

GENERAL AGREEMENT ON

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TARIFFS AND TRADE

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MINUTES OF MEETING

Held in the Centre William Rappard
on 21-22 June 1989

Chairman: Mr. John M. Weekes (Canada)

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1. Accession of Tunisia

- Time-limit for signature by Tunisia of the Protocol of Accession (C/W/591)

The Chairman recalled that at its meeting on 6 March, the Council had taken note of the change in the time-limit in paragraph 5 of the draft Protocol of Accession of Tunisia to 30 June 1989 in order to allow time for the completion of the tariff negotiations required for accession. He drew attention to the communication from the Director-General in C/W/591 in which it was suggested that this time-limit be changed to 16 October 1989.

The Council took note of this change.

2. Accession of Bulgaria

- Information on new legislation (L/6512)

The Chairman recalled that at its meeting on 12 April, the Council had agreed that further consultations were needed on procedural aspects of the Working Party, and that it would revert to this matter when there had been sufficient progress in those consultations to make consideration by the Council useful. This item was on the Agenda of the present meeting at the request of Bulgaria.

The representative of Bulgaria, speaking as an observer, said that since the submission of the Memorandum on the main features of the economic and trade policies and of the foreign trading system of Bulgaria (L/6364),

Bulgaria's economic reform, described in it as an on-going process, had entered a new substantive phase; a number of new important legal instruments had been adopted. The main directions of these instruments had been briefly presented at the Council meeting on 12 April. On 31 May, his delegation had sent contracting parties detailed information on these new developments accompanied by a letter from the Minister of Foreign Economic Relations (L/6512). His delegation had also sent to all contracting parties the English text of the relevant legal acts. He hoped that the information on the new legislation would facilitate the Council's decision on the procedural aspects of the Working Party, and expected the Council Chairman to convene informal consultations as soon as possible prior to the July Council meeting.

The Council took note of the statement.

3. Accession of Nepal
- Communication from Nepal (L/6507)

The Chairman drew attention to L/6507 containing a communication from Nepal concerning its interest in acceding to the General Agreement pursuant to Article XXXVIII.

The representative of Nepal, speaking as an observer, said that Nepal believed in free economy and policies of effective and efficient allocation of resources through market forces. Its export and import trade régimes were liberal, transparent and unrestrictive in terms of quantitative and fiscal measures. The import régime did not discriminate on the basis of origin. Import policies were publicized well in advance, and only suitable and absolutely necessary changes or amendments therein were encouraged over the short term in order to maintain stability and continuity in the policies. Consequently, thousands of firms were engaged in import trade. Likewise, no restrictions were imposed on exports, except in the case of goods concerned with conservation of national heritage or with environmental protection, and for prevention of abuses of established international conventions and customs. There was no duty on export; moreover, there was a system of duty draw-back on imports of industrial raw and semi-processed materials and intermediate goods for further processing and export under bonds.

Major exports of Nepal consisted of woolen carpets, garments, hides and skins, jute and jute products, lentils and some other agricultural products; major imports were petroleum products, coal, manufactured consumer items, capital goods, industrial raw and semi-processed materials and intermediate goods. Nepal had launched a structural adjustment programme on 16 July 1987. As a result of implementation of this programme, the GDP, investment, savings and government revenue had been enhanced. Notwithstanding these encouraging achievements, Nepal had been suffering consistently widening and adverse trade balances. Its export/import trade ratio was almost one to three, and therefore, the trade scenario was far from satisfactory.

GATT had been playing a very positive and constructive rôle in the expansion of international trade and economic development, and had resolved many intricate issues in this field. Therefore, the Government of Nepal had applied on 16 May 1989 for accession to the GATT on terms to be agreed with contracting parties. Nepal had also asked the Secretariat to help organize a local seminar to acquaint the officers concerned with the evolution of this arrangement, to which it had received a positive response. He urged the Council to give consent to Nepal's application and to let it accede to GATT as early as possible.

The representatives of Japan, Hungary, Chile, Colombia, Israel, Norway on behalf of the Nordic countries, Malta, Singapore, Bangladesh, Turkey, Kuwait, Peru, Australia, Austria, Canada, Czechoslovakia, Hong Kong, Egypt, Argentina, Mexico, Morocco, Thailand, Pakistan, the European Communities, Indonesia, India, Nigeria, Philippines, Tanzania, Uruguay, Yugoslavia, United States, New Zealand, Poland, Korea, Romania, Switzerland, Malaysia, Sri Lanka and Tunisia welcomed Nepal's decision to accede to the GATT and supported the establishment of a working party to examine its request.

