relevant domestic interests. His delegation therefore was still not in a position to discuss the Panel report's substantive findings at this time.

The representative of Australia wished to join other speakers in supporting the adoption of the Panel report given the important GATT principles confirmed by this Panel in its deliberations. Having heard that the United States had not yet completed its consultations on this issue he could only regret that it would not be possible for the United States to agree to the adoption of the Panel report at the present meeting.

The representative of Sweden, speaking on behalf of the Nordic countries, supported the adoption of the Panel report.

The representative of Mexico said that his country's position on this matter remained unchanged

The representative of Costa Rica said that his delegation supported the adoption of the Panel report and regretted that the United States had not made it possible for the Panel report to be adopted at the present meeting.

The representative of Colombia supported the previous speakers which had called for the adoption of the report and regretted that the United States had not facilitated the adoption of the Panel report.

The Council took note of the statements and agreed to refer this matter to the CONTRACTING PARTIES at their Fiftieth Session for further consideration.

5. United States - Taxes on automobiles
- Panel report (DS31/R)

The Chairman recalled that at its meeting in May 1993, the Council had established a Panel to examine the complaint by the European Communities. The report of the Panel had been issued to contracting parties on 11 October 1994. As all knew, paragraph G.1 of the April 1989 Decision (BISD 36S/61) required the Council to consider panel reports after thirty days following their issuance. The present meeting was the thirtieth day following the date of issuance of this report and the parties to the dispute had expressed their concurrence to take up this report at the present meeting. The report of the Panel was now before the Council in document DS31/R.

Mr. T. Cottier (Switzerland), Chairman of the Panel, in introducing the report, said that the Panel had been established by the CONTRACTING PARTIES at the request of the European Communities on 12 May 1993. Australia, Japan and Sweden had reserved their right to intervene as third parties. On 2 August 1993, the Chairman of the Council had reported that the Panel had been composed under standard terms of reference with Mr. T. Cottier as Chairman and Mr. C. Cozendey and Mr. A. Macey as members. The Panel had met with the parties to the dispute on 4 and 5 November and the 16 and 17 December 1993. On 11 February 1994, the Panel had informed the Council that it would require additional time to complete its work due to delays in the composition of the Panel, the unavoidable postponement of the second panel meeting, and extra time granted by the Panel to the parties for the submission of supplementary facts and comments thereon. The Panel had submitted its report to the parties on 30 September 1994, and had circulated it to the CONTRACTING PARTIES in document DS31/R on 11 October 1994. The Panel had examined three United States measures affecting imported automobiles - the luxury tax, the gas guzzler tax and the corporate average fuel economy (or "CAFE") regulation. After a thorough review of the arguments of the parties, the Panel had concluded in its report that (a) the luxury tax on automobiles was not inconsistent with Article III:2; (b) the gas guzzler tax on automobiles was not inconsistent with Article III:2; (c) the CAFE regulation was inconsistent with Article III:4 and, to the extent that it was based on separate foreign fleet accounting, could not be justified under Article XX(g) or Article XX(d). Accordingly, the Panel in its report had recommended that the CONTRACTING PARTIES request the United States to bring that part of the CAFE regulation found to be inconsistent with the General Agreement into conformity with its GATT obligations.

The representative of the European Communities said that the Community had initiated this dispute settlement process due to the particular, and in its view, discriminatory treatment accorded by the US legislation which imposed special taxes on top-of-the-range cars. These measures had a visible impact on European exports to the US market where European top-of-the-range vehicles were indeed appreciated by US consumers. This problem was complex and the Community, at this stage, had not yet been able to conclude its review of the Panel report. This report raised problems of principle which were very important and one must be sure that it did not fall below jurisprudence which up to now had been accepted, for example, in the context of the panel report on "Japan - Customs duties, taxes and labelling practices on imported wines and alcoholic beverages."[1] In particular, the Community attached importance to the linkage between the obligations under Articles II and III of the General Agreement and had some doubts whether these elements had sufficiently been taken into account in the Panel report.

The representative of the United States said that it was his delegation's understanding that some contracting parties might need additional time to review the Panel report. At a future meeting this

[1]Panel report adopted on 10 November 1987, BISD34S/83, para. 3.9(b).

issue would be ripe for consideration and the United States would wish to make some comments on the report at that time.

The representative of Sweden said that his Government welcomed any action taken to reduce fuel consumption. However, Sweden considered the measures taken with regard to the CAFE system to be trade-distorting. It would be misleading to pretend that the European car industry would not be discriminated by this system. He reserved the right to revert to this matter after having more thoroughly studied the report.

The representative of Australia thanked the Panel for its report which was useful and timely and which, among other things, should help to correct perceptions that the GATT rules were adverse to countries' efforts to promote environmental protection. It also provided an important examination of the provisions of Article III. The Panel had affirmed the findings of other Panel reports that "Article III serves only to prohibit regulatory distinctions between products applied so as to afford protection to domestic production" (DS31/R, para 5.7). The Panel further emphasized that "Article III could not be interpreted as prohibiting government policy options, based on products, that were not taken so as to afford protection to domestic production" and concluded that determination of whether domestic and imported products were "like products" "should be analyzed primarily in terms of whether less-favourable treatment was based on a regulatory distinction taken so as to afford protection to domestic production" (DS31/R, para. 5.9). Australia would be able to support the adoption of the Panel report.

The Council took note of the statements and agreed to refer this matter to the CONTRACTING PARTIES at their Fiftieth Session for further consideration.

6. Poland - Import régime for automobiles
   - Recourse to Article XXIII:2 by India (DS40/2)

The Chairman drew attention to the communication from India in document DS40/2 requesting the establishment of a panel to examine its complaint.

The representative of India said that the factual aspects of the case were described in document DS40/2. He pointed out that India had waited for a considerable length of time after its initial communication in May 1993 (DS40/1) to try to resolve this issue with Poland. Only after it had become clear that a mutually-satisfactory solution had not been possible had India decided to request a panel. Poland's import régime for automobiles was characterized, among other things, by a duty-free quota for the European Communities which was a clear violation of Article I of the General Agreement. The question of Article XXIV did not arise because the Article XXIV test had not been completed for the Interim Agreement on Trade-Related Matters between Poland and the Community and in view of this, its legality could not be prejudged, much less presumed. Should Article XXIV have been invoked, however, India believed that Poland's actions violated the provisions of Article XXIV. In particular, Poland's action of increasing the incidence of duties on automobiles from 1 January 1992 prior to the entry into force of the Interim Agreement on Trade-Related Matters would be a clear violation of Article XXIV:5 of the General Agreement. India, therefore, requested the establishment of a panel pursuant to Article XXIII:2 and in accordance with the procedures established in the 1989 Decision on Improvements to the GATT Dispute Settlement Rules and Procedures (BISD 36S/61). India requested that this statement be circulated as an addendum to its communication on this subject.[2]

[2]Subsquently circulated as DS40/2/Add.1.

The representative of Japan said that, as his delegation had stated in the past, regional arrangements such as customs unions and free-trade areas constituted a major derogation from the m.f.n. principle - one of the basic GATT principles. Therefore, Article XXIV, and in particular its sub-paragraphs 4 to 9, should be strictly interpreted so that an exception remained an exception. As explained by India in its communication (DS40/2), Poland had significantly raised its import duty on cars from 15 per cent or US$800, whichever was higher, to 35 per cent or US$1,500, whichever was higher, after the free-trade agreement with the Community had been signed and only two months before its entry into force. At the same time, a duty-free quota for cars originating solely in the Community had also been established by that agreement. The introduction of these measures had had a direct impact on the sale of Japanese cars to Poland. This constituted a clear case of inconsistency with GATT provisions and in particular Article XXIV:4 and 5(b), which prohibited contracting parties from raising trade barriers to countries outside the customs union and free-trade areas. If this type of measure was to be found GATT-consistent, one would be faced with similar arrangements in the future, which would raise barriers immediately before entering into a free-trade area and then later increasing the margin of preference vis-à-vis third countries. Given the tendency towards a proliferation of regional and preferential trade arrangements, especially between the developed countries on the one hand, and the developing countries and/or the countries in transition on the other, this case was of crucial importance for the future multilateral trading system. It was for these reasons that Japan strongly supported India's request to establish a panel at the present meeting.

The representative of Korea said that his delegation agreed with India that measures taken by Poland with respect to the import of automobiles were incompatible with Article I of the General Agreement and could not be justified under Article XXIV:5. A duty-free quota of up to 30,000 units constituted a considerable preference for one exporting entity. The damage to other countries exporting automobiles had been further amplified by an increase in Poland's import duty of 20 per cent - from 15 to 35 per cent - only two months before the entry into force of the agreement with the Community. Korea, therefore, supported India's request for the establishment of a panel at the present meeting.

The representative of Brunei Darussalam, speaking on behalf of ASEAN countries, supported India's request for a panel which raised a matter of principle. He did not wish to get into the substance since India, in its communication (DS40/2) and in its statement, had clearly explained the reason for such a request. ASEAN countries shared India's concern on the question of derogation from the m.f.n. principle and inconsistency with Article XXIV.

The representative of Hong Kong said that, without wishing to prejudge the issue, it seemed that it raised a very important point of principle. At present, regional trading arrangements involving customs unions and free-trade areas were proliferating and were being constantly enlarged. Article XXIV was a major derogation from the m.f.n. principle and it was necessary to ensure that Article XXIV and, in particular sub-paragraphs 4 and 5(b) relating to the prohibition of raising barriers to those who were outside of such arrangements, were strictly observed. Otherwise, one was bound to face a gradual erosion of the multilateral trading system. Therefore, in the present context, Hong Kong strongly supported India's request to establish a panel to examine the exact circumstances of this particular case.

