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GENERAL AGREEMENT ON TARIFFS AND TRADE

COUNCIL
26 March 1980

MINUTES OF MEETING

Held in the Centre William Rappard on 26 March 1980

Chairman: Mr. G.O. MARTINEZ (Argentina)

Subjects discussed:

1. Consultation on Trade with Hungary - Report of the Working Party (L/4930)

The Chairman recalled that the Council had established a Working Party in July 1979 to conduct the third consultation with the Government of Hungary provided for in the Protocol of Accession.[1/] The Report on the consultation had been circulated to contracting parties in document L/4930.

Mr. Farnon (New Zealand), Chairman of the Working Party, introduced the Report and said that the Working Party had carried out the consultation in accordance with the plan set out in Annex B of the Protocol of Accession. The Working Party had noted that discriminatory quantitative restrictions inconsistent with Article XIII of the General Agreement were still maintained against exports from Hungary by the EEC, Norway and Sweden. He said that the Working Party had discussed at length the question of removing these restrictions as well as the question of export incentives, subsidies and fiscal matters. He added that the Working Party had also examined Hungary's imports in general and certain aspects of its import régime in particular, such as the status of the global quota on consumer goods, and the criteria used in the licensing system. The Working Party had furthermore considered matters relating to bilateral payments agreements, the publication of trade regulations, the import turnover tax and export prices and tariffs.

The Council adopted the report.

2. Agreement between Finland and Poland - Report of the Working Party (L/4928)

The Chairman recalled that in May 1978 the Council had established a Working Party to examine the Agreement between Finland and Poland. He said that the Working Party had carried out its examination and had circulated its Report in document L/4928.

[1/] BISD 20S/3

Mr. Barthel-Rosa (Brazil), Chairman of the Working Party, introduced the Report and said that there had been discussion in the Working Party on a number of issues related to the Agreement, including trade coverage, import duties, rules of origin, quantitative restrictions and other measures. However, the Working Party had been unable to reach any unanimous conclusions as to the compatibility of the Agreement with the provisions of the General Agreement. It had been agreed to reconvene at a future date; but no agreement had been reached on an appropriate time for such a future meeting. He said that one member of the Working Party felt that such a meeting should not take place before a working party had terminated a thorough examination of the Polish customs tariff. Some other members believed that it would be desirable to have more information concerning the Polish customs tariff and its rôle in order to help the Working Party to continue its examination of the Agreement. He said that one of the parties to the Agreement shared the opinion of certain other delegations that an examination of the Polish customs tariff lay outside the mandate of the Working Party and that it was not pertinent to the question at hand, especially in view of the fact that the Polish customs tariff had been published. The Working Party had therefore agreed to submit these matters to the Council for appropriate action.

The Council agreed that the Chairman of the Working Party, in consultation with the delegations concerned, should fix an appropriate time for a future meeting of the Working Party, and adopted the Report.

3. Textiles Committee - Report on the Annual Review (COM.TEX/15)

The Chairman recalled that in accordance with Article 10:4 of the Arrangement Regarding International Trade in Textiles, the Textiles Committee was required to make an annual review of the operation of the Arrangement and to report to the Council. The current Report was before the Council in document COM.TEX/15.

The Director-General, as Chairman of the Committee, introduced the Report and said that the Committee had carried out the review of the second year of the extended Arrangement at its meeting held on 11 December 1979. The Committee had been assisted in this review by a report from the Textiles Surveillance Body on its activities during the period from 21 October 1978 to 30 November 1979, contained in document COM.TEX/SB/519.

He said that the Committee had asked the Textiles Surveillance Body to prepare a catalogue of all cases where the provisions of agreements entered into involved variations from the provisions of Annex B of the Arrangement. It had further been agreed that a Working Group of the Textiles Committee should carry out a detailed examination of adjustment measures with reference to the objectives set out in paragraph 4 of Article 1 of the Arrangement. The two reports thus prepared would be examined by the

Committee at a meeting to be held some time in July 1980. He added that following the Committee's decision, the Working Group on Adjustment Assistance Measures had met on 12 February 1980 and had decided to proceed further with the task entrusted to it by setting up a small Technical Sub-Group. Following the meeting of that Sub-Group on 12 March 1980, two airgrams (GATT/AIR/1611 and 1612) had been sent out. He stressed the need for the provision of the information called for in the two airgrams as soon as possible and, at the latest, within the time-limit prescribed therein (15 May 1980). The Sub-Group had agreed to reconvene shortly thereafter to continue its work.

He said that the Committee had also decided to meet again in October 1980 to conduct the major review of the extended Arrangement in the light of its operation in the preceding years, and also to begin discussion on the future of the Arrangement beyond its current four-year extension.

The representative of India stressed the importance of the forthcoming July 1980 meeting of the Textiles Committee, which would provide useful input for the major review.

The Council emphasized the need for the contracting parties to supply the information requested in the airgrams as soon as possible, and adopted the Report.

4. Tariff matters - Introduction of a loose-leaf system for the schedules of tariff concessions (L/4821 and Adds. 1 and 2, C/107/Rev.1, C/M/138)

The Chairman recalled that at its meeting on 29 January 1980 the Council had established the Committee on Tariff Concessions and had authorized the Chair to nominate the Chairman of that Committee. He said that he was now in a position to inform the Council that Mr. Dugimont (European Communities) had been nominated Chairman and Mr. Hussain (India) Vice-Chairman of the Committee.

He also recalled that in January 1980 the Council had begun consideration of a proposal put forward by the Director-General for the introduction of a loose-leaf system for the schedules of tariff concessions. Following the discussion, the Council had agreed to postpone a decision on this matter until its next meeting; and delegations had been urged in the meantime to clarify any problems through consultations. He said that these consultations had been carried out in the Committee on Tariff Concessions at its initial meeting on 28 February 1980. In the light of the discussions in the Committee, the Proposal by the Director-General had been slightly revised and was now before the Council in document C/107/Rev.1.

