GENERAL AGREEMENT ON

TARIFFS AND TRADE

RESTRICTED

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COUNCIL
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MINUTES OF MEETING

Held in the Centre William Rappard
on 16 June 1988

Chairman: Mr. A.H. Jamal (Tanzania)

1. Floating initial negotiating rights - Draft decision (C/W/550)

The Chairman drew attention to the draft decision on floating initial negotiating rights in document C/W/550, which had been examined and agreed upon by the Committee on Tariff Concessions at its May meeting, and referred to the Council for consideration and adoption. A decision by the CONTRACTING PARTIES had become necessary as a result of the introduction of the Harmonized System by a substantial number of contracting parties on 1 January 1988; other contracting parties would follow on 1 July 1988 and thereafter. He said that Council members would be aware that the Harmonized System had brought about a very significant change in the tariff nomenclatures and GATT schedules of the contracting parties concerned, with certain consequences for other contracting parties in relation to their position under Article XXVIII. As had been the case at the end of the Kennedy and Tokyo Rounds, this situation required a decision as outlined in C/W/550.

The representative of Jamaica noted that the draft decision provided for a determination on a mandatory basis, and asked which contracting party would be deemed to have acquired the rights initially negotiated with respect to Article XXVIII modification of schedules. He noted that paragraph 1 of Article XXVIII referred to "substantial interest" and that

the Interpretative Note Ad paragraph 1 said that "it would therefore not be appropriate for the CONTRACTING PARTIES to determine that more than one contracting party had a principal supplying interest." Other paragraphs referred to the importance of taking into account the share which would have been achieved in the absence of discriminatory quantitative restrictions maintained by the applicant contracting party. Thus he wanted to have clarified whether this draft decision in effect amended the General Agreement.

Mr. Lindén, Legal Adviser to the Director-General, said that the background to the draft decision in C/W/550 was that in the Kennedy and Tokyo Rounds, tariff reductions had been granted according to an across-the-board formula. Thus, no contracting parties had acquired initial negotiating rights to most of the concessions granted, as opposed to previous rounds where results had been achieved through bilateral negotiations which clearly identified initial negotiators. Decisions taken at the end of the Kennedy and Tokyo Rounds provided that the rights of an initial negotiator would accrue to the contracting party that had the main supplying rôle at the time of a particular renegotiation of a bound item. The principal supplier would thus have the same rights as the initial negotiator would have under Article XXVIII. As the concessions resulting from the Kennedy and Tokyo Rounds had come up for renegotiation in connection with the introduction of the Harmonized System, it had proved necessary to have a similar rule for the concessions resulting from those renegotiations. Accordingly, the draft decision in C/W/550 was not an amendment to Article XXVIII, but simply a definition of "initial negotiator" in the context of that particular type of negotiation. The substantial suppliers would not at all be affected by it. The draft decision was required because for many concessions there were no initial negotiators in the traditional sense, hence the reference to "floating" negotiating rights, which would remain "floating" until they became activated in a concrete case.

The Council took note of the statements and adopted the draft decision in C/W/550.

2. Uruguay import surcharges
- Request for extension of waiver (C/W/552, L/6352)

The Chairman recalled that by their Decision of 24 October 1972 (BISD 19S/9), the CONTRACTING PARTIES had waived the application of the provisions of Article II to the extent necessary to allow Uruguay to maintain certain import surcharges in excess of bound duties. The waiver had been extended a number of times and was due to expire on 30 June 1988. He drew attention to Uruguay's request (L/6352) for a further extension of the waiver, and to the draft decision in C/W/552.

The representative of Uruguay referred to the communication in L/6352 and said that the Interministerial Advisory Technical Committee, which was the inter-agency body with responsibility for adjusting Uruguay's schedule of tariff concessions, was continuing its work with a view to solving the

many technical problems involved in the complex transposition of the nomenclature. Views still differed considerably among the various agencies involved, because Uruguay's concessions had originally been granted on the basis of the Geneva Code and had to be adapted to the current NADI nomenclature, which was based on the Brussels nomenclature. The Committee had almost completed the transposition except for a small number of products. However, difficulties had delayed the work on conversion of concessions negotiated on the basis of specific and mixed duties, which were to become subject to ad valorem duties. Nonetheless, the Committee had completed a preliminary transposition of the duties that would be applicable, which was to be confirmed at the level of each participating agency. A study of the impact of the transposition was also being carried out. For these reasons his authorities were requesting an extension until 30 June 1989 of the authorization granted by the CONTRACTING PARTIES for the application of surcharges by Uruguay, at which time it was hoped that the transposition work would have been completed.

The representative of the United States said that his Government did not object to the requested extension of Uruguay's waiver, but would appreciate a best estimate of how much longer Uruguay believed it would be necessary. Very little was known about the relationship of Uruguay's current tariff régime to its original GATT obligations. The United States hoped that Uruguay would complete its work on the proposed new tariff structure in the near future and that a new schedule of GATT concessions would be presented to the CONTRACTING PARTIES well before the expiration of the proposed extension of the waiver so that further extensions would not be needed.

The representative of Jamaica said that his delegation had noted the progress made by Uruguay over the past sixteen years. He drew attention to paragraph 2 under the heading "terms and conditions" of the October 1972 Decision (BISD 19S/9) related to Uruguay's import surcharges and to the existence of other terms and conditions.

The representative of the European Communities recalled that the CONTRACTING PARTIES had, subject to certain conditions, waived Uruguay's Article II obligations for balance-of-payments reasons. That Decision, taken sixteen years earlier, had been extended regularly. The Council had before it a new request. His delegation had noted the arguments put forward by Uruguay. While recognizing that a certain simplification, harmonization, and even reduction of tariffs had been put into place, the original waiver had been granted because of economic difficulties and only for the period necessary to redress the situation. No opportunity had been provided to hold balance-of-payments consultations in this connection. The Community could accept only a one-year extension; full balance-of-payments consultations would be needed if another extension became necessary.

The representative of Uruguay said that his delegation was very much aware of the irregular nature of waivers, and that Uruguay's was a little more so than others in respect of the functioning of GATT. He would transmit these comments to his authorities.

The Council took note of the statements, approved the text of the draft decision in C/W/552 extending the waiver until 30 June 1989, and recommended its adoption by the CONTRACTING PARTIES by postal ballot.

3. Harmonized system - Requests for waivers under Article XXV:5
   (a) Bangladesh - Schedule LXX (C/W/549/Rev.1, L/6347)
   (b) Mexico - Schedule LXXVII (C/W/554, L/6358)
   (c) Israel - Schedule XLII (C/W/553, L/6356)
   (d) Malaysia - Schedule XXXIX (C/W/555, L/6359)
   (e) Yugoslavia - Schedule LVII (C/W/551, L/6350)

The Chairman drew attention to the communications from Bangladesh (L/6347), Mexico (L/6358), Israel (L/6356), Malaysia (L/6359) and Yugoslavia (L/6350) in which each of these Governments had requested either a waiver or an extension of a waiver already granted in connection with its implementation of the Harmonized System.

The representative of Jamaica noted that paragraphs 1 and 3 of Article XXVIII required prior action by the CONTRACTING PARTIES acting jointly if a contracting party sought to withdraw concessions in terms of insuring compensation, while paragraph 2 did not require a prior determination by the CONTRACTING PARTIES. With this in view, he pointed out that paragraph 1 in each of the two draft decisions referred to negotiations and consultations with interested contracting parties pursuant to paragraphs 1, 2 and 3 of Article XXVIII, while paragraph 3 of the draft decisions merely stated that other contracting parties would be free to suspend concessions initially negotiated to the extent that they considered that adequate compensation was not offered by the government seeking the waiver. He asked for clarification on this point.

Mr. Lindén, Legal Adviser to the Director-General, said that paragraph 3 of the draft decisions only foresaw a temporary situation before the negotiations were actually terminated and the results entered into force. The final corresponding situation was covered by paragraph 3(a) of Article XXVIII, which did not provide for any approval by the CONTRACTING PARTIES. The only requirement was that contracting parties which had negotiating rights under Article XXVIII had to notify the CONTRACTING PARTIES that they intended to withdraw substantially equivalent concessions. They did not have to ask for permission to do so.