The representative of Australia said that his country strongly supported India's arguments in requesting a panel. It was important to Australia to make the point that Article XXIV or XXIV:4 and 5 were critical elements of the GATT rules. This was not just a question of principle but hard rules which Australia and others expected to be respected. Australia supported the request for a panel and hoped that Poland would accept its establishment at the present meeting.

The representative of Chile said that his delegation also supported the establishment of a panel at the present meeting. In view of the significance of this case for the multilateral trading system and

the clear trend towards the proliferation of various types of regional agreements, Chile urged Poland to accept the establishment of a panel at the present meeting.

The representatives of Mexico, the United States and Brazil supported India's request for a panel.

The representative of Poland said that he would only respond to the arguments put forward by India, both in its written presentation and in its statement at the present meeting. He needed to reflect further on some of the points raised by other speakers and therefore the lack of his specific and immediate reaction to their statements should not necessarily be interpreted as a tacit endorsement of the views they had expressed. His delegation did not contest India's view that bilateral consultations on this matter, though friendly and courteous, had not resulted in a settlement of the dispute. This had not been because of a lack of good will, but rather due to a substantial divergence of views as to the substance and a different perspective of its factual aspects. Poland believed that this matter did not involve any inconsistency with its GATT obligations. In particular, in changing its tariff régime and subsequently instituting a duty-free quota for automobiles Poland had acted within its GATT rights. The submission by India might be understood to inadvertently imply that Poland's action had been specifically aimed at frustrating the efforts of an Indian exporter to penetrate the Polish market. Such inference would be unfounded. In 1990 imports of automobiles from all sources had soared to record levels. This had been caused by a combination of factors, including a general import liberalization, introduction of currency convertibility or excessive demand for consumer durables as a form of savings under conditions of rampaging inflation and still insufficient public confidence in the national currency. In 1991 total imports of passenger cars had jumped several-fold compared to the previous year and even more in relation to earlier periods. Urgent import relief measures had become necessary when in late 1991 it had become evident that imports of automobiles under Harmonized System (HS) Code 8703 had been, in volume terms, higher than domestic output and had caused, not only heavy material injury to the industry, but had faced Poland with a virtual threat of imminent extinction. Among several options available to Poland, a priced-based measure such as the increased customs tariff, had been perceived to be the most appropriate and effective arrangement. The fact that it had been introduced a few months prior to the entry into force of the Interim Agreement between Poland and the Community had simply been a coincidence due to the exceptional circumstances described above. Contrary to the assertion made by India, the new tariff rates had not shut down the market to foreign competitors. In 1993 some ninety-six thousand automobiles were imported to Poland predominantly on an m.f.n. basis. Such imports had equalled nearly one-third of domestic production. Foreign suppliers had also been invited to benefit from an m.f.n.-based, duty-free entry for cars in knocked-down kits for industrial assembly in Poland. This option had also been repeatedly offered by Poland to India during the bilateral consultations on this matter. It was therefore safe to assume that the reasons why some external suppliers might have seen their market position weakened could at least partly, be attributed to factors controlled by such suppliers, and unrelated to Poland's trade policies. The increase in the tariff rates for imported automotive industry products had been an autonomous, national policy measure taken by Poland and was not related to the objective of negotiating a free-trade agreement. The rationale behind this tariff increase had been to encourage and facilitate the restructuring of Poland's automotive industry through the infusion of foreign private capital and investment and through other measures which would help to alleviate severe structural problems faced by this industry with their potentially grave social ramifications. He recalled that 1991 had been a "make-or-break" year for the consolidation of Poland's great efforts to pass the point of no return in embracing a market-based economic model. It had therefore been indispensable to take every reasonable step, including trade-related measures, to reverse the alarming decline in industrial output and employment which threatened to undermine the credibility of the reforms and their social support.

India claimed that Poland's action had resulted in the nullification and impairment of the benefits accruing to India under the General Agreement. At the time when the customs duties for automotive

products had been increased, Poland's entire external tariff had been unbound under the terms of the Protocol of Accession of Poland to the General Agreement. Indeed no tariff concessions or any measure had been sought from Poland by any contracting party at the time of its accession to GATT in 1967, which implied that Poland's tariff régime itself had been considered by the CONTRACTING PARTIES to be irrelevant for the purpose of GATT commitments. In fact, the option of tariff-based concessions had been implicitly excluded by the decision of the CONTRACTING PARTIES to base Poland's entry into the GATT on a non-tariff formula. Legally this situation had existed also in 1991. There could be no presumption of nullification under the GATT where there were no specific commitments and the notion of nullification and impairment under the GATT did not extend to autonomous adjustments in those national policy instruments which had not become multilaterally recognized as a legally valid source of binding obligations under the General Agreement. India claimed that Poland's action had contravened Article I of the GATT. The claim appeared to be formulated in general terms and therefore its legal justification at this stage was not entirely clear. He hoped that this did not imply that the consistency between the provisions of this Article and the Interim Agreement itself was being challenged. Such an implication would be strongly rebuffed by Poland. Poland would not accept India's allegation that the change in tariff rates for automotive products had been inconsistent with Article I of the General Agreement. The increase in the tariff levels had been introduced erga omnes, including Poland's partners within the preferential trading arrangements. It had not been until 1994 that the first of the seven annual duty reductions for automobiles imported from the Community had become effective under the terms of the Association Agreement. Such tariffs were administered in a way which did not close the market to competitive m.f.n. suppliers. A duty-free quota for a certain amount of automobiles imported from the Community was exempted from this application. The quota was a bilateral instrument negotiated under the Association Agreement in conjunction with a reciprocal arrangement by the Community. This particular instrument was fully compatible with Article XXIV. For economic reasons explained above, Poland could not commit itself to fully liberalize its import régime for automobiles right on the entry into force of the Interim Agreement with the Community, although such complete and one-step liberalization would correspond with the "substantially all the trade" provision of Article XXIV:5. The quota was intended to serve as an instrument of such gradual liberalization without upsetting the vital social and economic interests of the country. The duty-free quota was not a trade restricting instrument but - on the contrary - a limited trade liberalization measure, and there were no GATT provisions which prevented or otherwise restrained the application of a duty-free quota as a means of gradual liberalization in the respective schedules establishing a free-trade area. India appeared to base its claims principally on Article XXIV. As was widely recognized, this particular Article, rather remarkable for its ambiguities, had always been the subject of varying interpretations. This seemed to be particularly true with regard to the question of adjustments in tariff rates under regional arrangements which had never been successfully resolved in GATT. This might explain why none of the regional arrangements had ever been denied the benefits of Article XXIV, though it might be argued that at least some of them contained departures from those provisions. There was a potential risk of discord involved in the examination -- through a dispute settlement process -- of one specific aspect of a potentially complex case in isolation from an overall assessment of the factual and legal background and substance of the Interim Agreement between Poland the Community. For this reason his authorities had always maintained in consultations with India that it would be far more appropriate to deal with this matter first in the Working Party which had already been established for the purpose of the examination of the Interim Agreement between the Community and Poland. Poland continued to believe that such a procedure could reasonably be expected to arrive at a balanced conclusion. Nonetheless, Poland did not wish to challenge India's right to avail itself of the dispute settlement process in this case.

The Council took note of the statements and agreed to establish a panel with the following terms of reference unless, as provided for in the Decision of 12 April 1989 (BISD 36S/61), the parties agreed to 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 India in document DS40/2, and Add.1, and to make such findings as will assist the CONTRACTING PARTIES in making the recommendations or in giving the rulings provided for in Article XXIII:2."

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

The representative of the European Communities said that his delegation took note of all the statements and of the decision to establish a panel. The Community wished to reserve its right to participate in the panel deliberations.

The representatives of Japan, Korea, Australia, Mexico, New Zealand, Canada, Brazil, Switzerland, Turkey and Austria reserved their rights to make third-party submissions to the panel.

The Council took note of the statements.

7. Status of work in panels and implementation of panel reports
- Report by the Director-General (C/190)

The Chairman drew attention to the report by the Director-General in document C/190.

Mr. P. Sutherland, Director-General, introducing the report, said that the report was intended to reflect the current status of dispute settlement in the GATT, and thus recorded all disputes in which an action had taken place within the past twelve months. For the sake of completeness, it included some disputes in which a settlement or withdrawal had been announced over the twelve-month period. Disputes were classified within three main stages: the pre-panel stage (consisting of consultation and conciliation proceedings); the panel stage; and the implementation stage. The report showed that there had been a substantial decline in dispute settlement activity in the past twelve months, compared to the previous twelve-month period. This decline in activity had occurred in disputes brought under the General Agreement as well as in those brought under the Tokyo Round Agreements. During the past twelve months, the number of requests for consultation had been halved from thirty-one to fifteen, panels established had fallen from seven to four, and adoptions of panel reports had declined from four to three. The number of disputes in which implementation issues had been raised had fallen to a particularly low level, from ten to only two during the latest twelve-month period. One explanation for this decline in dispute settlement activity was the expected entry into force of the WTO Agreement and its improved dispute settlement rules. These would provide for expanded coverage and greater automaticity leading, he believed, to a fairer and more efficient settlement of trade disputes between WTO Members.

The representative of Sweden wished once again to underline the importance that Sweden attached to the adoption of the panel reports and implementation of panel decisions. On two different occasions Sweden had requested a panel in connection with its exports to the United States. Both panels had decided in Sweden's favour but no adoption had been possible.[3] The credibility of the dispute settlement system was at stake and now with the transition from GATT to the WTO ahead it was of particular importance that contracting parties managed to handle unresolved disputes. Disputes involving panel reports which were adopted or accepted but not implemented had to be treated in a satisfactory manner.