Mr. Dugimont, Chairman of the Committee on Tariff Concessions, introduced the revised proposal and said that the question of introducing a loose-leaf system for schedules of tariff concessions had been one of the major items on the agenda of the Committee meeting. As a result of its discussions the Committee had revised certain sections of the Director-General's proposal, as reflected in document C/107/Rev.1. From these discussions there had also emerged a general understanding to proceed speedily with the establishment of such a system. Although some delegations had explained their concern in respect of certain problems, he believed that a pragmatic approach would lead to satisfactory solutions. He said that one of these delegations, that of Australia, had stated that it would not oppose a consensus but would participate on a best-endeavour basis. He added that another delegation had clarified its position in respect of paragraph 1 of the Annex of document C/107/Rev.1 by pointing out that the time-limit of three months would start from the moment when the domestic legal procedures had been completed. He said that the Committee had shared this interpretation on the understanding that it would not preclude certain delegations from notifying changes before domestic procedures had been completed. He said that in view of the interest shown by the delegations present, the time had now come to start work on the actual introduction of the loose-leaf system for the schedules of tariff concessions.

The representative of India said that in view of the time frame envisaged in the Director-General's proposal, due flexibility should be provided for developing countries to permit them to adjust to the loose-leaf system.

The representative of Sweden said that it was essential to achieve uniformity and better discipline in the area of tariff schedules in order to increase transparency. He said that there had been a detailed discussion on the format of the loose-leaf system in the Committee, and that it was his understanding that in deciding on the system, the exact format would be worked out taking this discussion into account. He stressed that uniformity was a major purpose in this exercise, which required a more detailed outline of the format than the one contained in the Annex to document L/4821, Add.1.

The representative of Australia said that in principle he supported the concept of the loose-leaf system for schedules of tariff concessions. The proposal as set out, however, would involve major policy and practical problems for Australia in respect of the operation and administration of its customs tariff. He said that his country would nevertheless participate in the new system on a best-endeavour basis, which would incorporate the following points: (1) The tariff item number and description in the new schedule would be based on the CCCN, and within this a full, precise and comprehensive description of the product would be given. Ex-items would be reported in many cases . (2) No new obligations would be accepted in respect

of changes to customs tariffs which did not affect GATT concessions. Certification would only be followed where the essential character of a concession for GATT schedule purposes had been affected. (3) On the question of recording previous initial negotiating rights, Australia continued to believe that a definitive position needed to be taken by the CONTRACTING PARTIES on the question. (4) Any inclusion of previous or superseded initial negotiating rights was without prejudice to their legal status. (5) On the listing of "other charges and duties", Australia would be recording the date on which the present concession was established.

The representative of New Zealand recalled his statement at an earlier meeting of the Council in respect of the difficulties New Zealand had in accepting the system as proposed. He said that in the meantime the problems had been discussed extensively with other delegations. In the light of the revised proposal, which made it clear that the aim of paragraph 5 was to set out objectives rather than commitments which New Zealand would endeavour to meet, his delegation could support the proposal for the establishment of the loose-leaf system.

The representative of Japan raised a point with respect to the proposed procedures for notification and certification of schedules. He referred to document L/4821/Add.2 which provided that in the case of some countries, for constitutional reasons, the certification will contain not only the approved loose-leaf pages but also the text of each rectification or modification spelled out in the form originally used to describe the changes submitted by them. He said that this provision was applicable to Japan and that his delegation would consult with the secretariat in the event that certification would be prepared in respect of Japan's Schedule. His delegation endorsed the proposal as presented in document C/107/Rev.1.

The Council adopted the proposal on the Introduction of a Loose-leaf System for the Schedules of Tariff Concessions (C/107/Rev.1), and adopted the decision on the Procedures for Notification and Rectification of Schedules of Tariff Concessions.

5. India - Auxiliary Duty of Customs - Request for extension of waiver (L/4958, C/W/339)

The Chairman recalled that by the Decision of 15 November 1973 (BISD 20S/26) the CONTRACTING PARTIES had waived the application of the provisions of Article II of the General Agreement to the extent necessary to enable the Government of India to apply the auxiliary duty of customs on certain items included in its Schedule XII. The waiver, which had been extended a number of times, was due to expire by 31 March 1980. He said that the delegation of India had now submitted a request for a further extension of the waiver (L/4958).

The representative of India said that the special circumstances which had obliged the Government of India to maintain the auxiliary duty of customs the previous year continued to exist. Despite various measures that were proposed to raise additional revenue, the resource situation continued to be increasingly difficult. In the financial year 1980-81, the total receipts of the Central Government were estimated at Rs 189,800 million, whereas the total expenditure would amount to Rs 202,150 million, resulting in an overall budgetary gap of Rs 12,350 million. This underlined the necessity for mobilizing additional resources to the maximum extent possible for essential developmental activities and for covering increased costs of essential imports, particularly those of imported crude oil and petroleum products. He said that the conditions of the levy of the auxiliary duty would remain unchanged. He also stated that earlier exemptions had been maintained, but his Government had also exempted four GATT bound items from the levy of auxiliary duty with effect from 4 March 1980, as indicated in document L/4958. These additional exemptions would be continued for the financial year ending 31 March 1981. He furthermore pointed out that the incidence of auxiliary duty on items bound in the GATT had been maintained at the lowest possible levels and, except for two items, continued to be either nil or 5 per cent. His delegation considered that these duties would not have an adverse effect on imports into India within the framework of India's obligations under GATT. He stressed that the auxiliary duty of customs was not intended to be a measure of protection designed to restrict imports. India stood ready to consult with any contracting party which considered that serious damage to its interest was caused or imminently threatened by the application of the auxiliary duties.

The Council approved the text of the draft decision (C/W/339) and recommended that the decision be adopted by the CONTRACTING PARTIES by postal ballot.

6. United States - Agricultural Adjustment Act (L/4925)

The Chairman recalled that under the Decision of 5 March 1955 (BISD 3S/32) the CONTRACTING PARTIES were required to make an annual review of any action taken by the United States under the Decision on the basis of a report to be furnished by the Government of the United States. He said that the twenty-second annual report by the United States had been circulated in document L/4925.

The representative of the United States stated that during the course of the Multilateral Trade Negotiations (MTN), the United States had made concessions which would increase the imports of cheese and chocolate crumb. The necessary administrative measures to implement these concessions by 1 January 1980, taken in the last quarter of 1979, included a proclamation by the President of the United States giving effect to the cheese and chocolate crumb quota increases and the revision of the Department of

Agriculture licensing regulations. He explained that the effect of these changes was to facilitate the maximum utilization of the quotas. The changes included new rules which opened licensing possibilities to firms which could not show a record of importations in the base period for the quota concerned. The licensing requirements for chocolate crumb had been eliminated; and Australia and New Zealand had been added to the list of eligible supplying countries. He said that although the cheese "pricebreak" system had been terminated, full account had been taken of the previously uncontrolled trade in arriving at the quota amounts. This would allow an increase in the total amounts imported under quota. He added that soft ripened cheese and various other speciality cheeses remained free of quotas.