The representatives of Israel and Bangladesh further said that their respective delegations supported GATT's technical assistance being provided to Nepal.

The representative of Hungary said there was no need to stress the importance that his authorities attached to the strengthening of the multilateral system. The accession of Nepal to GATT would be beneficiary not only to Nepal but also to all contracting parties.

The representative of Norway, speaking on behalf of the Nordic countries, expressed their satisfaction that Nepal, a least-developed country, found merits in joining the GATT.

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

Terms of reference:

"To examine the application of the Government of Nepal to accede to the General Agreement under Article XXXIII, and to submit to the Council recommendations which may include a draft Protocol of Accession."

Membership

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

Chairman

The Council would authorize its Chairman to designate the Chairman of the Working Party in consultation with representatives of contracting parties and with the representative of Nepal.

The Council so agreed.

The Chairman invited the delegation of Nepal to consult with the Secretariat as to further procedures, in particular regarding the basic documentation to be considered by the Working Party. He also invited Nepal, on behalf of the Council, to attend meetings of the Council and of other GATT bodies.

4. Accession of Venezuela
- Communication from Venezuela (L/6519)

The Chairman drew attention to document L/6519 containing a communication from Venezuela concerning its interest in acceding to the General Agreement pursuant to Article XXXIII.

The representative of Venezuela, speaking as an observer, said that Venezuela, like many Latin American and other developing countries, had experienced considerable economic difficulties in recent years. Despite its domestic adjustment efforts, the problem of external debt had continued to weigh heavily, exercising an adverse influence on Venezuela's development efforts; it had also had to deal with seriously deteriorating terms of trade, arising mostly from reductions in the price of oil. Venezuela had to modernize its economy and adapt it to changing international trade and financial conditions, to consolidate and strengthen its democracy and to respond to growing social pressures. Venezuela's economic reform program was a bold effort to deal with all these challenges. The basic objective of the new trade policy was to create a more responsive, competitive and dynamic domestic economy, capable of responding to a changing world economy. This new trade policy would be more transparent and less discretionary. Venezuela was moving towards a tariff-based system, involving the gradual reduction of tariffs and the conversion from specific to ad valorem rates. Venezuela was gradually eliminating most of its quantitative controls on imports, and was greatly simplifying administrative procedures associated with importing and exporting. Parallel to these changes, the foreign exchange system had been converted from a multiple to a unified, floating-rate system.

An essential condition for the success of these policies was a significant and sustainable increase in non-traditional exports and a diversification of Venezuela's export base. To this end, it had to be able to rely upon open access to foreign markets and upon predictable, transparent, and equitable relations with its trading partners. It was in this context that Venezuela sought GATT accession. Venezuela had already undertaken significant changes in its trade policies and considered these changes to be a clear and positive contribution to the international trading system, which should be fully taken into account in its accession negotiations. Its trading partners would find Venezuela ready to contribute fully to the GATT system, on the basis of its status as a developing country. Venezuela expected they would give full recognition to its efforts and grant it fair and equitable treatment in its accession negotiations, consistent with its development needs. In this connection, he expressed appreciation for the positive reactions which had been

apparent in the informal consultations with several countries. He thanked the Secretariat for its useful and timely cooperation.