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[3]Panel report on (a) United States - Anti-dumping duties on imports of stainless steel plate from Sweden (ADP/56, 67, 77, 84, and 117 and Corr.1); (b) United States - Anti-dumping duties on stainless seamless pipes and tubes from Sweden (ADP/38, 40, 43, 47).

If they could not be solved in time they must not be allowed to just drift and disappear into outer space without either GATT or WTO rules in a position to deal with them. The work must be allowed to continue with regard to unresolved disputes.

The Council took note of the statements and of the Director-General's report in C/190.

8. 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 (BISD36S/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 in 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 (DS23/19) on the status of implementation of the Panel report on its measures affecting alcoholic beverages (DS23/R).

The representative of the United States said that his delegation had nothing new to report on developments since the last Council meeting regarding federal implementation of the Panel report on US measures affecting alcoholic and malt beverages. With respect to the sub-federal measures, as noted in the communication from the United States (DS23/19) which had been circulated to delegations, the Commonwealth of Puerto Rico was considering corrective legislation for the 1995 legislative session.

The representative of Canada said that his delegation was pleased to hear that progress was being made at the State level, "bit-by-bit", to bring the measures at that level into conformity with the recommendations of the Panel on US measures affecting alcoholic beverages. As Canada had pointed out last year[4] it understood that certain state legislatures met only in the spring. It would therefore ask the United States to encourage State governments to begin preparing now in order to introduce, or reintroduce, any legislation that might be required to implement the Panel's recommendations.

The representative of Australia also thanked the United States for its report but wished to support Canada and to encourage the United States to move more expeditiously towards full implementation of the recommendations of this Panel report.

The representative of Brazil said that his delegation wished, once again, to express its concerns that the conclusions of the Panel report on the United States' denial of m.f.n. treatment as to non-rubber footwear from Brazil (DS18/R) had not yet been implemented by the United States.

The Council took note of the statements.

9. The Fourth ACP-EEC Convention of Lomé
   - Request for a waiver under Article XXV: 5 by the European Communities and ACP contracting parties to the GATT (C/W/820/Rev.1, L/7539 and Corr.1)

The Chairman drew attention to document L/7539 and Corr.1 containing a request by the European Communities and ACP contracting parties to the GATT for a waiver from the provisions of Article I:1, with respect to the preferential treatment granted by the Community for products originating in ACP States as foreseen under the relevant provisions of the Fourth Lomé Convention. The request was made for the duration of the Convention. He also drew attention to the text of the draft Decision contained in C/W/820/Rev.1.

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[4]C/M/267.

The representative of the European Communities said that the joint request for a waiver by the Community and the ACP contracting parties constituted an important political turning point. The Lomé Conventions and previously the Yaoundé Conventions, constituted the cornerstone for the development policies of its associated States, making possible both free access of their products in the Community market, as well as benefits accruing to them from the substantial financial assistance provided, mainly in the form of grants. The Convention also aimed at ensuring stability of income, drawn essentially from exports of commodities on which these countries essentially depended. This had been done through a system of income guarantees to counter the major problem faced by these countries: fluctuations in international prices of their commodities.

On numerous occasions in the past, contracting parties had been informed of the objectives sought by the Community and the ACP States, through this contractual development policy. The Working Party, which had recently submitted its conclusions on the Fourth Lomé Convention, had once again noted the usefulness and importance of these agreements, and had recognized that the development policy contained therein was commendable. However, despite this positive assessment, it had never been possible to agree, in strictly legal terms, on the conformity of these agreements with the GATT. While a number of the Community's partners considered that the Convention was not compatible with the GATT, the Community had always considered these association agreements to be fully consistent with the GATT provisions.

He said that because the Community and the ACP States had been advised, encouraged and urged by their trading partners to seek a waiver, they had submitted a text which contained a request under Article XXV:5, authorizing the Community to be exempted from its obligations under Article I:1 of the General Agreement (C/W/820/Rev.1). To this end, the Community and its ACP partners had had intensive consultations in the past few weeks with their main trading partners. Because the political scope of the policy was quite clear, the questions had been basically technical. He believed that these had been answered to the satisfaction of the trading partners involved. Therefore, it should be possible to find a consensus on the draft text submitted to contracting parties, thereby enabling the CONTRACTING PARTIES to vote its adoption. Before concluding, he thanked the Chairman for his assistance, and all delegations which had given their support and encouragement for the submission of the request for a waiver. He hoped that the Council would be able to conclude the debate satisfactorily.

The representative of Jamaica, speaking on behalf of ACP contracting parties, said that this matter was of the highest importance for the seventy ACP States, fifty of which were contracting parties. The Fourth Lomé Convention, signed on 15 December 1989 between sixty-eight ACP States and twelve member States of the European Community was by any standard, the most comprehensive ever signed between a group of industrial countries of the North and a group of developing countries of the South, and there had been general recognition among contracting parties that its objectives were commendable. Referring to the objectives of the Convention he said that in Article 1 the States expressed their "resolve to intensify their efforts to create, with a view to a more just and balanced international economic order, a model for relations between developed and developing states, and to work together to affirm, in the international context, the principles underlying their cooperation". Article 4 stated that support would be provided in ACP-EEC cooperation for the ACP States' efforts "to achieve comprehensive self-reliant and self-sustained development, based on their cultural and social values, their human capacities, their national resources and their economic potential in order to promote the ACP States' social, cultural and economic progress and the well-being of their populations, through satisfaction of their basic needs, the recognition of the rôle of women and the enhancement of peoples' capacities, with respect for their dignity". This showed that the Lomé Convention was not concerned solely with providing ACP States preferential access to the Community market. He said that aspects of ACP-EEC cooperation encompassed such areas as environment, fisheries, agriculture and commodities, food security, rural and industrial development, manufacturing, processing and mining development, energy development, the development of services, cultural and social cooperation as well as regional cooperation. The instruments of such

cooperation covered trade, with special undertakings and protocols on rum and bananas, cooperation in the field of commodities, with a special chapter devoted to the stabilization of export earnings, a protocol and special undertakings on sugar, as well as development and finance cooperation, including debt and structural adjustment support. He also mentioned provisions covering least-developed, landlocked and island ACP States. He believed that the originality of the Convention lay in its comprehensiveness: preferential access to the Community market, the financing of projects by the European Development Fund and the stabilization of export earnings in the agricultural and mining sectors.

With reference to preferential access to the Community market, he referred to the statistical annex to document L/7539, which had given details of imports by the Community from ACP States. He recalled that the Working Party on the Fourth Lomé Convention had requested and received details on the Convention. Such information included the fact that the Convention had not prevented the Community from extending trade benefits to non-ACP countries. Under the Generalized System of Preferences of the Community, the least-developed countries enjoyed the same trade benefits as the ACP countries; furthermore, in order to advance the international struggle against drugs, the Community had extended some of the benefits already enjoyed by the least-developed countries under its GSP to a number of other countries. In previous discussions over the past two years, many delegations had expressed the view that no matter how laudable its aims, the Lomé Convention did not fall within the provisions of GATT. The two Panels on the imports of bananas to the Community (DS32/R and DS38/R), both recommended that a waiver be sought. He recalled that at the previous meeting of the Council, when the report of the Working Party on Lomé IV had been presented, two delegations had expressed the same view. The joint request for a waiver under Article XXV:5 of the GATT by the Community and the ACP contracting parties was in response to these concerns. The draft Decision had been the subject of consultation with a number of contracting parties and their useful and constructive comments had been incorporated into the document. His delegation and all ACP States commended the draft Decision for consideration and approval.

The representative of Senegal said that cooperation between African, Caribbean and Pacific States on the one hand and the European Communities on the other which was several decades old, with origins going back to long standing historical and legal connections prior to GATT, had produced effective economic cooperation structures. This formula for cooperation had made it possible for ACP countries to finance their respective development programmes thanks, inter alia, to stability in their export earnings. The wide-scoped trade and aid agreements had been freely negotiated and concluded on the basis of a shared conviction that effective economic cooperation between countries at different levels of economic development had to be moved by a spirit of solidarity and partnership. With respect to the Fourth Lomé Convention, the latest of these agreements, it had been unanimously recognized that it contained extremely important innovative elements in terms of economic and trade cooperation. It had also been recognized that there was no proof that the implementation of the provisions of the Convention had affected the interests of third countries. Finally, it had not been proved that Lomé IV could endanger liberalization of trade in favour of all developing countries; on the contrary, it was an efficient instrument through which the level of development and the standard of living in ACP countries (which included a large number of least-developed countries) could be improved. Therefore, to question the preferential régime that these countries enjoyed could cause serious disturbances and result in set-backs to their economies. On the other hand, maintenance of the régime would not result in such consequences for the non-ACP developing countries.

He said that since the philosophy of the GATT was not to endanger stability for its members, but rather to ensure their harmonious development, the ACP States, contracting parties, had closed ranks over the past few years, to ensure that there would be no misinterpretation of certain technical provisions of the GATT, and that their fragile economies could advance. Nevertheless, the tone of certain reactions continued to be disturbing. Since the signature of the Uruguay Round Agreements

in Marrakesh in April 1994, the international climate had become quieter: confidence, security, predictability were no longer words only for use during negotiations. A consensus had been achieved on objectives for international trade and the means to their attainment. The ACP States which had participated in the negotiations, placed a great deal of hope in the universal and inter-dependent trading system to be represented by the World Trade Organisation. He said that the future could not erase the past, but stronger international cooperation could be forged through taking the best from the past together with the present. He believed that in preparing the draft Decision all efforts had been made to preserve acquired rights and benefits and to dispel the concerns of other parties. It was clear that the ACP-EEC States would like the waiver to be granted in a context of confidence, with the understanding that any difficulty which might arise during the period covered by the waiver would find speedy and satisfactory settlement though notification and consultation. The determination of the ACP-EEC States to find a solution acceptable to all could not be more clearly expressed. He therefore believed that the request for a waiver, which had already received the support of a very large majority of contracting parties, should be accepted by consensus.