The representative of the European Communities said that his delegation welcomed the decisions by Bangladesh, Mexico, Israel, Malaysia and Yugoslavia to implement the Harmonized System, and supported their requests for waivers or extensions of waivers earlier granted. This would enable consultations with interested parties to take place. The Community hoped that all contracting parties implementing the System which had not already undertaken Article XXVIII consultations would adopt this procedure. He recalled that India, which had introduced the Harmonized System in April 1986, had not yet done so, and asked that Article XXVIII procedures be followed in that case. He said that the implementation of the Harmonized System was meant to be tariff-neutral. In transposing existing tariffs into it, the objective was to avoid significant increases in both bound and unbound rates.

The representative of India stated that his delegation had not been aware that the European Communities had intended to raise the issue of India's implementation of the Harmonized System at the present meeting under this agenda item. His delegation's view on the procedures for the implementation of the Harmonized System had been amply clarified in the Committee on Tariff Concessions. As to the application of these procedures to both bound and unbound items in equal measure, India had reserved its position. It was not possible for procedures adopted in the Committee to circumscribe or override the rights and obligations accorded and recognized by the General Agreement. With regard to India's transposition, his delegation had explained in the Committee that it was in accordance with the provisions and procedures under Article XXVIII, where changes of a formal nature which did not involve any alteration of the tariff bindings could be simply notified under rectification procedures without the necessity of seeking a waiver. The submission of India's Schedule under the Harmonized System had been delayed for several reasons, including Article XXVIII negotiations which predated the introduction of the Harmonized System, in which some of the bindings were involved. As the European Communities were aware, India was in the process of consultations on both issues with all interested contracting parties, including the European Communities. He took note of the Community's present statement which would be communicated to his authorities for their consideration.

The Chairman drew attention to the draft decisions contained in the following documents: C/W/549/Rev.1 - Bangladesh,; C/W/544 - Mexico; C/W/553 - Israel; C/W/555 - Malaysia; C/W/551 - Yugoslavia. He said that the documentation still to be submitted and any negotiations or consultations that might be required should follow the special procedures relating to the transposition of the current GATT concessions into the Harmonized System, adopted by the GATT Council on 12 July 1983 and contained in document L/5470/Rev.1.

The Council took note of the statements, approved the texts of the draft decisions referred to by the Chairman, and recommended their adoption by the CONTRACTING PARTIES by postal ballot.

4. Sweden - Restrictions on imports of apples and pears
- Recourse to Article XXIII:2 by the United States (L/6330)

The Chairman recalled that this item had been before the Council at its meeting on 4 May, and said that it was on the Agenda of the present meeting at the request of the United States. He understood that bilateral consultations had been resumed and were still in progress. In the light of that situation, the United States had asked that consideration of this item be deferred.

The Council took note of this information.

5. European Economic Community - Payments and subsidies paid to processors and producers of oilseeds and related animal-feed proteins - Recourse to Article XXIII:2 by the United States (L/6328)

The Chairman recalled that at its meeting on 4 May, the Council had agreed to revert to this item at the present meeting. In the absence of the delegation of the European Communities, the Council considered some other items on the Agenda and then returned to the present item.

The representative of the United States recalled that at the May Council meeting, the representative of the European Communities had not been ready to agree to the US request for a panel and had said that more time was needed to consider it. The United States had been skeptical then of the need for further consultations; too often in the past, requests for additional consultations had been used as a delaying tactic. Regrettably, that was again the case, as nothing new had been added at the third formal round of Article XXIII:1 consultations on 6 June. His delegation hoped that the Community could now cooperate in the dispute settlement process and agree to the establishment of a panel.

The representative of the European Communities said that the United States was right in the technical sense that consultations had not led to a solution. The Community's version would have been that the United States had not appeared to want a solution in the course of those consultations. In fact, the United States had undertaken a mistaken endeavour in that something of absolutely vital interest to the Community was at stake. This dispute reflected the conflict between two totally contradictory conceptions of agricultural policy. The United States' policy was aimed at production, while forgetting US farmers; considerations of price and cost seemed to override all others. The Community's policy was conceived with the farmers in mind, by compelling other sectors of the population to act in solidarity with them. In the United States there were two million farmers, of whom 750,000 worked full time; in the Community, 11 million people were involved in farming. In the United States between 1979 and 1981, the expenditure in favour of the two million people had been ECU 29 billion. Between 1984 and 1986, that amount had risen to ECU 79 billion for the same people, who were less numerous now, i.e., 500,000. In the Community between 1979 and 1981, ECU 79 billion had been spent, and between 1984 and 1986 the figure had been the same. It was interesting to note how that same figure of ECU 79 billion could be broken down on each side of the Atlantic. On the US side, the taxpayers contributed ECU 59 billion and the consumers ECU 20 billion. On the Community side, it was the other way round: the budget accounted for ECU 29 billion while the consumers paid ECU 50 billion. In the light of those figures, the Community as such would obviously not be in a position to agree to a form of suicide which that vital interest -- involving 11 million farmers -- would imply. From the figures, it was evident that that cost of intervention was becoming unbearable on both sides. A solution to these two conflicting conceptions had to be found, and for that reason the Community had agreed to include agriculture in the Uruguay Round negotiations. If at the same time one party tried to extract concessions from the other, there were certain risks

for both the requesting party as well as the Community. What would happen if a panel's conclusions were to confirm the validity of the Community's policies? The Community would no longer have any room to negotiate. What would happen if a panel were to agree with the US argument? That would paralyse the entire negotiating process.

The Community was not in favour of policies that ran such high risks, and did not like to see the entire concept of subsidies singled out. He had tried to set out as frankly and as simply as possible what was at stake, and why there was need for deep-rooted reflection of a genuinely political nature. This was why he had previously voiced certain doubts and why the Community still had doubts. He stressed again that an absolutely vital interest of the Community was at stake. Although the US representative was arguing for what, in his view, was a totally erroneous policy, he wanted him to try to explain how much his Government wished to press for this particular request.

The representative of the United States said that he appreciated the opportunity to comment on a matter of such vital interest to the Community. He noted that the present meeting was not one of the Agricultural Negotiating Group, and said that one should not think that any process pursued under normal GATT rights in the normal business of GATT was necessarily linked with the Uruguay Round. In fact, it had been clear from the way Ministers had launched the Round that the normal processes of GATT would have to be encouraged. Hopefully there was nothing in the Community's remarks that would discourage the pursuit of normal GATT interests or claim that it was not the right, not only of a contracting party, but of the Council itself, to allow normal GATT business to take place. That message was precisely what the United States was sending in its request for a panel, as his and other delegations, including the Community, had sent in requesting other panels while the Uruguay Round was taking place. The Community had shared with the United States the extent to which the subject of this dispute was not a routine matter, but was of vital interest to the Community. The Community had gone on to say that on the table was a conflict between two entirely different concepts of agriculture. Was not that precisely what the GATT dispute settlement process was asked to resolve? In the US view, conflicts resulting from differing systems and differing perceptions of one's rights and obligations in GATT were precisely the kind of issues that ought to be taken to a panel. The United States clearly had a significant economic interest in the issue at hand. His delegation did not see any connection between the normal pursuit of GATT business in the present case and whatever might be taking place, often in the same room, during the Uruguay Round, perhaps even in the Agricultural Negotiating Group. Neither matter should interfere with the other. They were two separate actions. He urged the Community to accept the US request for a panel at the present meeting.

The representative of Jamaica said that he wished to raise some points which went to the heart of some of the Council's responsibilities. He recalled that when a panel had been established in March 1986 to examine a

complaint by Nicaragua against the United States, there had been bilateral consultations regarding the terms of reference. His delegation had put on record that it had not been consulted on those terms of reference even though it had been bound by the Council's decision on them. He recalled the difficulties that had subsequently arisen from the Panel report based upon those terms of reference (L/6053). His delegation had therefore said at that time that more information was needed by the Council because it was carrying out the joint responsibility of the CONTRACTING PARTIES. In the present instance, he was asking for more information so that the responsibility taken by individual Council members could be clearly recognized. The US request could be seen as involving two separate actions but perhaps one single set of issues, which was the liberalization of agricultural markets. Turning to document L/6328, which mentioned subsidies and preference payments made to processors as well as to producers, he noted that the United States claimed that its request was supported by factual evidence not concerning Community trade measures at the border but rather policies which went beyond trade measures. If these were essentially subsidies, though there were other issues involved, why was this matter not brought up in the Subsidies Committee? He had, however, no difficulty with the issue being considered by the Council because it had wider implications than those related to the Subsidies Code[1]. As for the US request in L/6328, he hoped that it would be possible to have some clarification of the terms "EEC policies" as distinct from specifically trade measures and "impairment of tariff concessions granted". He said that according to food and agriculture experts, the markets for tropical vegetable oils had been severely impaired because of the huge subsidies as well as the more efficient production processes for vegetable oil seeds grown in temperate zones. That was a matter of interest not only to the particular parties in question but to a wider set of countries and certainly to his own delegation. This was so both in terms of trade interest and in terms of deciding on the precise terms of reference for a panel should it deal with policies and not with specific trade measures.