He said that Venezuela attached the greatest importance to participation in the Uruguay Round and intended to seek the approval of the participants in the negotiations for Venezuela to participate. Its interest to do so was based upon a number of important considerations, bearing in mind that, even upon the most optimistic assumptions about the timing of the accession negotiations, Venezuela was unlikely to become a GATT contracting party before the Uruguay Round entered its final stages. Venezuela was convinced that the Uruguay Round was going to have far-reaching consequences for the international trading system. Not only were fundamental rules of the trading system under negotiation, but important new issues were also being considered. If Venezuela was excluded from the Round, then in effect it would be negotiating in the GATT of the past only to find itself participating in the trading system of the future. Moreover, Venezuela did not wish simply to become a member of GATT; it wanted to be an active participant in the trading system, with full rights to share in decisions which were of vital interest to its economy. This would indeed prove difficult if Venezuela was unable to participate in the Uruguay Round. In raising this issue, he realized that a decision favourable to Venezuela would require a modification of the agreement of participation contained in the 1986 Punta del Este Declaration. He noted, however, that this Decision had not been taken with Venezuela in mind, nor in the context of the kind of circumstances in which Venezuela presently found itself. If that was true, then he would appeal to the traditional flexibility and pragmatism which had been such a central and important feature of the trading system, and request participants in the Uruguay Round to reconsider their decision. Venezuela was fully aware that the GATT Council was not the competent forum to consider this issue, but he did not want to pass up the opportunity to emphasize Venezuela's interest in this important matter, and to inform the members of the Council of its readiness to continue consultations on the question and to provide any clarifications or further information as might be required.

The representative of Brazil said that the members of the Informal Group of Developing Countries welcomed with much satisfaction and firmly approved Venezuela's decision to enter into consultations with a view to accede to GATT. The same countries also supported the natural and understandable wish of Venezuela to be authorized to participate in the Uruguay Round.

For many years, Venezuela had shown a dynamic and active presence in international life, based on a respectable and responsible tradition of constructive and dynamic participation in all -- especially economic -- fora. Venezuela's decision to request accession to GATT came at a particularly important moment in its history, when it had decided to liberalize its economy and trade. In this context, Venezuela's request to be authorized to participate in the Round seemed reasonable. To this end, the developing countries supported the proposal that high-level consultations be held by the Chairman of the Trade Negotiations Committee

with a view to seeking, in line with GATT's tradition of pragmatism and flexibility, an adequate and satisfactory formula. They, including the countries of Latin America and the Caribbean, assured Venezuela of their collaboration and assistance and expressed their unanimous wish that the accession process be completed as soon as possible.

The representative of Jamaica said that Venezuela had a solid track record as a reliable trade partner. It had close and stable political relations with his own country, and their mutual trade relations allowed Jamaica to welcome Venezuela's request to accede to GATT. Jamaica shared the sentiments expressed by Brazil. His delegation took note of the courage of the Government of Venezuela in taking this step at this difficult moment in the adjustment process of its economy. That fulfilled one of GATT's fundamentals that market opening constituted an efficient method to encourage growth and stimulate development. His delegation endorsed and underscored the following points: an expeditious process leading to Venezuela's becoming a contracting party by the first half of 1990; the full recognition of Venezuela's economy as one at a stage of development, including diversification of its production sectors and hence the full justification for contracting parties in the working party to take account of Venezuela's trade, financial and development requirements and that in this process, the autonomous trade liberalization measures should be taken fully into account in the working party; and that Venezuela's accession be kept fully within the rules and disciplines of the General Agreement. However, Venezuela and the contracting parties would feel free, on a voluntary basis, to reflect on the evolution of the GATT system. Against that background and giving it its due weight -- although the Uruguay Round process was a separate matter -- Jamaica hoped that Venezuela would be able to participate shortly in it on equal terms.

The representative of the United States said that his country welcomed Venezuela's decision to join the GATT trading system and hoped that process could work as quickly as possible. This signified Venezuela's belief that its economic and trade goals could best be developed within GATT disciplines and benefits. The economic reforms recently undertaken, including the announced trade liberalization measures, would go far towards bringing Venezuela's trade régime closer to existing GATT provisions. The United States applauded Venezuela's decision to pursue an outward-looking trade strategy because such policies held the greatest promise for economic growth and development. This choice reflected a major change in Venezuela's perspective towards the policy tools needed for international competitiveness. The United States welcomed this change and would take an active rôle in the accession negotiations. It would work to achieve agreement on terms of accession in a protocol that would confirm Venezuela's liberalizing decisions in the trade area and its intent to adhere to basic GATT obligations. The United States looked forward to working with Venezuela in the GATT and in the Uruguay Round after its full accession. The United States understood Venezuela's interest in Uruguay Round participation and urged Venezuela to work expeditiously to complete its accession negotiations in order to join the Uruguay Round as soon as possible. The United States, for its part, would work as expeditiously as possible to achieve this objective.