The representative of Zambia said that his country associated itself with the statements made by the previous speakers. As a member State of the ACP group as well as a contracting party of the GATT, Zambia took great interest in the work of both institutions. To that effect Zambia had already ratified the Marrakesh Agreement establishing the WTO, signifying its interest not only to the present, but also to the future of these organisations. His delegation was confident that the Council would support and grant a waiver to the Community and the ACP contracting parties, not only from the current rules of the GATT, but also from those of the future institution to supersede it. While the consistency of the Lomé Convention with the GATT had been discussed earlier, in the context of a particular aspect of trade between the Community and the ACP countries, it was important to emphasize the fact that the Convention also covered other aspects of cooperation. It was in this light that his delegation favoured a waiver that would not only legitimize the ACP-EEC trading arrangements, but would also confer GATT consistency to this Convention. The waiver would allow the Community to cooperate with ACP States in areas of trade and to follow other objectives such as, poverty reduction, food security and the development of human capabilities, areas not covered in this forum. The recent Panel rulings on bananas which he had referred to earlier had introduced considerable uncertainty on the future of the ACP-EEC preferential régime. It was therefore important to place the régime on a sound and predictable basis and prevent disruption to trade and investment decisions, which could further worsen development prospects of the ACP States. In conclusion, he highlighted Article 130 of the Maastricht Treaty that committed the Community to a policy towards a sustainable economic and social development of developing countries, particularly the most disadvantaged among them, thus enabling the gradual integration of these countries into the world economy.

The representative of the United States said that for several years his delegation had urged the Community to seek a GATT waiver for the Lomé Convention preferences, because the United States believed that the waiver process, in which the terms of the waiver ensured that the interests of all contracting parties had been protected, was a far better method of dealing with this issue than continued attempts to unilaterally extend Article XXIV. He noted that the 1993 banana Panel (DS32/R) had agreed with this position. His delegation, however, had problems with the timing of the request. The objective of this sudden request was to confer a waiver that would be incorporated into GATT 1994. There was no objection in principle to such a proposal, in fact the United States had hoped that this had been made the previous year, or even when the Lomé Convention had been signed in 1989. The 1956 Guiding Principles to be followed by contracting parties in considering applications for waivers from Part I of the GATT (BISD 5S/25) provided that the contracting party applying for a waiver should give full consideration to representations made to it by other contracting parties and engage in full consultation with them. These principles also provided that "the contracting parties when examining a waiver should give careful consideration to any representations that such consultations

had proved unsatisfactory, and in general should not grant an application in cases where they are not satisfied that the legitimate interests of other contracting parties are adequately safeguarded."

Since a substantial amount of trade was involved with the waiver request -- which directly affected the interests of a large number of contracting parties -- great care was needed in drafting the waiver text, with careful consideration given to all the implications that the waiver had for the system. He was not satisfied that the draft Decision, as presented to the Council, responded to the problems raised by his and other delegations, with the Community. From a technical standpoint therefore, the United States delegation was not in a position to allow, at the present meeting, for a consensus to develop in favour of putting the text to a vote. He was ready to participate constructively in further consultations on this question with the Community and other interested members of the Council.

The representative of Morocco said that the request for the waiver under Article XXV:5, submitted by the Parties to the Lomé Convention, was perfectly logical because it had taken account of two fundamental elements. First, preferential concessions to ACP States were crucial, even vital for their economies. As had been mentioned by him on several previous occasions, tariff concessions constituted not trade, but economic advantage for these countries. Such concessions did not increase these countries' market share, but rather guaranteed their export earnings, as well as the incomes of their producers. The system guaranteeing the stabilization of their export earnings, as foreseen by the Convention, had resulted in providing necessary support to the economies of these countries. The second element was to avoid any arguments on the compatibility of the trade provisions of the Lomé Convention by assuring them greater legal security, particularly because this was perfectly in line with suggestions made by certain panels. He agreed with the representative of the Community that the request for the waiver constituted a political turning point, because it had met some concerns and sensitivities expressed by certain contracting parties. Morocco therefore firmly supported the request for a waiver submitted by the Parties to the Lomé Convention.

The representative of the Côte d'Ivoire said that her country fully subscribed to the statements made by the Community, Jamaica and Zambia. As a member of the Lomé Convention, the Côte d'Ivoire fully supported the request for a waiver. This request was in line with the suggestions which had been made by trading partners in the Working Party on the Convention, as well as in other bodies. Earlier discussions had made it clear that there was nothing to prevent the members of the Convention to attain its goals which included, inter alia, the economic and social development of the ACP countries. The Convention also included instruments, compatible with the General Agreement, which had been conceived to give special consideration to the particular social and economic needs of the countries concerned. The ACP-EEC countries had chosen Article XXV:5 procedures to request the waiver. The Côte d'Ivoire therefore appealed to the sense of responsibility of the contracting parties, particularly the developed countries, and especially the United States, to give their support to developing countries as stated in the General Agreement, notably in Article XXXVI:1(a), (b) and (f).

The representative of Japan said that with respect to the positions taken by the Community and other parties to the Lomé Convention as expressed in the preamble of the draft Decision, his delegation was of the opinion that the Convention contained provisions that were inconsistent with the non-discrimination principle of the GATT. There were two methods to redress such a situation; one was to obtain a waiver and the other was to modify the inconsistent provisions in order to bring them into conformity with GATT. The latter solution was preferable. He therefore urged the Parties to the Convention that even if they obtained the waiver, they should not lose time to take the necessary steps towards the second solution.

The representative of Pakistan said that his country recognized the long historical and trade ties between the Community and the ACP countries, and was fully appreciative of the contribution of the Lomé Convention towards the promotion and economic well-being of these countries, most of

which were heavily dependent on export earnings from a few commodities. Pakistan was fully aware of the circumstances that had led to the request for a waiver, and in this context, noted in particular, the advice to the contracting parties involved, on the advisability of pursuing the economic objectives of the Lomé Convention through the use of policy instruments consistent with the General Agreement. Pakistan believed that the ACP countries, contracting parties to the GATT, were indeed faced with exceptional circumstances within the meaning of Article XXV:5 of the GATT. He therefore, welcomed the willingness and decision of the ACP countries to follow a GATT-consistent approach, and was pleased to extend his delegation's support in principle to the granting of the waiver. Pakistan was willing to participate in the process for developing a consensus, and was reassured by the willingness of the parties to the Convention to consult with respect to any difficulties that might arise from the implementation of the waiver.

The representatives of Cyprus, Egypt, Israel, Poland and Turkey supported the granting of the waiver to the parties of the Convention. Egypt believed that the time was right for a satisfactory conclusion on this matter by reaching a consensus at the meeting. Turkey believed that the draft text for the waiver had sufficiently taken into consideration the interests of other contracting parties.

The representative of Singapore believed that this was a case when the mechanical implementation of GATT rules needed to be tempered with considerations of social justice. His delegation had taken note of the policy aims of the Community's agreements with the ACP parties, in particular the developmental aspects of the issues raised by the request for a waiver. Singapore therefore supported the request for the waiver having noted that it had been strongly endorsed by the Lomé ACP members.

The representative of Chile welcomed the Community decision to request a waiver from its obligations under Article I:1 of the GATT with respect to its preferential treatment given to an important group of developing countries. He did not believe that this could be done pursuant to Article XXIV, which concerned the establishment of free-trade areas or customs unions. He believed that the Lomé Convention was basically a special cooperation instrument, which, because of its characteristics, may nullify or impair benefits accruing to contracting parties under the GATT, including third-party developing contracting parties that benefit from the preferential system of the Community. Furthermore, his delegation had other doubts with respect to the draft submitted to the Council and believed that, the wording of the draft needed to be examined in greater detail. As his delegation had a favourable attitude to the initiative, it was interested in participating and cooperating in such an exercise.

The representatives of Argentina, Australia Canada, and Uruguay welcomed the request for the waiver. They believed it was the appropriate course of action. Canada recalled that it had encouraged such an action in the Working Party on the Convention. Australia recognized that it was the prerogative of the requesting parties to draft the request, but believed that it was the right of the other contracting parties to be consulted on the provisions therein. Argentina and Uruguay recognized that there were some technical details that needed to be ironed out in further consultations, but hoped that a decision could be taken at the Fiftieth Session of the CONTRACTING PARTIES. Canada and Uruguay said that their delegations would like to participate in any future consultations on this matter.

Austria, Hungary, India and New Zealand supported the joint waiver request by the Community and the ACP contracting parties. Austria and Hungary had a preference for a decision at the present meeting and India hoped for a conclusion of the process without further delay. However, in view of the comments made by some delegations who saw the need for further consultations, New Zealand hoped that they would be concluded as soon as possible, and India expressed its desire to be associated with the process. Austria and Hungary hoped an appropriate decision would be taken at the forthcoming Session of the CONTRACTING PARTIES.