The representative of the European Communities said that he attached much importance to the statement by the representative of the United States. As he understood it, that Government had decided to run certain risks, but had been careful to make it clear that the present matter should not be mixed up with the Uruguay Round negotiations. He would ask the representative of the United States for clarification as to how the timetable envisaged for a panel would appear in connection with the Ministerial meeting of the Trade Negotiations Committee in Montreal. Was he seeking the best possible way of speeding things up so as to have draft panel conclusions for that meeting? Any such attempt was surely doomed to

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

failure. It was clear that any panel likely to be established would work at its own pace so as to avoid interference with the Montreal meeting. He asked the representative of the United States to convey to his authorities the message that US agricultural policy might run the risk of destroying the type of US agricultural landscape which they were seeking. Farmers might be replaced by agricultural robots producing pigmeat, soya beans, milk and cereals to feed the United States and the rest of the world. The Community could simply not accept such a policy for its citizens. They wanted farmers, people on the land, and a kind of balance in their societies. He said that this comment would prove to be of importance sooner or later; for the time being, he would be satisfied with some kind of assurance which might enable him to take a decision on this matter.

The representative of the United States said that a panel would pursue its deliberations at the normal speed. The United States did not intend to press matters in such a way as to ensure that there would be an aspect of a panel report which would somehow be relevant to the discussion in Montreal. If such were to happen, that would be fine, but he said that he would be surprised if a panel report were to come out prior to the meeting in Montreal.

The representative of the European Communities said that he had been sufficiently cautious so as not to put the United States in a difficult position. He had taken note of what was positive in his reply, namely that the United States would not attempt to speed up a panel's proceedings to the point where there might be a collision at the Montreal meeting. It was clear that each body would proceed in terms of its own means and possibilities if a panel were to be created at the present meeting. Before continuing, however, he asked the Chairman, exceptionally and in view of the fundamental importance of this matter, to allow a member State, France, to express its views on the present stage of the discussion.

The Chairman said that he understood that the representative of the European Communities was in favour of France taking the floor, and accordingly invited France to speak.

The representative of France said that his delegation's request to take the floor at this point was justified by the comments made so far in the discussion. The United States had spoken of crucial and vital interests, and the Community had referred to the fact that the Council was discussing a fundamentally crucial problem. Within the European Economic Community, his authorities had continuously expressed their attachment to a satisfactory functioning of the dispute settlement procedures which they looked upon as a cornerstone of the multilateral system. That was as true in the case at hand as in other cases. In the present circumstances, however, where important measures in the agricultural sector had recently been taken by big trading partners, his authorities would want to make an overall assessment of the agricultural disputes connected to the Uruguay Round negotiations. Accordingly, France could not agree at the present meeting to the establishment of a panel as requested by the United States.

His delegation therefore asked that note be taken that there was no consensus among the CONTRACTING PARTIES at this stage with regard to the US request.

The representative of the European Communities said that, having fulfiled his family duties, he would now turn again to his responsibilities on the Community's behalf. It seemed that his concern and patience as the Community's spokesman had not been sufficient to convince and persuade all the members of the Community family. Perhaps France had just made a serious mistake by cutting off the Community branch on which the French rooster stood high. On behalf of the Community, he was prepared to accept his responsibilities and agree to the establishment of a panel. Since this was a very serious matter, all the parties concerned should take time and get things in perspective in order for the exercise not to be rushed abusively. He accepted his responsibilities, however, and agreed to the establishment of a panel.

The Chairman asked the representative of the United States if he would like to respond to the question raised earlier by Jamaica.

The representative of the United States said that he would first like the Chairman's interpretation of what had just happened.

The Chairman replied that he understood that the Community had accepted a panel. He asked the representative of the United States to continue with the discussion on the other outstanding matter, because it was important to understand the concerns of the Council and not just those of two parties. He noted that the representative of France wished to speak again, and that the spokesman of the European Communities had no objection to this.

The representative of France asked the Chairman to take note of the fact that France was a contracting party to the General Agreement, and was taking the floor as a contracting party. He reiterated his earlier statement that, as far as his delegation was concerned, it could not join any consensus at the present meeting on the US request for the establishment of a panel.

The Chairman asked the representative of the European Communities to clarify the position.

The representative of the European Communities said that it was fair to commit to the records of the meeting the statement made by France, but, on behalf of the Community, he had said that he accepted a panel. As far as the Community was concerned, a panel would be legally established if the Council followed this consensus. He supported such a decision on behalf of the Community. He suggested that the debate be limited to that issue because he did not want the Council to be discredited by invalid procedural issues.

The representative of Australia said that Australia supported the formation, the existence and the operation of the Community. That was a formal political position of his Government. The formal environment in which delegations were operating was as contracting parties. He was extremely concerned lest precedents be created by default in the present Council meeting which gave a legal standing to an entity which did not have a legal standing in the GATT, but had a significant and important political standing. Therefore, when one contracting party exercised its right as a contracting party, that should be recognized. When a group of contracting parties expressed a common political viewpoint, that was a separate matter. He urged, therefore, that the Chairman exercise very great care in the way in which he recognized the spokesman for the Community in this matter. He stressed that this was not a comment about the Community as such, but an important comment about the structural operation of the GATT, and he stressed the importance of the Council's not taking decisions which had a precedental effect. He saw a solution to this problem in that consensus was not unanimity. His delegation believed that the Chairman could conclude that a consensus existed -- there were cases when contracting parties might decide to dissent from a consensus -- but did not believe that the Chairman could take such a decision on the basis of an opinion expressed by a grouping which was effectively a political one within the terms of GATT. However, the Chairman could conclude that a consensus existed.

The Chairman referred to the Council's Agenda and to the request by the United States in L/6328, and noted that they referred to the European Economic Community and to recourse to Article XXIII:2 by the United States. Since there had been no suggestion of any amendment to the particular formulation of the subject under discussion, he had given the floor to the representative of the European Communities in that context.

The representative of India said that his delegation had listened with interest to Australia's statement which did appropriately recognize the rights of a contracting party wishing to assert its rights as such. However he could not accept the Australian view that consensus could be determined by the Chairman even if there was no unanimity. If a contracting party chose to contest a consensus and to state as its position that a consensus did not exist, it was then not possible for the Chairman of any GATT body to conclude that a consensus did exist. As long as his assessment was not contested, any chairman could conclude that there was a consensus; but once that consensus was formally disputed, contested or objected to by a contracting party, the consensus could not be said to exist.

The representative of the European Communities said that he would agree with the suggestion for a conclusion as proposed by Australia, but Australia had in fact outlined an extremely dangerous form of reasoning for the GATT as an institution. It was quite clear that France was a contracting party, but it was equally clear that France no longer had competence on matters of trade policy. That was the exclusive competence

of the Community, which he represented in the Council as the representative of the Commission of the European Communities. The issue of representation had arisen from the very outset, and it was in that way that the Community had assumed the competence that the member States no longer assumed on a national basis. If one were to follow any other type of reasoning, a large part of the GATT's achievements would in fact collapse, since agreements had been entered into by the Community, particularly in the negotiating rounds, past, present and future. Thus, he could not agree with India. Consensus did not necessarily mean legal unanimity. It was good practice among gentlemen, but he could not agree with India's reasoning in this instance.

The representative of Brazil said that his delegation shared India's view on the problem before the Council.

The representative of New Zealand said that this debate had many ramifications for GATT. New Zealand recognized and fully supported the United States' right to a panel. It also recognized France as a contracting party with the rights of a contracting party. It also agreed with India that if a country did not join a consensus, then a consensus did not exist. A country had a right to say no. Those were issues, though, which he hoped would never be tested in GATT and in particular at the present meeting. There was a major problem here, but it was an internal problem of the European Communities. He suggested deferring further consideration of this item until later in the meeting in order to give the Community more time to consult and to see if it could help the Council over this particular problem.

The representative of Argentina said that in this conflict of competence, Argentina recognized the existence of France as a contracting party but also recognized the Community as the representative of all the member States. To follow the stand taken by France would in fact be giving rise to an institutional conflict which would have a strong impact on the future life of GATT. Argentina fully supported the legal interpretation given by the Community through its single spokesman.