The representative of New Zealand noted that it was just over twenty-five years since the CONTRACTING PARTIES had agreed to a United States request for a waiver from Articles II and XI of the General Agreement in respect of Section 22 of the United States Agricultural Adjustment Act. Under this waiver the United States was obliged to furnish a report which, in New Zealand's view, should be the subject of rigorous discussion and analyses by the CONTRACTING PARTIES in order to ensure that the decisions made by the CONTRACTING PARTIES remained appropriately related to GATT provisions. He recalled that for a number of years after the waiver had been granted it had been the practice to consider the annual report by the United States by means of a Working Party. Considering that ten years had passed since the most recent working party review, and in the light of the many changes in the United States farming industry and in international trade during that time, he proposed that a working party be set up to review the twenty-second annual report.

He said that the latest report revealed that since the last Working Party Report in 1970 (L/3368), United States consumption of dairy products generally (cheeses excepted) had fallen, while at the same time domestic production had remained stable. As a consequence, surpluses had continued to exist despite the indication in the terms of the original GATT waiver that the United States would seek a solution to the problem of dairy product surpluses. It was evident to his delegation that the United States had made little effort over the twenty-five year tenure of the waiver to provide for improved access for imports of dairy products. Quota restrictions overall had been intensified, resulting in a reduction of New Zealand's relative share of the United States market. The United States should therefore be asked to explain in detail the direction in which its policies were moving on this issue. In his view, a working party was the most appropriate way in which a United States response to this question could be obtained.

The representative of Australia supported the proposal by New Zealand to set up a working party. He said that since the waiver had been granted twenty-five years ago the United States dairy sector had continued to be characterized by extensive domestic support measures and by the accumulation of dairy surpluses. He acknowledged that the United States was not alone in pursuing restrictive policies in regard to its dairy sector, and that most of the major dairy consuming countries maintained similar restrictive import régimes and had refused to negotiate any meaningful dairy concessions in the MTN.

The representatives of Argentina and Canada also supported the proposal by New Zealand to set up a working party.

The Council agreed to set up a Working Party with the following terms of reference and membership:

Terms of reference:

"To examine the twenty-second annual report (L/4925) submitted by the Government of the United States under the Decision of 5 March 1955, and to report to the Council."

Membership

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

Chairman:

The Chairman of the Council was authorized to nominate the chairman of the Working Party in consultation with the delegations principally concerned.

7. Documentation on Non-Tariff Measures - Proposal by the Director-General (C/110)

The Chairman recalled that at their thirty-fifth session in November 1979 the CONTRACTING PARTIES had agreed that in the context of the continuation of the process of trade liberalization the secretariat should be requested to update the relevant information. He said that in this connexion the Council had before it a Proposal by the Director-General in respect of documentation on non-tariff measures, contained in document C/110.

In introducing his proposal, the Director-General said that it had to be seen in conjunction with items 4 and 8 of the Council agenda relating to tariff matters and to notification and surveillance, respectively. He

explained that the proposal contemplated essentially that the Inventories of Non-Tariff Measures covering trade in both agriculture and industry, while maintaining their basic structure, be put on a revised basis. These inventories had served a very useful purpose in the MTN, but as the very result of those negotiations, they had now become unreliable and contained a host of obsolete material. He said that the basic elements of his proposal had been the subject of a number of consultations which had reflected broad agreement that the time had come to begin the updating process.

He said that the details of the procedure which contracting parties would be expected to follow were outlined in paragraph 4 of the document. These foresaw an initial stage which was covered in items (a)-(g) of that paragraph, the aim of which would be to arrive at a new basic documentation. This would be followed by a subsequent stage, to which reference was made in sub-paragraph (j) and to which the procedure described in items (d) to (g) would equally apply. In this updating process, the secretariat would - as in the past - remain in close contact with delegations and would, for example, refrain from making entries into the inventories in cases where the existence of a notified measure was challenged and bilateral consultations between the contracting parties concerned were still going on.

He added that in line with past practice, the secretariat would stand ready to provide any technical assistance which developing countries might require. The secretariat would take into account in the actual updating process any material points resulting from the Council's discussions on this item.

The representative of Japan recalled that, in agreeing to the GATT Work Programme at the last session of the CONTRACTING PARTIES and, in particular, that part which concerned the harmonization of trade, his delegation had stated that it should be preceded by sufficient preparation, such as the updating of valuable information and data. In welcoming the Director-General's proposal, his delegation attached particular importance to the need for finalizing the revised documentation after a process of verification. His delegation also understood that the proposal, in particular its paragraph 4, had been drafted with this clearly in view. His delegation therefore supported the proposal in document C/110.

The representative of the United States said that contracting parties would also want to look at the structure of the inventory to determine whether the current categories were still sufficient to cover the notifications or whether new categories would be desirable, for example to cover service-related measures, investment incentives and performance requirements.

The representative of India welcomed and supported the proposal made by the Director-General. He said that his delegation expected that in the post-MTN period the nature and content of the inventory would be retained in order to keep its complete and global nature as a point of reference for those contracting parties which, at this stage, were not signatories of certain codes. He also suggested that the secretariat compile lists of notifications submitted by developing countries to enable them to confirm which ones they wanted to maintain, amend or delete.

The Council agreed on the updating of the Inventories of Non-Tariff Measures according to the procedure set forth in paragraph 4 of document C/110, and requested the secretariat to proceed along the lines indicated in that document, taking into account the material points made by delegations in the discussion.

8. Notification and surveillance - Proposal by the Director-General (C/111)

The Chairman recalled that at their thirty-fifth session in November 1979 the CONTRACTING PARTIES had adopted an Understanding regarding Notification, Consultation, Dispute Settlement and Surveillance (L/4907). He said that in this connexion the Council had before it a Proposal by the Director-General in respect of Notification and Surveillance, contained in document C/111.