The representative of the European Communities thanked all delegations who had voiced their opinions because their statements had made it quite clear that the request for the waiver had met with their approval. The requesting parties had been given advice which they had followed and it seemed from this overall support that the right path had been followed. He understood, however, that a few delegations considered that certain drafting details needed to be ironed out. While he had thought that in the preceding weeks all partners had been consulted on the draft text, it appeared that certain elements might have been overlooked. The Community was ready to enter into further consultations with those delegations who seemed to have problems with certain drafting aspects of the text and to provide any further explanations that were still required. He agreed with all those who had said that these consultations should be concluded rapidly so that a final decision on this request could be taken at the Fiftieth Session of the CONTRACTING PARTIES.

The representive of the ACP group of countries, speaking as an observer, recalled that the first three Conventions of Lomé had been signed in 1974, 1979 and 1984. These had been presented and examined by the GATT. The text of the Fourth Lomé Convention had been submitted to GATT in 1992. The Working Party which had been established to examine the compatibility of the Conventions with the relevant GATT provisions had commended the objectives of the Convention in its report to the Council. The contracting parties which had participated in the Working Party, had been fully aware of the importance which the ACP States attached to the Convention. The ACP States had maintained all along that its provisions were fully compatible with the GATT. During the examination of the Fourth Lomé Convention, some contracting parties had recommended that the ACP countries seek a waiver. The ACP countries had heeded this advice in making the request for a waiver under Article XXV:5. This request had been made in the belief that there was a general consensus for granting the waiver until the expiry of the Fourth Lomé Convention. The ACP States hoped that the contracting parties would approve the draft Decision.

The Council took note of the statements and agreed to refer this matter to the CONTRACTING PARTIES at their Fiftieth Session for further consideration.

10. German unification: Transitional measures adopted by the European Communities
    - Request for a waiver under Article XXV:5 (C/W/821 and Add.1, L/7541)

The Chairman said that, at the request of the European Communities, he proposed to refer this matter to the Fiftieth Session of the CONTRACTING PARTIES.

The Council so agreed.

11. Canada - Article XIX action on boneless beef
    - Statement by Australia

The Chairman recalled that the Council had considered this matter at its meeting in June and had agreed to revert to it at a future meeting. The matter was on the Agenda at the request of Australia.

The representative of Australia recalled that in mid-1993 Canada had imposed import restrictions on imports of boneless beef from sources other than the United States. While Canada had claimed that the legal basis for these restrictions was Article XIX, Australia believed that Canada had failed to demonstrate injury or threat of injury to justify the introduction and maintenance of these measures. On the contrary, it was clearly evident that the restrictions had no foundation and had adversely affected not only non-US suppliers but also Canadian domestic interests. Indeed, twice during 1994, the Canadian Government had responded to pressures from both domestic importers and exporters to relax the restrictions. In May the tariff quota prior to the 25 per cent surtax, had been increased from 71,021 tonnes to 85,021 tonnes and in early October the Canadian Government had taken the decision

to exclude certain cuts from the application of the surtax which had further increased the scope for imports into Canada without applying the surtax. To a large extent, these liberalization measures had been taken in order to ease the increasingly tight supply situation in the Canadian market in 1994, especially for the processing industry. Prices in the Canadian market during 1994 had been at an all time high and increasingly Canadian processors had been commercially disadvantaged by their lack of reliable access to imported supplies of competitively priced products. It was difficult to reconcile Canada's resort to Article XIX with its traditional commitment to trade liberalization policies. It was even more difficult to see how these restrictions had served Canadian interests particularly of consumers and meat processors; however, this was a domestic matter for the Canadian Government to resolve. Australia's concern was that the arrangements which Canada was proposing for 1995 were just as unacceptable as the Article XIX restrictions. The Canadian authorities had recently made clear their intention to terminate the Article XIX action and to implement with effect from January 1995 a tariff quota of 76,409 tonnes consistent with the commitment undertaken by Canada in the Uruguay Round. The quota would apply to imports of fresh, chilled and frozen beef and veal from non-NAFTA countries of which 27,600 tonnes would be reserved for imports from New Zealand. Imports within the quota would be tariff-free while imports above the quota would be subject to a tariff equivalent of 31.1 per cent falling to 26.5 per cent over six years. He expressed concern that the arrangements proposed for 1995 and beyond would restrict access to a level lower than that provided under the Article XIX restrictions in 1994 and lower than the level of imports demonstrably required to meet the needs of the Canadian domestic industry and in particular its processing sector and industry in general. In the verification of schedules process in the Uruguay Round earlier this year, Australia had indicated that it had not accepted the final offer Canada had made on beef in the Uruguay Round Negotiations, that it had not accepted that the level of access provided by Canada was adequate, and had not accepted the discriminatory elements of the final package and, therefore, had not regarded the negotiations between Australia and Canada on beef as being satisfactorily concluded. Australia would continue bilateral contacts at a political level on this issue and might need to revert to the matter in the appropriate GATT/WTO forum in the near future.

The representative of New Zealand echoed some of the concerns expressed by Australia. While New Zealand had been able to secure a market access outcome on beef with Canada in the Uruguay Round, it had not been without great difficulty and considerable concessions on its part. As New Zealand had made plain before, it had not considered the Article XIX action taken by Canada, nor its tariffication of beef in the Round as justified. Australia had correctly pointed out that the repeated relaxation of import restrictions this year had demonstrated how unnecessary the safeguard action had been. However, despite its unhappiness with safeguards, New Zealand had been prepared to accept Canadian tariffication for what it had considered to be a mutually advantageous arrangement. However, last week, Canada had announced that it intended to allocate import licences for beef access in 1995. In New Zealand's view, this had undermined the value of the access arrangement agreed with Canada earlier this year. As had been pointed out to Canada, import licensing had never been a feature of its import régime and was not justified by the overall market-access outcome for beef in the North American market. New Zealand would continue to pursue this matter with the Canadian Government but wished to register its disappointment at Canada's intention for 1995, in the expectation that it would reconsider that course of action.

The representative of Canada said that, as had been stated at the June Council meeting, his Government did not believe that there was a basis for the continuing Australian complaints on this issue. However, since his delegation had heard the Australian version of developments from the adoption of the measure, it would like to review the same period from a Canadian perspective. Canada's Article XIX safeguard for boneless beef had been put in place following an inquiry by the Canadian International Trade Tribunal (CITT) concerning the impact of a surge in imports of offshore boneless beef on Canada's beef industry. The CITT had found that imports of boneless beef threatened serious injury to Canadian slaughterers, boners and cattle producers. Canada's safeguard, as recommended

by the CITT, involved a tariff quota level of 48,014 tonnes for the period from 1 May to 31 December 1993 and a tariff quota of 72,021 tonnes for 1994. Within the quota, imports were subject to the m.f.n. rate of duty of 4.41 cents/kilogram, with imports above these levels subject to an additional surtax of 25 per cent ad valorem. On 11 June 1993, Canada had notified the GATT of its intention to implement measures under Article XIX for the balance of 1993, 1994 and 1995. This safeguard measure was fully consistent with Canada's international rights and obligations. This measure was in stark contrast to the agreement that Australia had again concluded with the United States in 1994 which restricted the entry of Australian beef into the US market. Unlike Australia's agreement with the United States, the Canadian safeguard measure did not impose an absolute quantitative restriction on imports. Moreover, in 1994, two liberalizing measures had been introduced to the safeguard régime: (i) on 6 May, the Government had increased the tariff quota by 13,000 tonnes, after a review of market conditions which had contributed to the filling of the quota more rapidly than expected, and (ii) on 7 October, in response to a further review which had indicated that current domestic supply had not been sufficient to meet demands for certain cuts for the remainder of the year, the Government had announced the lifting of the surtax on specific cuts of boneless beef until 31 December 1994. Given the liberalizing nature of these modifications, which benefited Canada's trading partners, his delegation was surprised that Australia had again raised this issue at the present meeting. On 3 November 1994, Canada had announced that its MTN régime for beef and veal would come into effect on 1 January 1995. This followed the tabling of Canada's Uruguay Round implementing legislation in the House of Commons on 25 October. On the basis of this announcement, it was not intended to renew the current safeguard régime for 1995. As all delegations were aware, Canada's access régime for beef and veal was based on the outcome of the Uruguay Round negotiations. In implementing the tariff quota as described by Australia, Canada would be honouring its market access commitments for beef and veal. Canada had also taken note of the statement of New Zealand, but did not believe that the Council was the appropriate forum to discuss the implementation of Uruguay Round commitments. Canada was prepared to pursue ongoing bilateral discussions on the matter.

The representative of the European Communities supported the statement by Australia. The Community also considered that the measures taken by Canada could not be justified under Article XIX of the General Agreement. Moreover, Canada could not invoke the decision of a domestic body such as the Canadian International Trade Tribunal in order to justify the measures on boneless beef under the GATT.

The representative of Australia said that many of the elements provided by Canada with respect to the market situation in 1994 underlined the validity of Australia's argument concerning the inadequate level of access provided by Canada under the Article XIX action and under the tariff quota to be applied from 1995. Australia reiterated its intention to continue bilateral discussions with Canada on this issue and in the light of their results it might revert to the matter in the appropriate GATT/WTO body.

The representative of Canada referred to the comments made by the European Communities and pointed out that any import measure under Article XIX could be introduced on the basis of an investigation of the circumstances of domestic industry and conclusion by a reliable body. He could not understand how such a body could be other than domestic at the initial stage of safeguard action.

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

12. EEC - French regulations concerning the labelling of scallops[5]
- Statement by Chile

The Chairman recalled that this matter had been raised by Canada at the June Council meeting. The matter was on the Agenda of the present meeting at the request of Chile.