The representative of the United States agreed with Argentina's statement. Contracting parties had to know with whom they were negotiating and were dealing in normal GATT affairs. His delegation had been instructed by the European Communities themselves to negotiate and to deal with the representative of the European Communities. Was that process going to change to one in which dealing with the twelve member States would mean dealing with each one separately and with the thirteenth, the Commission? Was the word of the spokesman for the Communities not the word of the Communities? If that were the case, it would mean a major change in how everyone operated under the GATT. It meant that at any time, on any issue, when one had an agreement of any sort with the representative of the European Communities, it would be possible that subsequently one of the member States might void that agreement. The United States hoped that this was not the case.

The representative of the European Communities said that the statements by Argentina and the United States echoed and amplified what he had said earlier. It would be a most unwise course to introduce an element of insecurity into what had been accomplished in this institution in the past, what was being done today and what would be done in the future. The Community was present because competence with regard to trade policy had in fact been transferred to it by treaties. A contracting party could not raise an objection concerning something which no longer belonged to it as a government. The Community had assumed responsibility for trade policy on behalf of the member States; that was the guarantee and the security for other contracting parties. To take the French views into consideration would put into question all the current Community's obligations and rights. For these reasons, even when France spoke as a contracting party, its views as to trade policies were null and void and could not be taken into account.

The representative of Canada said that his delegation shared to a large extent the views expressed by the United States and Argentina. At this point it was difficult for the Chairman to try to determine whether or not a consensus existed. He recalled that a previous Council Chairman had, some years earlier, been faced with a similar situation regarding Canada's request for a panel. The contracting party against which the complaint had been raised had opposed establishment of a panel, and this had been the last intervention before the Chairman's decision to establish a panel that there was a consensus. Events sometimes evolved in such a way that the various parties to a dispute might, at a particular time, see that as a satisfactory outcome to the situation. He hoped that a discussion of what consensus was and how it ought to be legally determined could be avoided at the present meeting. However, the Chairman faced a challenge in terms of how this particular meeting ought to be managed. There might be some merit in New Zealand's suggestion that more time might be helpful in considering how to manage this situation, because it would be most unfortunate if a precedent were created at the present meeting that might be regretted in the future.

The representative of Australia said that document L/6328 was clearly directed at policies of the European Community. Australia recognized fully the competence of the spokesman of the Community to decide whether there was a consensus in respect of its members on the issue at hand. It should not be too difficult for the Chairman to find that there was a consensus, and he was not sure that additional time for consultation was needed.

The representative of the United States agreed with Australia and said that his delegation did not believe that further time for consultation was needed. On the basis of the Australian representative's judgement and that of the Chairman, with confidence in the Community, and in the light of the way in which this dispute had been brought against the Community, there was a consensus. He would therefore now proceed to respond to Jamaica's question. The dispute went beyond a simple subsidies issue. The United States had called particular attention to problems related to Articles II

and III of the General Agreement, and specifically to aspects that related to denial of national treatment and nullification of tariff bindings. That was why the procedure that had been followed was appropriate.

The representative of Jamaica said that the document mentioned the EEC oilseed and related animal-feed proteins régime. He said that as far as he understood, the Community did not have full responsibility for all the trade policies of each of its members and that there were some areas where the member States had retained jurisdiction for some trade policies in certain product areas. He therefore would like to know whether the Council was discussing a single Community régime or more than one régime.

The representative of the United States said that all of the aspects encompassed in the US complaint fell within the competence of the Community.

The representative of the European Communities said that France was a contracting party and could speak as such but could not speak with regard to the domains that no longer belonged to France alone, that was to say, trade policy.

The Chairman noted that France wished to speak and that the representative for the European Communities had no objection to this.

The representative of France said that he regretted that a debate had been launched on issues of competence, which should be the sole responsibility of the member States and the Community institutions. It was not for any other country outside the Community to express any judgement on the functioning of the Community institutions. He simply wanted to make it clear that he had taken the floor, as the Community representative had pointed out, on a political stand but, legally speaking, as a contracting party.

The Chairman thanked the representative of France for his statement regarding the respective competence of the Community.

The Council took note of the statements, agreed to establish a panel and authorized the Council Chairman to draw up the terms of reference and to designate the Chairman and members of the Panel in consultation with the parties concerned.

The representative of India said that he did not wish wish to enter into the issue of the question of the internal competence of the European Communities vis-à-vis their member States. However, his delegation would not like the present matter to create any precedent with regard to the wider issues of the competence of a contracting party to oppose a consensus, and of what a chairman of any GATT body understood to be consensus. He also reserved his position on the implications of the past instance that Canada had recalled.

The representative of Jamaica said that if there was consensus regarding the establishment of the Panel, it was within the traditional meaning of consensus, namely, that no contracting party had opposed it. If not, Jamaica would have to state for the record that it did not join that consensus, because his Government was not ready to constitute a precedent which would be enimical to small trading countries such as Jamaica.

The representatives of Brazil, Canada, Argentina, Thailand, Malaysia, Indonesia, Uruguay and New Zealand reserved their countries' respective rights to make submissions to the Panel.

The representative of Brazil stressed that he shared India's and Jamaica's views on the question of consensus.

The representative of Canada referred to his intervention on this subject at the May Council meeting, which remained the position of his authorities. On the other hand, his delegation considered that nothing had happened at the present meeting to affect the manner in which the Council took decisions by consensus.

The Chairman noted that France wished to speak and that the representative for the European Communities had no objection to this.

The representative of France said that while the Chairman had concluded that a panel had been established as requested by the United States, there was no consensus for its establishment. France, as a contracting party, had to oppose its establishment.

The representative of Peru said that his delegation agreed with the views expressed by India, Jamaica and Brazil and reserved its right on this particular issue.

The representative of Hong Kong said that his delegation was concerned with the institutional implications of what had just taken place, in particular the relationship and the conduct of commercial matters between contracting parties and the Community, and its member States. Hong Kong shared the views of others that this did not constitute a precedent. Hong Kong would indeed welcome a clarification form the Secretariat.

The Director-General said that according to practices established a number of years earlier, and not just in the Council, the representative of the Community had the authority to commit the Community to a Council decision.

The representative of France noted that the Director-General had spoken of practices, not of contractual right.

The Director-General replied that he had taken great care not to interfere with the internal affairs of the Community, in the light of the wish expressed by France earlier.

The representative of Mexico said that his delegation understood that in the future, if Mexico, as a contracting party, opposed any consensus, that opposition should be considered as constituting a lack of consensus in any circumstances. He did not wish to add any comments about the particular circumstances regarding certain entities within the GATT, but merely to state Mexico's rights as a fully-fledged contracting party in this respect.

The Council took note of the statements.

6. European Economic Community - Restrictions on imports of dessert apples
- Communication from Chile (L/6362)

The Chairman drew attention to the communication from Chile in document L/6362. In the absence of the delegation of the European Communities, the Council considered other items on the Agenda and then returned to the present one.

The representative of Chile recalled that the Council had established a Panel on 4 May to deal with Chile's complaint concerning the Community's import licences for dessert apples (L/6329 and Add.1, L/6337, L/6339). That had not, however, solved the most urgent problem of Chile's exports of apples en route, or in other words shipments which had already left Chilean ports before the Community's measures had been known. Producers and exporters had rightfully planned their respective production and exports on the assumption that the Commission would apply the GATT rules. A serious financial problem was faced by the exporters who had been denied entry of those shipments into the Community. The constitution of the Panel was following its usual course, and the panelists would not be designated in the near future nor would they start their work within the following days. The solution to the problem of apples en route, a perishable product, could not await the results of the Panel's work. It would thus only be fair and in conformity with the General Agreement that the CONTRACTING PARTIES urge the Community to solve this problem as soon as possible.

The representative of the European Communities recalled that the Community had accepted the establishment of a panel at the first Council meeting when it had been requested. The Community understood the urgency of the matter, but wondered what the Council could at this point do other than follow the normal dispute settlement procedures. He said that there were Community procedures for such cases, and that the European Court of Justice had ruled recently in favour of one importer of Chilean apples. He added that the Community was one based on law and that in accordance with fundamental principles of a democratic system governed by the rule of law, judgements by courts would obviously be respected and fully implemented. On the other hand, the Community could not accept outside interference in the internal process of justice.

The representative of Chile said that his delegation's sole intention was to draw the urgent problem of apples en route to the attention of the CONTRACTING PARTIES and to request that the Community be called upon to solve it in the most expeditious way. He reserved the right to make further observations on other aspects of this problem which the European Court of Justice could not solve rapidly enough.