The representative of the European Communities said the Community was extremely pleased that Venezuela had finally chosen to seek accession to GATT. The Community would do all in its power to facilitate and speed up the negotiation process with a view to completing it as soon as possible. As to the request for participating in the Uruguay Round, it was clear that the question had to be considered in another forum, notwithstanding the political value of a démarche in the GATT Council. The Community willingly recognized the symbolic value of the wish to participate in the Uruguay Round in parallel with the accession procedure, but would hesitate to advance the argument that one had to be in the negotiation in order to contribute to the shaping of tomorrow's GATT. Indeed, for a keen observer, tomorrow's GATT could already be pictured in terms of the likely good results of 1990. It was true that participation was a tutorial process, but this did not necessarily imply formal participation in the negotiations. If formal participation was agreed now, this might ultimately be contrary to the requesting country's interests and to those of the countries supporting it. There was an important impediment, namely the 1986 Ministerial Decision, i.e., the law. Dura lex sed lex. Derogating from that law would create precedents and could send a signal of insecurity for all future ministerial decisions, creating incoherence and inconsistency. The Community would study Venezuela's request most carefully with all sympathy and understanding before providing a final response, but it could already foresee insuperable difficulties. Having said that, the best solution to this problem was to uphold the Ministerial Decision and to apply it in a flexible and reasonable -- and not in an arbitrary and a disordered -- manner with regard to participation. The best way to achieve such a flexible application of what was a clear-cut and final decision was to speed up the accession negotiations.

The representative of Sweden, speaking on behalf of the Nordic countries, said that they welcomed Venezuela's decision to join the GATT. Venezuela was one of the largest and most important market economies which was not a contracting party. The Nordic countries believed that Venezuela could make valuable contributions to, and benefit from, the multilateral trading system. The Nordic countries looked forward to participating in a working party's deliberations.

The representative of Switzerland said that his authorities had been following with great attention and interest the very substantive economic adjustment process undertaken by Venezuela in the recent past. The present request for accession represented a logical follow-up to it. Switzerland welcomed that decision to join GATT and would actively cooperate and participate in a working party. As to Venezuela's request to participate in the negotiations, Switzerland understood very well this concern. The request, however, raised a number of important questions of principle. Switzerland had not completed its consideration of this matter and would want to revert to it at a later stage and in an appropriate framework.

The representative of Austria said that Austria favoured broad participation in GATT and therefore welcomed Venezuela's request for

accession, which showed the interest in GATT of developing countries as a whole. Austria had noted with interest Venezuela's statement and hoped that the accession procedures would be expedited.

The representative of Canada welcomed Venezuela's decision to accede to GATT. Venezuela was an important trading partner for Canada, which looked forward to Venezuela's increasing participation in the world trading system. Canada would work as constructively and as quickly as possible with Venezuela to assist this process. As to the request for Uruguay Round participation, Canada noted it and agreed with other speakers that this was a subject for discussion in another forum.

The Chairman noted the broad measure of support for Venezuela's request and proposed that the Council take note of the statements and agree to establish a working party as follows:

Terms of reference

"To examine the application of the Government of Venezuela to accede to the General Agreement under Article XXXVIII, and to submit to the Council recommendations which may include a draft Protocol of Accession."

Membership

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

Chairman

The Council would authorize its Chairman to designate the Chairman of the Working Party in consultation with representatives of contracting parties and with the representative of Venezuela.

The Council so agreed.

The Chairman noted that Venezuela and other speakers had said that Venezuela's request to participate in the Uruguay Round was a matter which would appropriately be considered by the TNC. He then invited the delegation of Venezuela to consult with the Secretariat as to further procedures relating to the accession process, in particular regarding the basic documentation to be considered by the Working Party.

5. Establishment of a streamlined mechanism for reconciling the interests of contracting parties in the event of trade-damaging acts (C/M/232)

The Chairman recalled that at its meeting on 10 May, the Council had authorized him to organize informal consultations, open to all delegations, to consider this matter further and to report to the Council. He had conducted two such consultations, and the process was not yet finished. The participating delegations had been asked to consult with one another and with their capitals on how to proceed generally with this matter, it being understood that he would remain in touch with these delegations with the intention of holding another consultation at an appropriate time.

The Council took note of this information.

6. Committee on Balance-of-Payments Restrictions
- Consultation with Pakistan (BOP/R/181 and Corr.1)

The Chairman recalled that at its meeting on 10 May, the Council had adopted the report in BOP/R/181 and Corr.1, and had agreed to revert to this item at the present meeting at the request of Pakistan.