The representative of Chile said that his country's exports of scallops to France had been adversely affected by French regulations concerning the labelling of this product which, in the view of his Government, nullified or impaired the benefits accruing to Chile under the General Agreement. These regulations contained the unjustified obligation that Chile change the denomination that it had applied until now for its product. On 28 March 1993, France had adopted a labelling regulation requiring that only the genus "Pecten" scallops could be labelled for sale as "Noix de coquille St. Jacques" and that all other species of this same family, the "Pectinidae", would be called "Pétoncles". On 7 January 1994, France had published a transitional regulation which allowed for the continued use of the "Noix de coquille St. Jacques" up to 31 December 1995. However, on 12 October this year, that country had again modified that regulation requiring that the transitional denomination be "Pétoncles" with "St. Jacques" in brackets. At the conclusion of this transitional period, i.e. starting on 1 January 1996, the denomination contained in the March 1993 regulation would apply and this had established that only "Pecten" could be nominated and labelled as "Coquille St. Jacques".

The Chilean scallop ("vieira") was of the same family as the "Pecten Maximus" in France. Their scientific name was "Argopecten Purpuratus". The physical appearance as well as the organoleptic characteristics of the product, i.e. the presence of an orange-coloured coral, the texture, the flavour and size were the same as the French species. Thus, the Chilean scallop had traditionally been sold on the French market with the name "Noix de coquille St. Jacques" or "Noix de St. Jacques" with the full acceptance of the French consumer. The denomination "Pétoncles" in the French market had been used for a substantially smaller product which was not as brightly coloured and which the consumer quite rightly identified with a lower quality and sold at a lower price. Chile found the French regulation incomprehensible and unacceptable since it was not limited to providing information to the consumer, but resulted in a protection for the marketing of the French scallop through a measure that could be considered as an appropriation of a trade denomination.

It was perhaps not a coincidence that this regulation was introduced after the Chilean exports had been growing significantly due to fishermen's efforts to improve the product quality. In 1993, Chile's exports of scallops to France had been of several million dollars under the label "Noix de St. Jacques". More than one-third of Chile's exports of scallops went to that country. The labelling requirement of "Pétoncles" would reduce these exports in quantity as well as in value due to the lower price given to the "Pétoncles" denominated products. Chile had made numerous representations to the French authorities but without any results. It had also informed the Commission of the European Community in Brussels that no solution to this problem was foreseeable. Chile believed that the French regulation was incompatible with GATT rules. Therefore it raised this problem before the Council with the request that the European Communities reconsider this measure. Chile was currently collecting more information to decide on the best time to avail itself of its rights under the GATT.

The representative of Canada said that his country was also extremely disappointed by the change introduced last month in the French regulations concerning the labelling of scallops. This followed numerous rumours of various changes over the past year. Canada had been selling scallops to France for more that forty years and French consumers had recognized the high quality of this Canadian product.

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[5]Carried in earlier Council minutes as "EEC - French regulations concerning the trade description of scallops".

On 23 March 1993, the French Government adopted an order to change the designation and labelling of Canadian scallops in the French market. The order required the use of the term "Pétoncle" under label of the Canadian product and prohibited the use of the usual term "St. Jacques". "Pétoncle" had a negative connotation in the French market and the labeling change had led to a decrease in Canada's traditional exports to that market. Following Canada's unsuccessful efforts to resolve the issue bilaterally with France, his country had requested Article XXII:1 consultations with the Community in August 1993. Further to these consultations, in January 1994 the French Government had published a temporary order which was to be effective until 31 December 1995. This amendment permitted the Canadian product to be labelled "St. Jacques" accompanied by the product's scientific designation. Canada had welcomed this interim solution and had pressed for it to be made permanent. According to the information available to his authorities, unlike the previous changes to the French regulation, the change introduced in October of this year had taken immediate effect with no transitional provisions, thereby seriously injuring Canadian exporters. The constant changes being made to this French regulation which nullified or impaired benefits accruing to Canada under the General Agreement were inexplicable. They were also creating an unnecessary tension in bilateral trade relations. Canada again requested the European Community to take rapid action to ensure that Canada's access to the French scallop market be restored to the level which had prevailed for many decades prior to March 1994.

The representative of Peru expressed his country's deep concern at the changes made in August and October in the French regulations on scallops which had artificially and unjustifiably modified the denomination of certain sea-foods, by arbitrarily assigning the denomination "Noix de coquille St. Jacques" only to shell-fish of the pectinate genus and excluding a whole series of products including the Peruvian shell-fish which was an "Argo- pecten" product. Peru had already stressed the urgent need that such measures, as well as previous regulations on scallops that France had introduced in 1993, be lifted. The regulations had damaged Peru's exports of scallops by drastically altering their image on the European market and by attempting to place their sale price at a lower range. These regulations had violated the principle of national treatment under the GATT. This issue had been the subject of Resolution 113 CM of the Ministerial Conference of the Latin American Organization of Fisheries and Fishing Development which had expressed to the French Government, as well as to the European Community, the refusal to accept the above-mentioned measures and had denounced the injury caused to Peruvian exports of scallops. This product had been exported with the denomination "Coquille St. Jacques" to France and to the European Community as a whole for a number of years. Its characteristics had always been defined under the denomination of "St. Jacques". The present French regulation established an artificial differentiation placing this product at a disadvantage vis-à-vis other products thus causing an injury to Peruvian exports. Peru requested an immediate lifting of the above measures and reserved the right to have recourse to the GATT provisions if the situation remained unchanged.

The representative of the European Communities said that he could not share the view of the representative of Chile that there was no difference between the "Pecten Maximus" and the "Argo Pecten". This difference was obvious and he would be able to recognize one shell-fish from another even in the darkest of nights. The "Coquille St. Jacques" was a shell-fish which had two parts as any shell-fish. One was flat and striated and one was hollow but less striated. The "Noix de Pétoncle" had two parts both of them being hollow. There was therefore no difficulty in recognizing the difference between the two products. With regard to the price element, he could not agree that the price of "Coquille St. Jacques" was substantially higher than that of the "Noix de Pétoncle": "Pétoncles" could be sold up to FF 23 a kilogram on some markets, whereas the "Coquille St. Jacques" might be sold around FF 13. He further added that the Community had fully respected the procedures for consultations. The measure under consideration which would enter into force on 1 January 1996, had already been notified in 1994. Therefore, all the parties would have the time to domestically explain the various elements of this issue. According to his information, no particular new element had been brought to light in the consultations held. The Community had taken note of the positions expressed by the various

parties but wished to underline that it had not been convinced by the argument that there was no difference between the "Coquille St. Jacques" and "Pétoncles".

The representative of Argentina said that he would not be able to detect any difference between the "Coquille St. Jacques" and "Pétoncles" either in terms of organoleptic characteristics or with regard to the quality of the product *per se*. Argentina fully shared the concern expressed by Chile, Canada and Peru regarding the regulations introduced in France in October this year, through which in future only the French "Pecten" would be able to use the denomination "Coquille St. Jacques" while all other like products would have to be denominated "Pétoncles". Argentina was a traditional exporter of a significant volume of scallops which would be affected by this regulation since so far these products had been exported under the label "Coquille St. Jacques" as indicated in the Community's import statistics under the tariff heading with the same denomination. Argentina was still analysing the rights that might be affected by this measure, but it wished to indicate that the French regulation on scallops discriminated against like-products and it seemed that France and the Community had not taken into account the presentations made by other exporting countries. Argentina wished therefore to join other countries which had requested that a constructive solution be found to the problem.

The representative of the United States associated himself with the previous speakers which expressed concern that the French regulations might damage their respective exports of scallops.

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

13. Training activities
- Report by the Director-General (L/7543)

The Chairman drew attention to the report by the Director-General in L/7543.

The Director-General, introducing the report said that in 1994 two regular Trade Policy Courses had been held, one in Spanish and the other in English. In addition to the regular Courses, two special Courses had been organized: the Fourth Special Trade Policy Course for Eastern and Central European and Central Asian Countries, financed by the Swiss Government, and a Special GATT Course for Officials from the Russian Federation and Ukraine, organized at the initiative and with the financial support of the Government of the United States. In all, ninety-seven officials from developing countries and from the economies in transition participated in these Courses. The growing number of developing countries that had acceded to the GATT in recent years or had shown interest in accession, and the greater awareness of the importance of trade policy issues engendered by the Uruguay Round Negotiations had led to an increased interest in the GATT Trade Policy Courses and greater demand for participation in them. The large increase in GATT jurisprudence resulting from the Uruguay Round Negotiations, and the novelty and complexity of many of the resulting agreements had also generated wider interest, not limited to developing countries alone, in participation in the Secretariat's Training Programme. The need of the economies in transition in Central and Eastern Europe and Central Asia, particularly the newly independent countries among them, for training facilities to enhance their understanding of the work of the GATT and the functioning of the multilateral trading system, was self-evident. In the circumstances, the financial support of the Swiss Government to the organization of the Special Trade Policy Courses for these countries for four successive years was extremely opportune. In the same context, the initiative of the Government of the United States to finance a Special Course for officials from the Russian Federation and Ukraine this year was also very welcome. The Director-General expressed his deep appreciation to the Swiss Government for their financing of the Special Trade Policy Courses for Eastern and Central European and Central Asian countries and of the workshop on negotiating techniques for the regular Trade Policy Courses, as also to the Government of the United States for financing the Special Course for Officials from the Russian Federation and Ukraine. He also thanked the Governments of the Netherlands and Denmark for their cooperation in organizing

and hosting the study tour for the participants in this year's Trade Policy Course in English, and the Government of Spain for its cooperation in organizing the study tour of this year's Trade Policy Course in Spanish. Finally, he expressed appreciation to the Permanent Missions in Geneva and to the international organizations which had continued to extend their cooperation and to make valuable contributions to the GATT's training activities.