The representative of Canada recalled an earlier statement by the European Communities, at the time when a licencing scheme was in effect, to the effect that that scheme served only monitoring purposes. He reminded the Community of its obligations under Article XIII:3(b).

The representative of the United States said his delegation shared Chile's concern with regard to the Community's treatment of apples en route. He did not dispute the importance of the rule of law to the Community but noted that there were two separate matters involved -- the measures themselves and their timing. The United States supported the call by Chile to do something for the immediate problem of shipments that had been caught en route by the Community's decision, which would not necessarily have to wait for a ruling by the GATT Panel since there was the Court ruling referred to by the Community.

The representative of the European Communities said that there were factual questions involved -- the different shipments, their timing, destination and quantities; the Community had discussed these with Chile. There were also legal questions involved which were for examination by the GATT Panel. The Community had not been responsible for any delay in defining the Panel's terms of reference and composition. If there were situations or companies with specific problems of urgency, there were Community court procedures to deal with them. His delegation would convey to his authorities the messages from Chile, the United States and Canada, but failed to see what the Council could do further.

The representative of Australia said that on other occasions his delegation had expressed sympathy for Chile's concerns with the Community's measures on apples. He would merely emphasize that the Article XIII:3(b) obligations were very important to all contracting parties and particularly to countries such as his, because of the long distances for shipments. Thus it should not be a matter for exporters to fight for their rights in a court, but for the measure to be implemented only if it conformed to the provisions of Article XIII:3(b).

The representative of Argentina said that his delegation shared Chile's concern and hoped that the discussion of the matter would end with a concrete and positive result. Argentina, as a country far distant from Community's market, was seriously concerned by the situation.

The Council took note of the statements.

7. Japan - Restrictions on imports of beef
- Recourse to Article XXIII:2 by New Zealand (L/6355)

The Chairman drew attention to the request by New Zealand for the establishment of a panel to examine the system of import quotas and licensing controls operated by Japan on imports of beef (L/6355). He said that he had been advised by New Zealand that Article XXIII:1 consultations had been held with Japan. Although these had not yet led to a mutually satisfactory solution, both parties had agreed to continue them in an effort to resolve this matter. For these reasons, New Zealand had requested that its request under Article XXIII:2 be deferred for consideration at the next Council meeting.

The Council took note of the Chairman's statement and agreed to revert to this item at its next meeting.

8. Korea - Restrictions on imports of beef
- Recourse to Article XXIII:2 by New Zealand (L/6354)

The Chairman drew attention to a communication from New Zealand in document L/6354.

The representative of New Zealand recalled that at the Council meeting on 4 May, New Zealand had informed the Council that it had requested Article XXIII:1 consultations with Korea over the suspension of imports of beef. New Zealand was now asking the Council to establish a panel under Article XXIII:2 to review this matter (L/6354). Korea's policies had caused serious problems for beef exporters and were inconsistent with its GATT obligations. While this was a politically sensitive issue in Korea, the closure of agricultural export opportunities was also an extremely sensitive issue in New Zealand. In invoking GATT's well-established dispute settlement procedures, New Zealand believed it was doing the right thing by all parties concerned. He noted that paragraph 9 of the 1979 Understanding[2] stated explicitly that "requests for conciliation and the use of the dispute settlement procedures of Article XXIII:2 should not be intended or considered as contentious acts." Because of its great success in taking legitimate advantage of opportunities in the multilateral trading system underwritten by GATT, Korea had become the twelfth largest exporter in the world. Even the largest countries had a vital long-term stake in a smoothly functioning dispute settlement process. Korea had not responded to New Zealand's written requests for Article XXIII:1 consultations. It

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[2]Understanding regarding Notification, Consultation, Dispute Settlement and Surveillance (BISD 26S/210).

was well-established GATT practice to have such consultations before moving to Article XXIII:2. Article XXIII:1 merely referred to the need for any contracting party which felt that its benefits were being nullified or impaired, to "make written representations or proposals to the other contracting party". There had been eleven separate sets of discussions between New Zealand and Korea over the period 1984 to 1988 on the issue before the Council. Nothing in the wording of Article XXIII:1 required that efforts to resolve a dispute bilaterally be formally designated, by agreement, as consultations pursuant to Article XXIII:1. New Zealand had therefore unquestionably fulfilled the spirit of that Article, which was intended to avoid a party's immediately asking for a panel without making an effort to acquaint the other party with its concerns and to resolve them bilaterally. New Zealand had reluctantly concluded that it had reached the end of the road in its extensive attempts to resolve the issue bilaterally. The critical sentence in Article XXIII:2 was the first one, which stated "if no satisfactory adjustment is effected between the contracting parties concerned within a reasonable time,... the matter may be referred to the CONTRACTING PARTIES". He asked what, in the circumstances, would be regarded as "reasonable" by the CONTRACTING PARTIES. One important element was the long history of New Zealand's unsuccessful attempts to resolve the issue bilaterally; the second was the pace of developments arising from the Council's decisions on 4 May to establish panels to examine similar complaints by Australia and the United States. New Zealand, which had been the second biggest exporter of beef to Korea when its market was open, could not afford to sit back forever while intensive consultations were proceeding. His delegation thought it reasonable to ask that the Council establish at the present meeting a panel to review this matter under Article XXIII:2. New Zealand would be entirely reasonable as to the modalities of that panel, and had no wish to ask for a separate set of panelists to examine this matter or different terms of reference for its complaint. As Australia had said at the May Council meeting in a similar circumstance, the matter concerned the same set of policy measures maintained by Korea on beef which was the subject of complaint by the United States, Australia and now New Zealand. For procedural reasons, the Council had approved two panels for the United States and Australia; New Zealand now asked the Council for equivalent treatment.

The representative of Korea said that his country had a substantial and real interest in a healthy and viable dispute settlement system in GATT, and would be the last to deny any contracting party the right to a panel. Nor did it wish to be misunderstood that Korea refused any contracting party the right to consultations. The representative of New Zealand had recognized that beef imports had become a very sensitive political issue in Korea. The slow and difficult process of internal consultation and decision-making was, he feared, the price for democracy. He said that under the well-established GATT practice, Article XXIII:1 consultations should take place before a panel was established to examine a matter under Article XXIII:2. His delegation found it difficult to accept the logic with which New Zealand tried to justify a deviation from this established practice. There had been continuous consultations in his capital to find a mutually acceptable solution. His delegation believed

that consultations with a view to conciliation was an essential part of the dispute settlement system in the GATT. It would be in keeping with the spirit of that system and in the interest of the two countries that they continue their mutual efforts to resolve their difference through consultations. He informed the Council that his Government would be prepared to hold Article XXIII:1 consultations with New Zealand in due course. It was his sincere hope that Korea and New Zealand would be able to find a mutually acceptable solution in the near future.

The representative of Australia said that his country supported New Zealand's request for a panel. Australia had considerable sympathy with New Zealand's concerns about the complete closure of the Korean beef market in 1985. His delegation had noted New Zealand's efforts to arrange Article XXIII:1 consultations, and it was hard to understand Korea's difficulties in agreeing on a date. The issue was not new, and Korea had very recent experience in the process. There was a common agreement among contracting parties that requests for consultations should be responded to promptly and concluded expeditiously, as was embodied in the 1979 Understanding. Australia agreed that the consultative process was an important element in GATT dispute settlement. However, it should not become a source of delay in addressing genuine concerns. Australia considered that New Zealand had made every reasonable effort to pursue consultations, and should not be denied the right to have its concerns pursued. Noting that Korea had said "in due course", he thought that this did not satisfactorily meet the requirements of the Understanding. He was making these remarks because in Australia's experience in trying to settle the procedures to apply to the Panels already established for both Australia and the United States, he regretted having to announce that they were not being handled in a spirit of expeditiousness. Australia respected Korea as a nation and as a trading country and understood the rather acute political problems which were in the background of Korea's efforts to meet the established procedures and requirements of GATT dispute settlement. Nevertheless, what was being assessed was the standing of a very important member as a corporate citizen of the GATT. He urged that the Korean representative carry back this important message to his authorities. Because of its significant interest in the issue, Australia reserved the right to make a submission to the panel.