In introducing his proposal, the Director-General said that a number of informal consultations had been held on this subject and that he had attempted to strike a balance between different views expressed during these consultations and to present a pragmatic proposal designed to get the work started. He drew the attention of the Council to the calendar for regular notifications in Annex III of the document and said that there were some regional agreements, such as the Bangkok Agreement and the ASEAN Preferential Trading Arrangements, which had not been included pending further discussion in the Committee on Trade and Development regarding the implementation of the notification provisions of the Enabling Clause (L/4903). For some of the items that did appear in the calendar, the dates indicated could also be subject to change as a result of whatever decision could be taken in regard to the Enabling Clause. He also said that the date relating to the Turkish stamp duty was October instead of February.

In conclusion, he reminded the interested delegations that, in accordance with paragraph 25 of the Understanding regarding Notification, Consultation, Dispute Settlement and Surveillance, the technical assistance services of the secretariat were available to developing countries in connexion with any of the matters dealt with in his proposal.

The representative of Canada said that throughout the MTN Canada had attached considerable importance to a general improvement in the GATT dispute settlement process. His delegation believed that progress had been made toward that end, through provisions in the various MTN Agreements, and through the Understanding regarding Notification, Consultation, Dispute Settlement and Surveillance. He said that the Canadian delegation could accept the Director-General's proposal with respect to paragraph 2 of the Understanding, but wished to clarify three points relating to paragraphs 3 and 24 thereof, as follows. First, Canada agreed that arrangements at this stage should of necessity be experimental. While noting that some duplication would be unavoidable initially, every effort should be made to avoid it. Second, Canada agreed that it made good sense to consider paragraphs 3 and 24 as an integral package, as in the Director-General's proposal, taken together with paragraph 6(d), and that the review process should simply flow from a compilation of notifications. His delegation did not want to accept such an inference at this time, however, when it was not clear as to how such a review would relate to other reviews of developments of trade and trade measures within the GATT. Third, his delegation pointed to the element within paragraph 24 of the Understanding, on which it placed importance, and which seemed to call for a function not otherwise or elsewhere served in the GATT in a broad overview. He referred to the specific references that attention be paid to developments which affect rights and obligations under the GATT and to measures which have been subject to consultation, conciliation, or dispute settlement procedures. It was his delegation's understanding that from time to time the contracting parties should stand back in order to assess how well the system was working in dealing with trade problems and disputes. He felt that such a function, as it related to the interests of less-developed contracting parties, would play a different, but complementary rôle to functions now agreed within the Committee on Trade and Development, and under Part IV of the General Agreement. He recognized, however, that "a regular and systematic review of developments in the trading system" was a broad mandate, and he did not want to preclude a number of other elements that might be incorporated, as the ideas on this matter further developed.

He said that with respect to actual modalities, his delegation supported the idea that, initially at least, the Council should conduct the reviews at special sessions. The frequency of the reviews and the contents of the secretariat's factual note should be looked at in due course, in the light of further reflection and informal consultations.

The representative of Korea expressed support for the Canadian statement. He felt that the procedure should be preliminary and experimental and that it should be modified in the course of time. He supported the adoption of the proposal.

The Council adopted the proposal on Notification and Surveillance contained in document C/111, bearing in mind the statements made on its experimental nature. Contracting parties were invited to submit notifications in accordance with the calendar set out in Annex III of the document.

9. United States - Prohibition of imports of tuna and tuna products from Canada (L/4931, C/M/138)

The Chairman recalled that at the meeting of the Council of 29 January 1980 the representative of Canada had drawn attention to document L/4931 concerning the prohibition by the United States of imports of tuna and tuna products from Canada. He had expressed the hope that consultations between the two countries would make it possible to resolve the matter satisfactorily before the Council met again.

The representative of Canada referred to document L/4931 and said that written representation and bilateral consultations had not resulted in a satisfactory solution of this matter. His authorities therefore requested the immediate establishment of a panel to examine the compatibility with the GATT of the United States measure and to make recommendations and rulings as appropriate. It was his view that the United States action was contrary to the rules of GATT. He said that his authorities were particularly concerned that the United States measures were taken on grounds which had nothing to do with trade. Although the United States had indicated its readiness to offer compensation, his authorities held the view that this case represented an improper use of a trade measure and that the only appropriate solution would be the removal of that measure.

The representative of Peru supported the Canadian proposal for the setting up of a panel.

The representative of the United States said that this matter stemmed from the incompatibility between the domestic legislation of sovereign States. He explained that the United States maintained that tuna should be managed by international organizations and did not recognize that tuna was subject to the jurisdiction of coastal States in their fisheries zones. The Canadian legislation, on the other hand, called for the seizure of boats fishing in Canadian territorial waters. The United States Fisheries Conservation and Management Act of 1976 prohibited imports of fish and fish products from the fisheries concerned when United States boats were seized pursuant to a claim of jurisdiction which the United States did not recognize. He said that consultations had been held in Ottawa in 1979 in order to resolve the issue and that further efforts were now underway. Although his delegation did not see any need for a panel when his Government was still trying to solve the matter, it would not oppose the setting up of a panel.

The Council agreed to establish a panel with the following terms of reference:

> "To examine, in the light of the relevant GATT provisions, the matter referred to the CONTRACTING PARTIES by Canada relating to measures taken by the United States concerning imports of tuna and tuna products from Canada (L/4931), and to make such findings as will assist the CONTRACTING PARTIES in making recommendations or rulings as provided in Article XXIII."

The Council authorized the Chairman of the Council to nominate the chairman and members of the Panel in consultation with the two parties concerned.

10. EEC - Refunds on exports of sugar - Recourse by Australia (L/4833, C/W/341, C/M/135 and 138)

The Chairman recalled that at its meeting on 6 November 1979 the Council had adopted the Report of the Panel which had examined a complaint by Australia concerning refunds on exports of sugar by the EEC (L/4833). The Council had agreed that the matter should be discussed again at an early meeting in the light of the Report and taking into account the comments made at the meeting. The Council had reverted to this matter at its meeting of 29 January 1980, and had agreed that this item should again be considered at one of its future meetings. He said that this item had been placed on the agenda of the present meeting at the request of the delegation of Australia, at whose request the text of a draft decision had been circulated in document C/W/341.

The representative of Australia recalled that at the meeting of the Council on 29 January 1980 his delegation had announced its intention to seek a decision at this meeting of the Council on the action which the Council intended to take on the Report of the Panel, in the light of the Panel's finding that the EEC was in breach of Article XVI:1 of the General Agreement. The Report had stated that the EEC system was open-ended and therefore always constituted a threat of prejudice. He said that for the removal of the breach, the EEC was required to discuss with the CONTRACTING PARTIES the possibility of limiting the subsidization.