The representative of Switzerland noted that the positive appreciation regarding the training activities was largely due to the contribution of the Secretariat. He also informed the Council that his authorities were currently undertaking an evaluation of the Special Trade Policy Courses for Eastern and Central European and Central Asian Countries organized so far and would take a decision as to the continuation of financing by his Government of such a course next year, depending on the result of that evaluation. His authorities would shortly inform the contracting parties of the decision taken.

The representative of Madagascar underlined the importance of training activities for the integration of developing countries in the future multilateral trading system of the WTO and the particular attention that should be paid in that context to the special needs of least-developed countries. She proposed that the number of fellowships for least-developed countries be augmented through an increase of funding by developed countries of such programmes. She also suggested that the contracting parties examine in the appropriate body, ways and means to achieve this objective and consider the training aspect in the context of the work of the new unit established for least-developed countries in the Secretariat. She wished to express the appreciation of her Government to the Director-General for the establishment of that unit, an initiative which demonstrated the great attention accorded by the Director-General to least-developed countries.

The Chairman, on behalf of Council members, expressed appreciation for the Trade Policy Courses organized by GATT and stressed the importance of these courses for preparing government officials from developing countries and economies in transition for the future conduct of trade policy and international trade relations. Furthermore, he expressed appreciation for the contribution of the Government of Switzerland for financing the special course for Eastern and Central European and Central Asian countries, for the contribution of the Government of the United States of America for financing the special course for officials from the Russian Federation and Ukraine, and for the contribution of the Governments that had hosted study tours, as well as, for the cooperation of the Permanent Missions and International Organizations that had participated in the courses.

The Council took note of the statements and of the report (L/7543).

14. Committee on Tariff Concessions
- Statement by the Chairperson

Mrs. Bautista (Philippines), Chairperson of the Committee on Tariff Concessions, informed the Council that because of time constraints and the desire to present a full report on its activities the Committee decided that, instead of submitting an incomplete bi-annual report on its activities at the present Council meeting it would submit a full report, together with the requests for extension of current waivers, exceptionally directly to the CONTRACTING PARTIES at their Fiftieth Session. The time constraints were related to the fact that the waivers granted to a number of contracting parties would expire at the end of this year, and that some of those countries needed the time available, to be hopefully in a position to conclude their negotiations with other contracting parties, thus avoiding the necessity to extend their waivers beyond the set time limit. Nonetheless, she deemed it useful to inform the Council at the present meeting of some developments in the activities of the Committee during the second half of this year. The Committee's activities had been concentrated on the implication on GATT schedules of the substantial changes that had been introduced in the Harmonized System nomenclature and which would come into force on 1 January 1996. At the time of the introduction of the HS 1992

changes, the Committee had decided to establish simplified procedures for those changes but also for "any changes which may be introduced in the future", and in particular the more important changes to be implemented on 1 January 1996. These "Procedures to Implement Changes in the Harmonized System", contained in document L/6905 (BISD39/300) had been approved by the Council in October 1991. According to these procedures, no later than 120 days (four months) after the circulation of (1) a communication by the former Customs Co-operation Council - now called World Customs Organization (WCO) - concerning the acceptance of a Recommendation to revise the HS nomenclature in accordance with Article 16 of the HS Convention, and (2) correlation tables prepared by the WCO Secretariat, contracting parties should submit the documentation related to the transposition of their schedules and then carry out the necessary consultations and/or renegotiations under the provisions of Article XXVIII. The time-limit of 120 days for submission of the required documentation indicated in the Procedures had caused concern to some delegations mainly in the context of the special situation following the conclusion of the Uruguay Round. Following consultations, the members of the Committee had reached an understanding that, depending on the status of individual schedules, the specified time-limit would be applied with a certain flexibility, i.e. the countries that had encountered some problems, mainly in connection with legal aspects of their Uruguay Round schedules, would delay, to the extent necessary, the submission of the documentation. The Committee had also examined the situation regarding the implementation of the Harmonized System by contracting parties and had noted that all 124 contracting parties, except only ten[6] for which the Secretariat did not have any confirmation, were applying the Harmonized System.

The Chairman drew the attention of the Council to the fact that the Reports of the Textiles Committee and the Committee on Budget, Finance and Administration would also be submitted directly to the CONTRACTING PARTIES' Fiftieth Session in December.

The Council took note of the statements.

15. Management of accession negotiations
- Statement by the Council Chairman

The Chairman recalled that delegations had received a copy of the draft statement on management of accession negotiations which he had prepared in the light of consultations. This statement was intended to respond to the proposal made by Sweden on behalf of the Nordic countries at the June Council meeting on this matter. He had heard no objections to this statement. However, certain delegations had pointed out that this statement should best limit itself to GATT, since the Council had no authority over WTO matters. He had, therefore, deleted all references to the WTO in the operative part of the text. He also informed the Council that he subsequently intended to officially bring this text to the attention of the Chairman of the Preparatory Committee of the WTO for appropriate action in that forum. He also proposed to delete the sub-titles in the text to avoid any misunderstanding as to its intended scope. Then the Chairman read out the following statement:[7]

"In recent meetings of the Council, a number of delegations have suggested that the unusual increase in the number of requests for accession to the GATT and eventually the WTO calls for an effort to rationalize the management of work on accession negotiations in order to ensure that such negotiations can be successfully concluded in the most effective possible manner.

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[6]Angola, Burundi, Gambia, Grenada, Guinea-Bissau, Guyana, Maldives, Qatar, Sierra Leone, Suriname.

[7]Subsequently circulated in C/COM/4.

Such negotiations are carried out according to established procedures both in GATT and in the Preparatory Committee to the WTO. After consultations with delegations, it has nevertheless been possible to identify a certain number of points which may help to guide both the Secretariat and governments in handling the negotiations on accession. These points, which I will now read out to you, are of an indicative nature; their aim is to rationalize the manner of work on accession negotiations when an unusually large number of requests for accession must be dealt with. They are not intended in any way to substitute for the established procedures which are maintained.

The points are as follows:

1. the management of accession negotiations in the GATT should ensure the wider acceptance and effective application of rules and disciplines under the GATT, thus contributing towards the reform processes in the applicant countries or territories, and towards the objective of further strengthening the multilateral trading system;
2. there shall be no lowering of present standards for terms of accession to GATT;
3. accession negotiations should be limited to issues related to GATT rights and obligations including market access to the applicant country or territory;
4. accession negotiations should be approached on a case-by-case basis, while respecting the established procedures for negotiations with all applicants;
5. adequate lead-time should be allowed in the preparatory stage of accession negotiations before meetings of the respective working parties are convened, in order to allow both the applicant government and members of the working party to better prepare themselves;
6. in line with 5 above, more than one round of questions and answers may be organized if necessary; subsequent rounds will be designed to select and clarify issues before an initial meeting of the working party;
7. adequate lead-time should be allowed for governments to examine documentation;[8] the conformity of such documentation with established procedures should be checked in advance by the Secretariat, which would inform contracting parties and the applicant government of its views;
8. the Secretariat may be invited to examine the technical assistance requirements of the applicant government so as to elaborate its own plans for assistance and further coordinate them with those of individual governments;
9. the applicant government should be encouraged to undertake the necessary in-depth preparation for the accession negotiations before the working party meetings, inter alia, through informal consultations with contracting parties and the Secretariat;
10. applicant governments should also avail themselves, to the extent possible, of the training activities of GATT as part of their preparation for negotiations and to fully use their GATT observer status, in particular, to attend meetings of other accession working parties and of various committees."

[8]i.e. three to four weeks.

After having read out the statement the Chairman said that in order to avoid any confusion he wished to clarify that the expression "wider acceptance" used in point 1 of the statement was intended to refer to wider acceptance by countries or territories.

The representative of Sweden, on behalf of the Nordic countries, recalled that these countries had raised the issue of management of accession negotiations as they had seen a need for a comprehensive approach of the globalization of the multilateral trading system. He was grateful for the interest shown by delegations in this important issue. A constructive discussion had taken place in the informal consultations which had been conducted by the Council Chairman for which he wished to express appreciation. He also wished to thank the Chairman and the Secretariat for providing the statement on the management of accession negotiations and expressed the hope that the points contained in the statement would assist contracting parties in an improved handling of these very important negotiations. This whole exercise had proved its value, namely, to focus on the issue and increase the awareness of its significance. The Nordic countries intended to pursue this issue also in the Preparatory Committee of the WTO.

The representative of the European Communities also expressed appreciation for the preparation of the statement which would help delegations to carry out accession negotiations in the future. He noted that the points contained in the Chairman's statement were of an indicative nature and therefore the Community endorsed the statement. However, in point 3 he felt that it was not desirable to single out the market-access issue. It would be more appropriate to emphasize that the acceding country or territory would have to observe all rights and obligations under the GATT rules and disciplines.

The Council took note of the statements.

16. Procedures for issuance and derestriction of GATT documents

The Chairman reported that substantial progress had been made in the informal consultations entrusted to Mr. Szepesi, Chairman of the CONTRACTING PARTIES with regard to procedures for issuance and derestriction of GATT documents. Nevertheless more time was needed to reach agreement on the text of a draft Decision. Mr. Szepesi therefore intended to pursue consultations with a view to submitting a draft Decision at the Fiftieth Session of the CONTRACTING PARTIES.