The representative of the United States supported New Zealand's right to the establishment of a panel and reserved the United States' right to make a submission to it. His delegation fully supported Australia's statement. As the issue of the US request bore relevance to the present case, he reported on the status of the Panel established by the Council in May. Some progress had been made in the discussions with Korea on procedural issues, but one obstacle remained, namely the participation by the United States and Australia in the hearings of the two Panels. Allowing each complaining party to attend the other Panel's proceedings, and to have access to each other's submissions, would minimize duplication of work in the two Panels. The United States did not understand Korea's objections to this aspect of coordination, especially since there was nothing novel about it. Procedures along similar lines had been agreed,

and the dispute settlement process allowed to proceed, in the earlier cases concerning the US customs user fee (L/6264) and the US ("Superfund") taxes on petroleum and certain imported substances (L/6175). More recently they had been agreed in the case of complaints by the United States and Australia concerning Japan's beef import restrictions. Korea had already recognized the logic of linking these panels. He urged Korea to follow procedures used by other contracting parties in similar situations, and to agree to fuller coordination of the work of the two panels already established to examine the complaints by Australia and the United States.

The representative of Canada said that his delegation found the discussion thus far rather perplexing. As a country with an interest in the specific product and also in the dispute settlement process, his delegation could agree substantially with what it thought to be New Zealand's carefully measured and thoughtful statement, in particular with regard to the wording of the first part of Article XXIII:2. That was a logical and correct assessment of the Article's intent. His delegation was puzzled as to why Korea had not deemed it fit to enter into Article XXIII:1 consultations with New Zealand, and would be interested in some clarification as to why Korea had not yet held such consultations and why even now Korea had said that it would agree to hold these consultations "in due course".

The representative of Jamaica said that as the GATT was a rule-based organization, it was the concern of all members that each live up to the obligations it had acquired autonomously. New Zealand's comments were very useful in pointing out that when a dispute involved two relatively small trading nations, they had an even more compelling obligation and interest in settling the dispute in keeping with GATT procedures. It would seem unreasonable if larger trading nations were able to secure panels and smaller ones were to experience difficulty in obtaining them. Jamaica unreservedly supported New Zealand's request and hoped that the panel could be established at the present meeting. Referring to the discussion at the special Council meeting the day before, and to the difficulty which his delegation had encountered with the Director-General's report on the status of work in panels (C/W/156), he said that he also had difficulty with the rationale for establishing separate panels to deal with the same products and the same restrictions in the same country. That seemed to represent a duplication, taking account of the m.f.n principle. Nevertheless, in the light of the establishment of two panels to examine the United States' and Australia's complaints, a separate panel for New Zealand appeared to be appropriate.

The representative of Korea repeated that his authorities were prepared to hold Article XXIII:1 consultations with New Zealand in due course. He said that his delegation had wished to avoid any discussion at the present Council meeting on procedural matters related to the two Panels established by the Council in May to examine the complaints by Australia and the United States because it would not be productive to discuss in the Council matters still being discussed in consultations between the parties to the disputes. However, since those representatives had raised the

issue, he felt obliged to state Korea's view. His delegation firmly believed that the consultations on the administrative arrangements for the panels should be based, in the first place, on the Council's decisions. At its May meeting, the Council had decided, at the request of his delegation, to establish two separate panels. With regard to the question of participation in the hearings of the two panels, his Government believed that each complaining party could take part in the other panel's proceedings as an interested third party. Since both complaining parties would have their own panel which would examine their own complaint, such an arrangement would not impair their rights or benefits. Had the Council intended that both complainants be parties to both panels, it would not have created two separate panels. Regarding other panel arrangements, his delegation saw a clear distinction from the earlier cases to which reference had been made; each case had its own unique nature and circumstances which should be taken into account seriously. At the same time, his delegation strongly believed in the fundamental principle of consensus in the GATT dispute settlement mechanism. Consensus implied a reconciliation of the interests of all parties concerned, and a sense of shared responsibility. On that basis, his delegation had made an effort to come close to the constructive suggestions by the Secretariat regarding the administrative arrangements. He hoped that Korea's partners would now make an effort so that the appropriate arrangements could be agreed upon soon.

The representative of the United States recalled that in May, the Council had decided that the administrative details for the two Panels would be worked out after the meeting. That decision had not in any way made impossible the kind of arrangements that the United States had requested from Korea. He reiterated the US request for Korea to reconsider its position on the administrative matters for those two Panels so as to allow a procedure which had been used several times recently in GATT panels.

The representative of New Zealand said that there seemed to be large issues involved behind a seemingly innocuous request by New Zealand following on similar requests by the United States and Australia which had been agreed earlier by the Council. GATT operated both on legal and pragmatic bases and survived by a sense of realism between contracting parties. New Zealand's prime concern was to resolve a bilateral problem with Korea, and not to jeopardize its own multilateral rights or to cause difficulties for other parties or panels being formed. Clearly, matters had reached the stage where they would be most easily solved by a panel. One had, however, to recognize Korea's position for domestic reasons of its own; New Zealand understood the situation. He welcomed the statement that Korea would hold Article XXIII:1 consultations with New Zealand "in due course", and hoped that this meant very soon. As a senior New Zealand trade official would be in Seoul the following week, he hoped that that matter could be finalized at that stage and that Article XXIII:1 consultations would have been held well in advance of the July Council meeting. If such consultations were not held, New Zealand would have to revert to this item at that meeting, and he asked that it be deferred for consideration then. In the meantime, New Zealand continued to reserve its

position in respect of the United States' and Australia's Panels and expressed the expectations that if the matter was to come before an Article XXIII:2 panel, New Zealand would have the same panelists and the same harmonized procedures as for the United States and Australia. He asked that the Secretariat keep that in mind in its consultations with Korea, Australia and the United States.

The representative of Canada urged that the Korean delegation endeavour to hold Article XXIII:1 consultations prior to the next Council meeting. He had listened carefully to the Korean representative's statement that his Government attached great importance to the conciliation aspect of the dispute settlement process, and clearly, he said, Article XXIII:1 was part of it. He thought that there was great strength in New Zealand's arguments, in particular that Article XXIII:2 did not actually require that consultations formally designated as being held under Article XXIII:1 take place before the Council established a panel. That was something for all to bear in mind.

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

9. Accession of Tunisia
- Time-limit for signature by Tunisia of the Protocol of Accession (C/W/556)

The Chairman recalled that at its meeting on 2 February 1988, the Council had considered the report of the Working Party on the Accession of Tunisia (L/6277). He drew attention to the Director-General's communication in C/W/556, in which it was suggested that the time-limit in paragraph 5 of the draft Protocol of Accession of Tunisia be changed to 15 November 1988, and suggested that the Council take note of this change.

The Council so agreed.

10. United States - Taxes on petroleum and certain imported substances - Follow-up on the Panel report (C/W/540 and Add.1, L/6175)

The Chairman recalled that in June 1987, the Council had adopted the Panel report contained in L/6175. This matter had been discussed at the February, March and May 1988 Council meetings and was on the Agenda of the present meeting at the request of the European Communities. As it had been agreed at the May meeting, he had consulted with interested delegations on this matter. It had become apparent that there were essentially technical questions to be answered, and that a working party might not be the most suitable way to address them. Accordingly, he suggested that the Secretariat give the two parties technical advice on this matter, and that the Council agree to revert to this item at its next meeting. This would be technical advice to determine whether the Community's assessment of damages was correct and, if not, what the appropriate amount, if any, would be. This technical advice would also be made available by the Secretariat to other interested contracting parties.

The representative of Mexico noted that one year had elapsed since adoption of the Panel's report. Despite the specific interest which various contracting parties had in solving this problem, no concrete result had been obtained with respect to the Panel's recommendation. Mexico was very disappointed with the way in which not only GATT rules but also its basic principles, such as that of national treatment, were being violated. In Mexico's opinion, that situation, which had been commented upon at the special meeting of the Council the previous day, eroded GATT's credibility and in particular its dispute settlement mechanism. It was not clear how a greater participation of developing countries in the Uruguay Round could be sought when one of their major trading partners did not comply with its contractual obligations acquired forty years earlier or more recent political commitments such as the standstill. His delegation was following closely the Community's action relating to the suspension of concessions or other obligations to the United States, in conformity with paragraph 2 of Article XXIII. Mexico hoped that this action would be successful so as to facilitate the implementation of the Panel's recommendation. Mexico understood that the Community's action and its results could not prejudice the rights of, or remedies available to, other contracting parties, and that in any case, Mexico reserved its GATT rights, including those available for developing countries like Mexico.

The representative of Canada said that her Government shared the concerns expressed by Mexico about a Panel report that had been adopted nearly one year earlier. Her delegation still did not see any clear indication from the United States as to how and when it intended to remove the measure that the Panel had determined not to be consistent with the General Agreement. Canada reserved its rights in this matter.