The representative of Pakistan recalled that the report recommended that contracting parties give particular attention to the possibilities of alleviating and correcting Pakistan's balance-of-payments problems through measures which they might take to facilitate the expansion of its export earnings. As one of GATT's founding members, Pakistan had endeavoured to live up to its obligations, and Pakistan hoped and expected that its partners, particularly the developed ones, would reciprocate and live up to their own responsibilities towards it. He drew attention to the Preamble of the 1979 Declaration on Trade Measures Taken for Balance-of-Payments Purposes (BISD 26S/205), in which the CONTRACTING PARTIES had recognized "that the impact of trade measures taken by developed countries on the economies of developing countries could be serious". From this recognition, they had agreed, in paragraph 12, that particular attention be given to alleviating and correcting the balance-of-payments problems of a less-developed contracting party through measures necessary to facilitate the expansion of its export earnings.

Despite acute balance-of-payments difficulties, Pakistan had persisted in its efforts to simplify and liberalize its import régime. A number of restrictions had been removed and/or relaxed. Many non-tariff measures had been replaced by tariffs. The licensing system had been simplified and liberalized. A new customs nomenclature based on the Harmonized System had been implemented the previous year, and a comprehensive reform of the tariff system was in progress. While the Committee had recognized these efforts, Pakistan's efforts had ironically been met by an aggravation of discriminatory restrictions on its major exports by a number of developed contracting parties, and by the adoption and acceleration of trade distorting policies by them. Although the details of these measures had been provided to the Committee by Pakistan and by the IMF, some of them bore repetition. The most important and pervasive restrictions and distortions were in the area of agricultural exports, where trade distortions were caused by massive subsidization of commodities, such as cotton and rice, by major producers. Similarly, the adverse impact that the intensification of restrictions under the discriminatory Multi-Fibre Arrangement (BISD 21S/3) had on Pakistan's exports was not hidden, nor were the generally high tariffs in the area of textiles and clothing and measures affecting the export of leather products to the major developed country markets. Extensive analysis and documentation (paragraph 23) had been presented to the Committee to underscore the fact that these measures, taken by developed countries, had a serious adverse impact on Pakistan's economy. All of this fell within the ambit of the 1979 Declaration and called for action by contracting parties as foreshadowed in paragraph 12

of the Declaration. Accordingly, it had been Pakistan's hope and expectation that the Committee would clearly recommend that these countries facilitate the expansion of Pakistan's export earnings (i) by eliminating the discriminatory restrictions applied to its exports of textiles and clothing, and (ii) by discontinuing the trade distorting policies affecting its agricultural exports. Regrettably, these expectations had not been fulfilled. It was obvious that the countries which exhorted developing countries like Pakistan to pursue import liberalization policies did not have the same conviction when their own restrictive and distortive measures were concerned. Nevertheless, the Committee had recommended (paragraph 30) that particular attention be given to alleviating and correcting Pakistan's balance-of-payments problems through measures necessary to facilitate an expansion of its export earnings. He urged the countries which applied restrictions against Pakistan's textiles exports to stand up to their responsibilities and withdraw these restrictions. Similarly, he requested the countries, the subsidy policies of which had a profound impact in distorting the world markets in agricultural commodities, such as cotton and rice, to take urgent steps to relax and remove these distortions. This way, they would help Pakistan to alleviate its balance-of-payments problems and pursue its import liberalization policies and programme with confidence, and to contribute to the growth of trade.

The representative of Morocco welcomed Pakistan's courage and its important efforts to confront its economic and trade difficulties. These efforts aimed at further trade liberalization; fiscal adjustment, although important, had unfortunately not solved the problems, because of certain factors which were outside Pakistan's control. No country could grasp all the endogenous and exogenous parameters for predicting tomorrow's disequilibrium. That explained Pakistan's persisting difficulties and the soundness of its convincing arguments, which Morocco could make its own.

The representative of Brazil agreed that external measures had an impact on balance-of-payments equilibrium. Brazil also believed that Pakistan had made efforts to liberalize its economy and to redress its balance-of-payments disequilibrium. These efforts would benefit from measures taken by other trading partners. In that sense Brazil concurred with the suggestions just made by Pakistan.