At his delegation's request, the secretariat had circulated in document C/W/341 a draft decision on this matter. He explained that the draft decision was a request to follow up the Panel's findings of prejudice and threat of prejudice in terms of Article XVI:1, found to have been caused by the EEC system of sugar export restitutions.

He said that the Panel had found that the EEC system for granting refunds on exports of sugar was to be considered as a form of subsidy which was subject to the provisions of Article XVI:1, that this system and its application had caused a significant increase in EEC sugar exports, that it had contributed to depress world sugar prices in recent years, that it did not comprise any pre-established effective limitations in respect of either production, price or the amount of export subsidies and therefore constituted a permanent source of uncertainty in the world sugar market and a threat of prejudice in terms of Article XVI:1, and, finally, that it contained no element that would prevent the EEC from having more than an equitable share of world export trade in sugar.

In the view of his authorities, the EEC now had a clear obligation under the GATT to discuss with the CONTRACTING PARTIES the possibility of limiting the subsidization. The Panel's findings of prejudice and threat of prejudice caused by the EEC system and its application were of importance not only to Australia, but also to a number of other contracting parties. This was evident in the Resolution unanimously adopted by the International Sugar Council in November 1979, following the adoption of the Panel's Report by the CONTRACTING PARTIES earlier that month, and from the statements made at previous GATT Council meetings not only by sugar exporting countries, but by contracting parties interested in the important principles involved in this case. For these reasons, the draft decision provided for discussions between the EEC and the CONTRACTING PARTIES, pursuant to Article XVI:1.

He recalled that at the meeting of the Council on 6 November 1979, on the adoption of the Panel's Report, the representative of the EEC had assured the Council that all possible measures that could be taken by the EEC would be implemented, and that certain measures had already been taken. The delegation of Australia had therefore looked forward to a positive response from the EEC during discussions on the Panel's Report. Instead, the representative of the European Communities had subsequently claimed that the conclusions of the Panel were delicately balanced and that it was therefore inappropriate to extract some elements from the conclusions in order to prove the EEC wrong. The delegation of Australia accepted that the conclusions of the Report were not fully developed on some issues, such as the question of whether or not the EEC was in breach of Article XVI:3. At the Council meeting on 6 November 1979 the delegation of Australia had noted that that finding was merely a statement that there was insufficient evidence before the Panel for it to reach a definitive finding, and had indicated that at some stage it would wish to pursue this question. However, with respect to the question of prejudice to Australia and the threat of prejudice under Article XVI:1, he felt that the Report was explicit and unequivocal, and that the EEC's obligations under that Article were equally explicit and unequivocal.

He noted the EEC argument that there were no facts and figures to show that its sugar policy caused harm to the world sugar market, and that it would only be prepared to consult and discuss on the basis of precise, quantifiable and quantified data. In his view, Article XVI:3 was irrelevant in the context of a debate on Article XVI:1. There was no reference in Article XVI:1, or in any annex to that Article, to the need for discussions pursuant to that Article to be based on precise, quantifiable and quantified data.

He stated that the Panel's Report was based on extensive statistical evidence and clearly concluded that the EEC system and its application had caused serious prejudice in that it had contributed to depress world sugar prices in recent years, and constituted a threat of prejudice in that it did not comprise any pre-established effective limitations in respect of either production, price or the amounts of export refunds. It was thus a permanent source of uncertainty in world sugar markets. He felt that these findings provided a sufficient basis on which the EEC was obliged to discuss with the CONTRACTING PARTIES the possibility of limiting its subsidies.

He recalled, furthermore, that the EEC had also questioned whether it was appropriate to call its policy into question at a time when sugar prices were rising, since there was no reason to believe that the export refund system had resulted in any depressive effect on the world sugar market over the past months and that there was no risk in the months ahead that the EEC exports of sugar would contribute to a downward trend in the world sugar market. It was the opinion of the Australian delegation that the question of the world sugar markets over the last few months and over the next few months was not an issue in the follow-up to the Panel's Report, since the volatile nature of the world sugar market was widely known and well documented. The Panel had found that the EEC sugar export system and its application constituted a permanent source of uncertainty in world sugar markets and there was no element in this system or its application which would prevent the EEC from having a more than equitable share of world export trade in sugar. He stated that it was this open-ended nature of the scheme which caused concern to sugar exporting countries, making it necessary for the EEC to discuss the limitation of its scheme.

He stressed that Australia regarded this as one of the most important issues to come before the GATT. The manner in which the Panel's findings were acted on would be an important test case as to whether effective international action could be taken within the framework of the GATT in the area of export subsidies on agricultural products. If the GATT could not effectively deal with this question, then the CONTRACTING PARTIES would again have to examine carefully the rôle of the GATT in this area. In conclusion,

he requested that the Council adopt the draft decision before it in document C/W/341. His delegation was looking forward to a positive response by the EEC in the discussions on its subsidy system at the next Council meeting.

The representative of the European Communities said that the EEC system of refunds on exports of sugar could not be considered as a breach of the provisions of Article XVI:1. The EEC had made the notifications required, a fact recognized by the Panel. Furthermore, Article XVI:1 contained a set of general principles while Article XVI:3 set out the specific obligations of the contracting parties. Therefore, he could not agree with the argument advanced by Australia that Article XVI:3 was irrelevant in this context. What was important was that the system should be in conformity with the provisions of Article XVI:3, so that exporters like the EEC would not obtain more than their equitable share in the world export trade of the product concerned. He pointed out that in connexion with the share in export trade, the Panel had ruled that the EEC share had increased somewhat in 1976 and 1977, but that this increase had not been unduly large. For 1978 the Panel had stated that it was not in a position to conclude that the EEC had obtained more than an equitable share in the world trade of this product in terms of Article XVI:3. With respect to the alleged prejudice to Australia's interests, the Panel had found (paragraph V(d)) "... that, despite the increase in Community exports in 1978, Community sugar exports had directly displaced Australian exports only to a limited extent and in a few markets ...". Furthermore, the entry into force of the International Sugar Agreement in 1978 had entailed a certain reduction in the sugar trade for its members. As to any benefits accruing to Australia under the General Agreement that might have been impaired, the Panel (paragraph V(i)) had not considered those questions because no detailed submission had been made by Australia. He considered that all these statements by the Panel were in favour of the EEC case. While the EEC had not changed its refund system, it had reduced the amount of refunds in the light of developments of world sugar prices. The strong increase of sugar prices since September 1978 tended to invalidate the Panel's assumptions in regard to a depressive effect on prices. Since the EEC had not acquired more than an equitable share of that market, it was difficult to understand how a particular and additional obligation in respect of prices could be based on Article XVI when Article XVI:3 did not even mention prices.