The representative of the United States thanked all delegations which had been working on the project to improve GATT procedures for issuance and derestriction of documents, and appreciated the sincerity of their effort. The broad support for enhancing the transparency of GATT had been encouraging. Unfortunately the effort so far had fallen short of the objective as seen by his delegation. He believed that the effort should now be directed mainly with a view to future practice in the WTO, since his delegation believed that it was essential to get the WTO off to a fresh start, free of some of the recognized shortcomings of the GATT. The United States had made its concerns about the issue of transparency known in the past, including at previous Council meetings when it had sought more openness. Greater transparency could be achieved in two main ways. One was to be selective in designating documents subject to derestricted distribution or by speeding up derestriction. The other was to allow more outsider access to proceedings. He said, that given the widespread reticence to move ahead on the latter approach, how the parties addressed the question of the handling of WTO documents, became crucial for its credibility. Efforts so far had concentrated on improving timetables for the derestriction of GATT documents. While progress in this area could be useful, it was necessary to question whether pervasive/presumptive restriction of documents was really in the organisation's interest. He believed that serious consideration should be given to a more liberal policy. His delegation looked forward to further work on this matter with the Chairman of the CONTRACTING PARTIES, and hoped that the progress made would be used to further the work of the WTO Preparatory Committee, including the Sub-Committee on Trade and Environment.

The Council took note of the statements.

17. Council Working Practices
- Treatment of "Other Business" items

The Chairman drew attention to the draft statement he had circulated on the question of the treatment of "Other Business" items. The draft statement was the outcome of the informal consultations he had conducted at the request of a number of delegations. In the absence of any objection from delegations, he read out the statement, set out below:

"At the meeting of the Council on 16-17 June 1993, the Chairman made a statement containing certain proposals designed to expedite the conduct of Council business which was duly noted by the Council (C/M/264). One of the matters addressed by those proposals was the conduct of discussions under "Other Business".

In order to avoid unduly long debates under "Other Business" the following was proposed by the Chairman in his statement:

"(a) the Chairman would remind delegations at each Council meeting that discussions on substantive issues under "Other Business" should be avoided, and that the Council should limit itself to taking note of the announcement by the sponsoring delegation, as well as any reactions to such an announcement by other delegations directly concerned;

(b) the Council Minutes, unless explicitly requested by the delegations concerned, would not reproduce at length the statements made under "Other Business", but would be limited to an enunciation of the issues raised and a summary of the comments made;

(c) delegations should provide the Chairman or the Secretary of the Council and other delegations directly concerned, whenever possible, advance notice of "Other Business" items."

Since then certain Council meetings have been unexpectedly delayed because of excessively long discussions under "Other Business". A number of delegations have expressed the view that, while respecting the right of delegations to raise urgent matters of importance under "Other Business", further effort should be made to discipline the conduct of such discussions and to ensure that the Council can conclude its work in an expeditious and timely fashion. Therefore while maintaining the proposals mentioned above which were accepted by the Council last year, I wish to propose that the following additional procedures be adopted:

(i) the first item of business at a Council meeting would be statements by the Chairman which currently are made under "Other Business";

(ii) statements by delegations under "Other Business" should be limited to very short announcements;

(iii) exceptionally, when a delegation considers it must raise an extremely urgent matter of importance, the Chairman will allow a substantive statement to be made on the matter, which should nevertheless be limited to no more than five minutes; the delegation raising the matter, if it so wishes, may circulate for the record a longer statement in document form;

(iv) all efforts should be made to avoid an extensive debate on any question under "Other Business";

(v) if the regular Agenda of the Council is exceptionally long and the meeting runs out of time before "Other Business" items have been taken up, the Chairman may defer consideration of these items to the next meeting of the Council, unless a delegation requests otherwise.

These procedures, if accepted, will be applied on an experimental basis and may be revised as necessary."

The Council took note of the statement.[9]

18. EEC - Regulations affecting sale of imported bovine semen in Italy

The representative of Canada, speaking under "Other Business", said that contrary to written assurances provided by the European Communities following the Article XXIII:1 consultations held last February, the Italian holstein association called ANAFI had been effectively limiting imports of Canadian bovine semen by using a technical threshold, not applied to Italian bulls. This would have the effect of reducing Canadian exports by more than 50 per cent over the coming months. ANAFI, acting on behalf of the Italian authorities, had refused to accord, in the Italian herd book, the progeny of Canadian bulls not meeting a certain genetic standard, which had been set arbitrarily and was stricter than that applied domestically. Canada had requested the Community to intervene with the Italian authorities, and expected the restoration of Canada's full and unrestricted access to this sector of the Italian market.

The representative of the European Communities said that his delegation had listened carefully to the Canadian statement, and the Community was willing to consider this matter with the Italian authorities, in order to find a solution to this question.

The Council took note of the statements.

19. Japan - Customs duties, taxes and labelling practices on imported wines and alcoholic beverages

The representative of the European Communities, speaking under "Other Business", said that seven years ago in 1987, Brussels had believed it had won a victory with respect to the discriminatory tax treatment given to Community alcoholic beverages in the Japanese market.[10] Although several measures had since been introduced in Japan in order to remedy the fiscal distortions that hampered the interests and exports of Community products, a number of Community beverages continued to be subject to strong tax discrimination in the Japanese market. At present this discrimination amounted to between two to six times the tax applied to shochu. Under these conditions the Community believed that the situation was contrary to the key elements contained in the 1987 Panel conclusions. The Community, therefore, reiterated its request to Japan to take appropriate measures as soon as possible to remedy the discriminatory situation and thus apply the 1987 Panel conclusions. He believed that the appropriate time for this could be the preparation of the 1995 budget in Japan.

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[9]The statement will be circulated in C/COM/5.

[10]BISD 34S/83.

The representative of Japan said that since the adoption of the Panel report, various measures had been taken by his country. Japan therefore believed that the conclusions of the Panel report had been effectively implemented. Noting that there was a marked difference between shochu and whisky he recalled that in May 1994, Japan had revised the liquor taxation law, which had further reduced the tax difference between shochu and whisky.

The Council took note of the statements.

20. Customs Unions and Free Trade Areas: regional agreements

(a) Examination of the current trend towards regionalism

The Chairman, speaking under "Other Business", recalled that at the Forty-Eighth Session of the CONTRACTING PARTIES, Switzerland had drawn attention to the increasing trend towards regionalism, stating that the context in which it had been inscribed as well as the new forms it had taken suggested that the phenomenon no longer corresponded to the circumstances foreseen at the time Article XXIV had been drafted. Switzerland had suggested that contracting parties turn their attention to this matter, following the Uruguay Round, particularly in view of the fact that working parties on such agreements rarely arrived at a definite conclusion regarding their GATT consistency. The Chairman also recalled that at the Forty-Ninth Session the representative of Switzerland, supported by Hong Kong and Japan, proposed that consultations be held to initiate a process for an examination of the current trend towards regionalism. Since the Council had not considered this matter due to the pressure of preparatory work on the transition from GATT to the WTO, he therefore recommended that this matter be taken up the following year either by the GATT Council or, if considered appropriate at the time, by the General Council of the WTO.

The Council took note of this information.

(b) Biennial calendar for reporting on regional agreements

The Chairman drew attention to the fact that the requirements for biennial reporting on regional agreements had not been followed for quite some time, and that a calendar for such reports had not been established by the Council since 1987. He recalled that Ambassador Weekes, Council Chairman in 1990, had raised this issue at the Forty-Sixth Session of the CONTRACTING PARTIES, and his successors had done the same at subsequent Sessions. However, due to the pressure of work arising from the Uruguay Round and the transition from GATT to the WTO, the Council had been unable to take up this matter. He therefore recommended that this matter be taken up the following year either by the GATT Council or, if considered appropriate at the time, by the General Council of the WTO.

The Council took note of this information.

21. Appointment of presiding officers of Standing Bodies

The Chairman, speaking under "Other Business", recalled that at their Forty-Fourth Session in 1988, the CONTRACTING PARTIES had taken note of the Council Chairman's suggestion that "in future, at the first Council meeting each year, on the basis of a consensus which would have emerged from consultations, the Council Chairman should propose the names of presiding officers of the Committee on Balance-of-Payments Restrictions, the Committee on Budget, Finance and Administration and the Committee on Tariff Concessions for the current year. This would not preclude the re-appointment of an incumbent" (SR.44/2). Consultations, open to all delegations to ensure transparency, would precede such proposals. In the light of this, he announced that such consultations would be carried out by his successor, which would have to take into account pending decisions on the future work under GATT 1947, once the WTO came into existence. The Secretariat, in consultation with

the next Council Chairman, would be required to make the necessary arrangements for such consultations, which would be open to all delegations.

The Council took note of this information.

22. Trade Policy Review Mechanism - Reviews under 1994 and 1995 programmes

The Chairman noted that the programmes of Trade Policy Reviews, which had previously been circulated, were still subject to some revision. Revised schedules of remaining reviews for 1994 and reviews to be held under the 1995 programme would be circulated shortly and a statement on the proceedings in the Trade Policy Review Mechanism up to the Fiftieth Session of the CONTRACTING PARTIES would be included in his presentation of the report of the Council.

The Council took note of this information.

23. Report of the Council (C/W/822)[11]

The Secretariat had distributed in C/W/822 a draft of the Council's report to the CONTRACTING PARTIES on matters considered and action taken by the Council since the Forty-Ninth Session. The Chairman stressed that the report did not reflect the positions of various delegations, since the respective Council Minutes already contained such information and remained the record of the Council's work.

The Chairman proposed that the report, together with the appropriate additions that the Secretariat would make to include matters discussed at the present meeting, be approved. It would be distributed and forwarded to the CONTRACTING PARTIES for consideration at their Fiftieth Session.

The Council so agreed.

[11]And Corr.1 for the English text only.