The representative of the European Communities said that the primary objective remained the implementation of the Panel report. At the same time, the Community had put forward a request which regrettably could not be adopted as one party had raised questions. The Chairman had made procedural suggestions for dealing with this situation, and his delegation could go along with them.

The Council took note of the statements and agreed to the Chairman's suggestion.

11. De facto application of the General Agreement
- Report by the Director-General (L/6349)

In November 1967 the CONTRACTING PARTIES adopted a Recommendation (BISD 15S/64) inviting contracting parties to continue to apply the General Agreement de facto in respect of newly-independent territories on a reciprocal basis, and requesting the Director-General to make a report after three years. The Report circulated in L/6349 was the seventh made by the Director-General on the application of the Recommendation.

The representative of Jamaica asked for additional information regarding the statement in L/6349 that the governments listed therein were regularly kept informed about GATT activities and received all GATT documents and publications. His delegation understood that Kampuchea did not receive such documentation. As the Committee on Budget, Finance and Administration had considered the question of Kampuchea's association with the GATT, the Council might wish to reflect on the current status of that country.

The Director-General said that the Secretariat had been sending the normal documentation to Kampuchea via its representation at the Economic and Social Commission for Asia and the Pacific (ESCAP). He understood that there had been a proposal in the Budget Committee to delete Kampuchea from the list of countries in arrears of contributions, but that the proposal had not been accepted by the Committee. Kampuchea's de facto status was reflected correctly in L/6349.

The representative of Jamaica said that for the purpose of the CONTRACTING PARTIES' budget, Kampuchea was being assessed as if it were a contracting party. This matter had been stalled in the Budget Committee because some contracting parties were not yet ready to take the steps appropriate to Kampuchea's status vis-à-vis GATT and its contribution to the budget.

The Director-General said that Kampuchea was the only de facto country which appeared in the list of governments taken into account to assess the contributions to GATT's budget. This arose from Kampuchea's having achieved its independence in 1953, long before the other de facto countries in the list had achieved theirs, and its having been invited to participate in the activities of the CONTRACTING PARTIES. The precedent had not been followed in budgetary terms for those other countries. He considered that the representative of Jamaica was right in pointing out this situation, for which there did not appear to be an immediate solution.

The Council took note of the report (L/6349) and of the statements and invited the Director-General to remain in contact with the governments of the States concerned and to report again on the application of the Recommendation within three years.

12. Committee on Budget, Finance and Administration
- Progress report by the Committee Chairman

The Chairman recalled that the Council had most recently considered this matter at its meeting on 4 May.

Mr. Hill, Chairman of the Committee on Budget, Finance and Administration, recalled that at its regular meeting on 10-11 November 1987, the Council had requested the Committee on Budget, Finance and Administration to examine three measures, namely the minimum contribution,

an incentive scheme and an increase of the Working Capital Fund. The Committee was to include in its examination any other proposals thereon, and to make recommendations on these measures, separately or otherwise, to the Council. This request had been made in the light of a probable cash deficit in 1988 and the continuing situation of outstanding and chronic arrears in contributions. Further to the progress report made to the Council meeting in May, the Budget Committee met on 5 and 19 May and would meet on 22 June, with the hope that it could complete its work on this matter and forward its recommendations to the Council in July.

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

13. Committee on Balance-of-Payments Restrictions
- Designation of a new Chairman

The Chairman said that Mr. Girard (Switzerland) was stepping down as Chairman of the Committee on Balance-of-Payments Restrictions. Following informal consultations with delegations, he proposed that the Council agree to appoint Mr. Boittin (France) as the Committee's new Chairman.

The Council so agreed.

The representative of Australia congratulated Mr. Boittin on his new position. Referring to the process by which the Council made such appointments, he noted that not all of them were made annually as in the case for the chairmanships of the CONTRACTING PARTIES and Council. He suggested that the Chairman ask the Secretariat to prepare some information which could serve as the basis for informal consultations to develop a proposal for early consideration by the Council on how to regularize the process.

The representative of the United States welcomed Mr. Boittin as the Committee's new Chairman and said that his delegation strongly supported Australia's proposal.

The Chairman said that he agreed with the suggestion by the representative of Australia, and hoped that it would be possible for him to come forward with recommendations on this matter.

The Council took note of the statements.

14. United States - Imports of sugar
- Recourse to Article XXII by Australia

The representative of Australia, speaking under "Other Business", informed the Council that on 7 June, Australia had held consultations with the United States under Article XXII for the purpose of establishing the

United States' justification in GATT terms for its current sugar import régime. Australia's concern had been heightened by the maintenance of increasingly restrictive US import quotas, which for 1988 had been set at the lowest level since the formation of the GATT, in contrast with Australia's own liberalizing measures announced on 25 May. World sugar prices had been adversely affected by the operation of the US policy, which was more trade-distorting than even the policy of the European Communities. The irony was that high domestic prices under the US program had not encouraged consumption, which had fallen significantly in the United States in the face of price competition from alternative sweeteners. At the same time, US sugar production had continued to expand to the point where the United States was virtually self-sufficient in sugar. A continuation of current sugar policies might well result in the United States becoming a major exporter of sugar in the near future. Because of the program's pricing policies, however, those exports could be achieved only through payment of substantial subsidies, with further consequent disruption to world sugar markets. Thus, the United States' restrictions on sugar contrasted with its overall approach to agricultural trade liberalization in the Uruguay Round. His delegation understood from the Article XXII consultations that the United States considered that it had acquired rights in regard to quantitative restrictions on sugar. The United States had made the point that these measures -- and all its policies -- were on the table in the Uruguay Round. Australia was currently considering its position in the light of the consultations.

The representative of the United States confirmed that in response to Australia's request for consultations under Article XXII, US officials had met with Australian representatives on 7 June and had had a full discussion of the US sugar import policies. The United States had taken account of and responded to all the concerns which had been expressed, and remained convinced that its sugar import policies were fully consistent with the GATT. These measures were on the table in the Uruguay Round. He said that there was no contrast between the United States' policies and its position in the Uruguay Round. If Australia wished, the United States was prepared to discuss this issue further.

The representative of the European Communities said that the Community had a considerable interest in this matter but for no apparent reason, had not been part of these Article XXII consultations. He informed the Council that the Community had requested Article XXIII:1 consultations with the United States concerning the latter's sugar import régime.

The Council took note of the statements.

15. Accession of Bulgaria
- Memorandum on Bulgaria's foreign trade régime

The representative of Bulgaria, speaking as an observer and under "Other Business", said that on 14 June 1988, pursuant to its application for accession to the General Agreement (L/6023 and Add.1), his Government

had submitted to the CONTRACTING PARTIES a Memorandum on the main features of Bulgaria's economic and trade policies and on its foreign trading system. He recalled that at its meeting of 5-6 November 1986, the Council had agreed that the usual procedure for examining an accession request would be followed, and had established a working party. The Council decision indicated that when the Memorandum containing, inter alia, a description of Bulgaria's new economic and trade legislation had been made available, it would consider the procedural aspects of the Working Party's establishment. Between November 1986 and May 1988, the main legal acts and instruments containing the basic legislation on the new economic reform had been adopted in Bulgaria. They had been duly reflected and described in the Memorandum. Bulgaria therefore expected that the Council would now proceed to draw up the usual terms of reference and to appoint a chairman for the Working Party at its meeting on 20 July so that it would start its examination. His Government was determined to pursue the policies of the economic reform outlined in the Memorandum, which he described in detail. Bulgaria's interest to accede to the General Agreement on fair and equitable terms was an inherent element of that reform and one of the major prerequisites for its successful implementation. Some of the measures and instruments presently in force were inevitably of a transitional nature. Bulgaria believed that its economic and trade policies, as well as the way its customs system was organized and functioned, would make it possible to negotiate terms of accession on the basis of tariff concessions. Bulgaria was fully aware that the Memorandum was just the first step in the process of examination and negotiations on the terms of accession, and was ready to answer all relevant questions of the contracting parties in this process. He said that his Government would appreciate the Council Chairman's starting preliminary consultations with interested parties before the next Council meeting with a view to explore the possibilities for drawing up mutually acceptable terms of reference and designating a chairman for the Working Party.

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

16. Korean Foreign Trade Act

The representative of the United States, speaking under "Other Business", said that in preparing for consultations with Korea concerning its import restrictions on beef, the United States had discovered that the relevant law and associated enforcement decrees -- the Foreign Trade Act of 31 December 1986 -- had not been notified to GATT. The United States considered that Korea should do so in accordance with the appropriate GATT notification provisions.