He noted that the Panel Report stated that the EEC refund system did not imply pre-established constraints on production, prices or the amounts of refunds, which constituted a factor of uncertainty for the world sugar market. His delegation was, however, of the opinion that there was nothing in the General Agreement which would make it compulsory for the EEC to establish efficient limitations to be applied to production, prices or the level of the refunds. He felt that other systems applied by contracting

parties to their own exports could also involve a degree of uncertainty for trading partners in so far as they did not contain pre-established constraints. What really mattered was the way in which the systems were implemented. It was therefore difficult to see the basis on which the CONTRACTING PARTIES could decide that the EEC system should be changed. Furthermore, the EEC recognized that the provisions of Article XVI:3 were an integral part of its policies. He said that this also applied to the MTN Agreement on Interpretation and Application of Articles VI, XVI and XXIII of the General Agreement, and particularly Article 10 thereof, which had entered into force on 1 January 1980. In his view, this should be considered as an element of reassurance by the delegation of Australia.

The representatives of Argentina, Brazil, Canada, Chile, Cuba, Hungary, India, Korea, Malaysia, New Zealand, Peru, the Philippines and United States supported the draft decision proposed by Australia in document C/W/341. In the course of some of these representatives' interventions, mention was made of the principle involved and of the need to demonstrate the effectiveness of the dispute settlement procedures in GATT, which were said to be of interest to contracting parties irrespective of their export interest in the particular product involved in the present case.

The representative of the European Communities raised certain questions on the meaning and significance of Article XVI, paragraphs 1 and 3, stating that paragraph 1 dealt with the general principles while paragraph 3 stated the obligations and rules in respect of exports of primary products. In respect of the threat of injury, if one had to rely solely on paragraph 1, it would not in his view be in line with the meaning of the whole of Article XVI, including the supplementary explanations given in the Agreement concluded in the MTN on the interpretation and application of that Article of the General Agreement. Therefore the draft proposal submitted by Australia should be subject to a careful examination, since a number of delegations considered this to be a test case to be used as a precedent not only in respect of the EEC but also in respect of other contracting parties maintaining similar systems with regard to their own exports. If the consideration of this case was to be based solely on the provisions of Article XVI:1, this would constitute a request addressed to the EEC to limit refunds. But this, in his view, would not reveal the totality of this case.

He therefore recommended that the Council avoid precipitous action with respect to the proposed decision and that it carefully examine all aspects of this case, which did not only concern sugar. His delegation had taken note of the statements made by other delegations, and would continue to notify the measures and to demonstrate that it was impossible to draw the conclusion that the refunds had the effect of reducing world sugar prices.

The representative of Australia expressed surprise that the draft decision, as presented by his delegation and supported by many other delegations, could not be accepted and that the EEC wanted instead to consider the linkage between paragraphs 1 and 3 of Article XVI. In his view, the EEC should explain how it disagreed with the Panel's findings. He said that the findings of the Panel's Report, as adopted by the Council, were quite clear. The EEC had been found to be in breach of Article XVI:1 and therefore had to consult with the CONTRACTING PARTIES under that Article.

The representative of the European Communities maintained that it was difficult to assert that the refund system on sugar had a depressive effect on world sugar prices. He said that the Panel's Report was adopted by the Council with reservations having been made on this point. The Council now had to consider a possible follow-up to the Report and to ensure that the conclusions drawn were in line with the provisions of the GATT. The Report had furthermore stated that the refund system did not contain any pre-established limits on production, prices and amounts of refunds, and that this constituted a permanent source of uncertainty in world sugar markets. He questioned whether the Council could accept such a finding as the General Agreement did not contain any specific obligation in respect of the establishment of such limits. He said that there existed a limitation to the amount of refunds in the provisions of paragraph 3 of Article XVI and in the MTN Agreement on the interpretation and application of Article XVI, but that no proof could be supplied that these limitations had not been respected by the EEC. It was therefore necessary that such arguments be carefully examined before a decision on this matter could be adopted by the Council.

The representative of Romania said it was his understanding that according to the representative of the European Communities it was not the system as such which should be criticized, and that market disruptions had not been caused by the system. He asked whether it would be possible for the EEC to agree to certain amendments to the draft decision.

The representative of the European Communities repeated that a decision should not be taken hastily on the basis of a draft circulated the previous day, regardless of whether a broad consensus might appear to exist, if this were based on a serious misunderstanding. He proposed that the Council reflect on this matter.

The Council took note of the statements made. In order to provide representatives more time for reflection, the Council agreed to revert to this matter at its next meeting.

The representative of Australia said that while it appeared that the EEC believed that the Panel had been incorrect in its findings in paragraph (g) of its Report, the findings had been adopted unanimously by the CONTRACTING PARTIES. In the light of the Panel's Report having been made in October 1979 and adopted shortly thereafter, his delegation agreed to a deferral of a decision on this matter until not later than the next meeting of the Council.

11. GATT Work Programme - Communication from New Zealand (L/4956)

The Chairman drew attention to a communication from the delegation of New Zealand for the consideration of the contracting parties (L/4956).

The representative of New Zealand said that New Zealand had been encouraged by the way in which GATT had developed over time and had adapted to change. These developments had meant that discussions and consultations in GATT fora, such as the Council, reflected clearly the real problems and concerns of the contracting parties and were of direct relevance to New Zealand's commercial interests. He said that an important objective of GATT should be to sustain and build on these developments, and in this respect GATT's Work Programme for the eighties would play an important rôle. The positive efforts of all contracting parties would therefore be required if GATT was to continue to grapple successfully, as in the past, with the tasks that lay ahead. One of these tasks would be the important job that GATT faced to cement in place the results of the Multilateral Trade Negotiations and to implement them progressively. However, he felt the need to draw the Council's attention to a widespread dissatisfaction with the post-MTN situation. When the results of the Tokyo Round had become clear, many countries had been disappointed at the limited gains they had achieved, particularly as they were among the most trade-dependent economies and included some who had been encouraged to join the MTN in the prospect of negotiating worthwhile results.

He recalled that at the thirty-fifth session a Work Programme had been endorsed which should guide the efforts of GATT in the near future. However, re-examination of that document (L/4484/Add.1, Annex VI) revealed that while the implementation of the results achieved in the Tokyo Round should be a priority task, there was no specific reference to the unfinished work of the MTN. It was New Zealand's contention that these missing elements should not be allowed to fall by the wayside. He pointed out that New Zealand's special concern was with agricultural trade, and noted that the MTN results in this area were limited, despite the prominence given to it by the Tokyo Round objectives. While welcoming the Agreements reached on dairy products and on bovine meat and while looking forward to taking part in the agricultural framework consultations, New Zealand could not accept that the work of these bodies represented

all that could be achieved for agriculture in the GATT. The Work Programme approved at the thirty-fifth session of the CONTRACTING PARTIES stated that the rôle of agriculture should be an important one within that programme. It was New Zealand's view that trade in agricultural products should be recognized within the GATT context as of ever-increasing importance and that the expansion of trade in agricultural resources should be the objectives of this area. GATT should work towards recognition of the principle of comparative advantage in agricultural trade, as it had done already for trade in manufactures.

His delegation proposed, therefore, that after another twelve or eighteen months the CONTRACTING PARTIES should reflect in the light of the progress made in implementing the MTN and in carrying out the other parts of the GATT Work Programme on what also needed to be done. At the end of this period it could be helpful to have a comprehensive stocktaking to seek to identify those elements which most warranted particular and detailed attention, for reasons which would include their particular importance to the process of trade liberalization and/or their comparative neglect in the Tokyo Round. He proposed the compilation of an inventory of obstacles to freer trade in agricultural products as one element of this exercise, and expected that other contracting parties would suggest their own areas of concern. He thought that this exercise could then lead to an agreement on a set of detailed priorities for future work reflecting the most pressing problems and the identification of possible action which could be taken to arrive at solutions for these problems. He said that New Zealand was not asking for action now but wanted contracting parties to reflect on these comments with a view to deciding at an appropriate time what measures could be taken to correct remaining imbalances and inequities. This, he felt, could give a clearer focus to GATT's work and prepare the ground for concrete action.

The representative of Jamaica supported the statement made by New Zealand. He said that there existed a decision by the CONTRACTING PARTIES at their last session calling for consultations in the area of agriculture. He felt that action on this should not be postponed for eighteen months. As to the implementation of the MTN results, he drew attention to document L/4905 and to page 18 of document C/111. In those decisions there was mention that the unity of GATT and the consistency of the GATT system should be maintained and that contracting parties should receive adequate information on developments relating to the MTN agreements and arrangements. He suggested that this matter might be dealt with at the next meeting of the Council, including the presentation of a report from the secretariat or the chairmen of the committees and councils on the rules of procedures adopted so that the Council would be informed of these decisions.]

The representative of Australia supported the New Zealand statement and said that the Council should revert to this matter again in the future.

The representative of Czechoslovakia also shared the views expressed by the representative of New Zealand, and said that quantitative restrictions should be included in the priority issues to be taken up in GATT.

The representative of Zaire considered that the New Zealand statement was opportune. He felt that the GATT should consider the problems of all contracting parties and should place special emphasis on co-operation among developing countries and on the problems of the least-developed countries.

The representative of Brazil also shared the views expressed by New Zealand.

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

12. Administrative and financial questions - Final position of the 1979 budget (L/4941)

The Chairman drew attention to document L/4941 containing a report on the Final Position of the 1979 Budget of the GATT.

He said that the status of outstanding contributions as at the end of the year 1979 was presented in Annex A of the report. Since January 1980 further contributions had been received from a number of contracting parties, resulting in a total amount of outstanding contributions as of today of Sw F 4,628,160.

The Chairman also referred to paragraph 7 of the report concerning certain excess expenditures over approved appropriations in certain sections of the budget.

The Council authorized the increase in the appropriations by transfers as set out in paragraph 7 of the report and approved the proposed financing.

13. Spain - Tariff treatment of unroasted coffee (L/4954)

The representative of Brazil, speaking under Other Business, recalled that this matter had been before the Council at previous meetings and that there had been bilateral discussions between his country and Spain, outside the purview of GATT. Referring to document L/4954, he informed the Council of the request of his authorities to hold Article XXIII:1 consultations with Spain on the treatment of Brazilian unroasted, non-decaffeinated coffee by Spain. The consultations were to commence the following day.

The representative of Spain confirmed the statement made by the representative of Brazil and said that his authorities had agreed to the consultations.

The Council took note that consultations between the two contracting parties were getting under way.

14. EEC - Imports of beef from Canada

The representative of Canada, speaking under Other Business, said that as part of the MTN settlement the EEC had established a 10,000 ton levy-free tariff quota for high quality grain-fed beef, included within the global tariff quota of 21,000 tons contained in the EEC Schedule of concessions annexed to the Geneva (1979) Protocol. The EEC had initiated the implementation of the 10,000 ton quota through its Council Regulation (EEC) No. 2957/79 of 20 December 1979 and Commission Regulation (EEC) No. 2972/79 of 21 December 1979). He explained that the latter Regulation provided for the allocation by types of beef for 1980. Paragraph (1) provided for 10,000 tons of grain-fed beef and outlined product specification with the notation "beef graded USDA choice or prime automatically meets definition". Annex II indicated only that USDA was the acceptable certifying authority for product specification.

He pointed out that despite oral and written representations to the EEC in which Canada had shown that it could certify, on shipment basis, that beef from Canada met the exact specifications required for access under this concession, the EEC had not amended its Regulations to allow for the entry of beef from Canada. He said that the effect of this was that Canada was excluded from the quota concession. Canada had made written representations on 21 September, 25 October and 21 December 1979 and oral consultations had been held on several occasions, without results. He said that Canada had not received a reply from the EEC on its written representations on the possible discriminatory application of the tariff quota and that the EEC had proceeded with implementing the Regulations, which would preclude the participation of Canada in the quota. It was Canada's view that this constituted a discriminatory application of an MTN-negotiated tariff concession as embodied in the EEC tariff schedule and that it was contrary to Article I of the General Agreement.