The representative of Korea said that according to Korean law, the Foreign Trade Act had taken effect on 1 July 1987 and had been published in the Korean language in the Official Gazette, thus fulfilling Korea's Article X obligations. He could not find any GATT requirement that it be

published in one of GATT's official languages. He added that the unofficial English version of the text was available in Korea and would be distributed immediately and free of charge to interested embassies in the capital.

The Council took note of the statements.

17. Japan - Quantitative restrictions on imports of certain agricultural products
- Follow-up on the Panel report (L/6253)

The representative of the United States, speaking under "Other Business", raised the matter of Japan's implementation of the Panel report (L/6253) on twelve of its agricultural import quotas, which had been adopted by the Council on 2 February 1988. The United States had raised this matter repeatedly at Council meetings and each time had been met with the same perfunctory response, namely, a reference to the Japanese statement on 2 February. This was not enough, as the United States was losing trade every day the quotas remained in place. The issue was of concern to many contracting parties. Accordingly, he drew attention to the forthcoming circulation of a request by his Government for plurilateral consultations with Japan under Article XXII. These consultations would discuss exactly what Japan planned to do to bring its practices into conformity with the Panel report. The United States looked forward to prompt in-depth consultations on this matter, and hoped for wide participation by contracting parties.

The representative of Japan said that he would promptly report to his authorities the United States' suggestion, which he had heard for the first time. He recalled that when the Panel report had been adopted and discussed on other occasions, his delegation had said that there were serious legal flaws in the report, in particular with regard to the interpretation of perishability. Japan had been joined by other contracting parties in that respect. Japan had nevertheless agreed to the adoption of the report, largely in the interest of the dispute settlement process, and partly due to outside pressure. Four months had since passed. Japan and the United States were currently engaged in serious consultations regarding the implementation of the Panel report. His delegation had not calculated the average period between the adoption of a panel report and its implementation, but it would surely be longer than four months, let alone the case of the "Superfund" Panel report (L/6175). He reminded the Council that in the case at hand, it was dealing with twelve different important items. Thus, consultations should continue without undue haste or undue pressure.

The representative of Australia said that his delegation was very interested in the consultations and wanted to be included in them.

The Council took note of the statements.

18. Communication from the United States concerning the relationship of internationally-recognized labour standards to international trade

The representative of the United States, speaking under "Other Business", said that his authorities continued to believe that it would be useful to examine multilaterally the issue of internationally-recognized labour standards and trade. The Council's discussion of this issue at its meeting on 4 May 1988 had been useful. The United States would continue to consult with contracting parties with a view to finding an approach to deal with this issue that was acceptable to all parties concerned.

The Council took note of the statement.

19. Schedule of work

The Director-General, speaking under "Other Business", said that he had been consulting delegations concerning the overall "machinery" at their disposal in the Centre William Rappard, and sometimes outside. Following those consultations, and taking into account the current year's heavy work schedule, he had decided that the Secretariat should be in a position to carry out its responsibilities after the summer break -- usually the first week of August through mid-September -- as from the week of 29 August. He was informing the Council of this at the present meeting in the hope that the Secretariat's availability would be taken into account in scheduling meetings related both to normal GATT activities and to the Uruguay Round.

The Council took note of the statement.

20. Norway - Restrictions on imports of apples and pears
- Panel terms of reference

The Chairman, speaking under "Other Business", recalled that at its March meeting, the Council had established a panel to examine the complaint by the United States and had authorized him to draw up the Panel's terms of reference and to designate the Chairman and members of the Panel in consultation with the parties concerned.

He announced the terms of reference and composition as follows:

Terms of reference:

"To examine, in the light of the relevant GATT provisions, the matter referred to the CONTRACTING PARTIES by the United States in document L/6311 concerning quantitative restrictions maintained by Norway on imports of apples and pears, and to make such findings as will assist the CONTRACTING PARTIES in making appropriate recommendations or in giving a ruling on the matter as provided for in Article XXIII:2."

Composition:

Chairman: Mr. Pierre Pescatore

Members: Mr. Munir Ahmad
Mr. Alejandro de la Peña

The representative of Norway said that his Government could accept the proposed standard terms of reference on the clear understanding by both parties that "relevant GATT provisions" also comprised the Protocol of Provisional Application and that this understanding with regard to the scope of the mandate was communicated in written form to the Panel.

The representative of the United States said that his delegation could confirm that the United States concurred with Norway's understanding that the terms of reference for the Panel should also include the Protocol of Provisional Application.

The Council took note of the information by the Chairman and of the statements.

21. Japan - Imports of Spruce-Pine-Fir (SPF) dimension lumber - Panel terms of reference and composition

The Chairman, speaking under "Other Business", recalled that at its March meeting, the Council had established a panel to examine the complaint by Canada and had authorized him to draw up the Panel's terms of reference and to designate the Chairman and the members of the Panel in consultation with the parties concerned.

He announced the terms of reference and composition as follows:

Terms of reference:

"To examine, in the light of the relevant GATT provisions, the matter referred to the CONTRACTING PARTIES by Canada in document L/6315 and to make such findings as will assist the CONTRACTING PARTIES in making the recommendations or rulings provided for in paragraph 2 of Article XXIII."

He added that the two parties were in agreement that the agreed terms of reference did not preclude the Panel from addressing either the question of the definition of "dimension lumber" referred to in the Canadian complaint (L/6315) or the question of the relevance of the Japanese tariff classification to the issue.

Composition:

Chairman: Mr. Pierre Pescatore

Members: Mr. Richard Senti
Mr. Alejandro de la Peña

The representative of Jamaica recalled that on a prior occasion, he had requested that panel terms of reference and composition announced at Council meetings be made available in writing to representatives. In the present case, he asked whether there was a difference between these terms of reference and those for the preceding item, and whether the understandings were different.

The Chairman replied that the terms of reference were the same but the parties' understandings were particular to each panel.

The representative of Jamaica drew attention to the use of the word "make a ruling" in one case and "ruling" in the other. He said that since it was the Council's responsibility to make a judgement on panel reports, and in light of previous difficulties encountered with terms of reference in that respect, the terms of reference and composition of panels should be circulated in writing to the Council representatives well in advance of the meeting at which these would be considered and, if possible, in time for them to be communicated to their capitals.

The Chairman said that, for the future, the Jamaican representative might want to ask for the prior circulation of the Chairman's announcements. As for the case at hand, he recalled that the Council had authorized him to draw up the terms of reference and to designate the panelists. The present meeting was the first available opportunity to announce the results of his consultations with the parties concerned.

The representative of Australia said that he trusted that Jamaica was not asking for a procedure which would result in the creation of an additional decision point in the proceedings. The long-standing practice was that after a panel had been established, the Council Chairman was authorized "to draw up the Panel's terms of reference and composition in consultation with the parties concerned" and subsequently the Council noted the arrangements made. He would therefore be reluctant to decide on a prior circulation requirement which would undermine the Chairman's authority. Flexibility was called for in this case: if it was feasible to circulate a notice prior to a Council meeting, that would be acceptable, but he would object to adopting a fixed procedure.

The representative of Jamaica said that he was sure that Australia was aware of ongoing discussions about the need to arrive at standard terms of reference, in essence to shorten the time needed for panels to begin their work. If his suggestion would take the Council in that direction and introduce more transparency as to how panels were expected to work, it could not be seen as an inconvenience or an obstacle to the Chairman's consultation, or to the work of the CONTRACTING PARTIES.

The representative of the European Communities said that his delegation tended to agree with Australia. He added that it would be useful, in following the standard practice of circulating the terms of reference and composition, to do so as soon as they were agreed and if possible prior to the next scheduled Council meeting.

The representative of Malaysia said that he thought that if the terms of reference and composition of the panels were to be considered by the Council, Jamaica's was a fair request.

The Chairman noted that the Council had not provided for further consideration of the present Panel's terms of reference or composition.

The representative of Jamaica said that he did not see the difficulty raised by the European Communities and Australia. His was a simple request concerning terms of reference which were announced at Council meetings.

The Director-General said that at future Council meetings, copies of such announcements would be made available.

The representative of Jamaica said that in respect of financial implications, while the CONTRACTING PARTIES had budgeted Sw Fr 50,000 for panels in 1987, Sw Fr 194,000 had been spent, an overexpenditure of Sw Fr 144,000. That was an important question. He did not understand, for instance, why in some cases, separate panels had to be set up for a single question.

The Council took note of the information and the statements.