He said that the potential benefits which Canada had expected from this concession were an important element in the Canadian assessment of the balance of concessions between Canada and the EEC resulting from the MTN. If the matter were not resolved in the very near future, Canada would request the Council at its next meeting to establish a panel under Article XXIII:2 to investigate the matter.

The representative of the European Communities said that the consultations had not yet been completed due to force majeure and that the EEC intended to continue the consultations.

The Council took note of the statements.

15. EEC - Co-operation Agreement with Yugoslavia

The representative of the European Communities, speaking under Other Business, said that on 25 February 1980 a Co-operation Agreement had been initialled between Yugoslavia and the EEC. The goal of this Agreement was to intensify co-operation between the two parties in order to contribute to economic and social development and to reinforce the mutual links between them.

Measures were foreseen in the field of economic, technical and financial co-operation as well as in trade and in the social fields. He said that in the trade field the relevant clauses of the Agreement would enter into force on 1 July 1980, and were intended to promote trade between the EEC and Yugoslavia in the light of their respective levels of development. The Agreement would ameliorate the access of Yugoslav products to the EEC market. The Agreement had been set up for a period of five years; and before the expiry of the first phase, negotiations would commence for an extension of the Agreement. He said that a parallel Agreement had been drawn up between Yugoslavia and the European Coal and Steel Community. The texts of the Agreements would be notified to the CONTRACTING PARTIES as soon as they were available.

The Council took note of the statement.

16. Turkey - Economic Measures

The representative of Turkey, speaking under Other Business, said that his Government had taken a number of measures in order to improve the economic situation of Turkey, which was affected by the international economic situation, particularly in the field of energy, and by the balance-of-payments situation with its effects on productivity, employment and trade. One of the measures involved the reduction of the stamp duty from 25 to 1 per cent, and the other set of measures included the devaluation of the Turkish pound, the abolition of subsidies to State enterprises except in respect of certain raw materials and services, the reduction to zero of certain customs duties, a liberalization of the legislation and practices concerning foreign investment in Turkey and the promotion of oil exploration with special facilities accorded to foreign capital. He said that communications concerning these measures would be transmitted to the secretariat for circulation to the contracting parties.[1]

The Council took note of the statement.

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[1]Subsequently circulated in documents L/4960 and L/4964.

17. United States - Proposed Article XIX action for leather wearing apparel (L/4939)

The representative of the United States, speaking under Other Business and referring to document L/4939, informed the Council that on 24 March 1980 the President of the United States had decided to deny import relief to producers of leather wearing apparel. He said that his delegation would transmit to the secretariat a copy of this decision.

The Council took note of the statement.

18. Norway - Restrictions on imports of textiles from Hong Kong.

The representative of the United Kingdom, speaking for Hong Kong under Other Business, recalled that at the request of his delegation the Council had decided in July 1979 to set up a panel to examine Norway's Article XIX action on certain textile products. He said that the Panel's report has now been circulated in document L/4959. He noted that it contained a clear finding that Norway's Article XIX action was inconsistent with the provisions of the GATT and that, therefore, Norway should immediately either terminate its action or make it consistent with the provisions of Article XIII.

His delegation had been informed by the Norwegian authorities that they intended to extend their Article XIX action by six months from 1 July to 31 December 1980 (L/4692/Add.4). He said that his delegation felt very strongly that Norway should not take such a step before the Council had considered the Report of the Panel, and expressed the hope that Norway would reconsider its decision. He said that the Norwegian action had damaged Hong Kong's interests for more than two years, and that if, in the face of the Panel's findings Norway still decided to extend its Article XIX action on 1 April 1980, his authorities would feel compelled to reveal to the Hong Kong public the full facts of Hong Kong's case, including the findings made by the Panel. He noted that the trade loss suffered in the past two years as a direct result of Norway's actions exceeded by far the value of Hong Kong's imports from Norway.

The representative of Norway said that his delegation had taken note of the statement and that the Report of the Panel was under study by his authorities.

The Council took note of the statements.

19. EEC - Lomé Convention

The representative of the European Communities, speaking under Other Business, said that at the meeting of the Council on 16 November 1979 the EEC had informed the CONTRACTING PARTIES of the signatures affixed to the new Lomé Convention. He pointed out that the Convention had not come into force on 1 March 1980, as anticipated, so that the commercial provisions of the former Lomé Convention had been extended until the end of 1980. The parties to the Convention would notify the text of the new Lomé Convention as soon as possible.

The Council took note of the statement.

20. Japan - Restraints on imports of manufactured tobacco - Recourse by the United States

The Chairman recalled that at its meeting of 16 November 1979, the Council authorized its Chairman to take the necessary steps, in consultation with the two parties concerned, for the establishment of a panel with appropriate terms of reference, if the matter had not been settled satisfactorily on a bilateral basis by 31 December 1979.

He said that after consultations with the two parties concerned, a Panel had been established with the following terms of reference and membership:

"To examine, in the light of the GATT provisions, the matter referred to the CONTRACTING PARTIES by the United States relating to certain measures applied by Japan affecting imports of manufactured tobacco products (cigars and pipe tobacco) (L/4871), and to make such findings as will assist the CONTRACTING PARTIES in making recommendations or rulings as provided in Article XXIII."

Chairman: Ambassador H. Kröyer (Iceland)

Members: Mr. J. Jara (Chile)
Mr. A. Lautenberg (Switzerland).

The Council took note of the terms of reference and composition of the Panel.

21. Japan - Measures on imports of leather - Recourse by Canada

The Chairman recalled that at its meeting on 16 November 1979 the Council had agreed to establish a panel to examine the complaint by Canada and had authorized the Chairman to nominate the chairman and the members of the Panel in consultation with the two parties concerned.

He informed the Council that the Panel would have the following composition:

Chairman: Ambassador Ewerlöf (Sweden)

Members: Mr. Furulyas (Hungary)
Mr. Ostenfeld (Denmark).

The Council took note of the composition of the Panel.

22. Spain - Measures concerning the domestic sale of soyabean oil - Recourse by the United States

The Chairman recalled that at the meeting of the Council on 29 January 1980 it had been decided to establish a Panel to examine the complaint by the United States and had authorized the Chairman to nominate the chairman and the members of the Panel in consultation with the two parties concerned.

He informed the Council that the Panel would have the following composition:

Chairman: Ambassador Real (Uruguay)

Members: Mr. Besson (Switzerland)
Mr. Furulyas (Hungary).

The Council took note of the composition of the Panel.