The representative of Nigeria said that everyone was familiar with developing countries' acute and perennial balance-of-payments difficulties. Pakistan's efforts to improve the situation had not been sufficient because of external factors which were outside its control. Nigeria supported the request that other countries consider measures to assist Pakistan's efforts.

The representative of the European Communities found it unusual and surprising that the Committee's debate was being repeated in the Council and that points which had been discussed at length and in depth were being re-opened. Pakistan had taken some time to put forward its arguments in the Committee, but the Committee itself, as well as the IMF representative, had concluded that the main cause of Pakistan's problems was not trade-

related but stemmed from internal macro-economic policies. The Committee had noted that Pakistan had taken measures in that respect; it was hoped that these measures would be effective. He pointed out, however, that the contribution of exports was positive and that some of the markets targeted in Pakistan's intervention were already the largest positive contributors to redressing the balance-of-payments situation.

The representative of India said that the developing countries' balance-of-payments problems did not arise because of internal conditions alone but also stemmed to a large extent from the external environment. His delegation had participated in the Committee's discussion. In spite of the serious and adverse situation, Pakistan had taken many liberalization measures. India agreed that many restrictive measures were maintained in a number of developed-country markets on items of export interest to Pakistan, and that they had an adverse effect on its balance-of-payments position. His delegation urged that Pakistan's request be duly taken into account by the countries concerned.

The representative of Turkey said that his delegation had listened with great interest to Pakistan's statement and expressed its sympathy with Pakistan's striking arguments. Turkey believed that Pakistan had made significant efforts to revive its economy with great sacrifice and against an unfavourable external environment. As a country which had experienced its own balance-of-payments difficulties for years, Turkey understood very well the problems faced by Pakistan and fully supported its statement.

The representative of Mexico said that his delegation had taken part in the consultation and shared Pakistan's concern with regard to the importance of the external environment. Mexico had made the same point in the Committee and in the Uruguay Round Negotiating Group on the Functioning of the GATT System. The argument had been heard on several occasions that the importance of the external environment was being used as an excuse for not carrying out efforts towards trade liberalization. Mexico believed that this argument should not be transformed into a pretext for doing nothing to improve the external environment. Having so far relied on autonomous liberalization and not having resorted to Article XVIII consultations, Mexico found a similarity between Pakistan's and its own situations, in particular in respect of textiles. His delegation hoped that Pakistan's appeal would receive an appropriate response.

The representative of Peru supported Pakistan's request. Peru was also experiencing balance-of-payments difficulties and believed that the reasons put forward by Pakistan were perfectly understandable.

The representative of Yugoslavia said that his delegation praised Pakistan's efforts towards greater trade liberalization. During the Committee's consultation it had been shown that the external environment was not at all conducive to Pakistan's internal efforts to solve its balance-of-payments situation. For this reason, Yugoslavia supported Pakistan's request.

The representative of Uruguay said that his country had always supported Pakistan's efforts to struggle with its difficult balance-of-payments situation, which was caused by an adverse external environment. He would not repeat the position Uruguay had taken in the Committee, but would place on record its full identification with Pakistan's authorities. Their legitimate concerns demanded a response; this would be in favour of both Pakistan and the multilateral system.

The representative of Indonesia joined others in supporting Pakistan's statement and praised its efforts to come to grips with its serious balance-of-payments problems.

The representative of Bangladesh said his delegation had listened with interest to the enumeration of the measures undertaken by Pakistan in relation to its balance-of-payments situation. Bangladesh supported Pakistan's request.

The representative of Hungary said that his delegation had participated in the Committee's consultation and that Hungary's position had been duly reflected in the report. More generally, a supportive external environment was essential to countries with balance-of-payments difficulties, especially those which had embarked on structural adjustment aimed at trade liberalization.

The representative of Nicaragua said that most developing countries had balance-of-payments problems; unfortunately Pakistan was no exception. Nicaragua well understood the reasoning of Pakistan's statement and fully supported its request.

The representative of Colombia added his delegation's support to that expressed by previous speakers.

The representative of Argentina added his delegation's support. It was perfectly in order to discuss this matter in the Council. Argentina had experienced a similar situation when it had undergone a full balance-of-payments consultation two years earlier, and had then invoked paragraph 12 of the 1979 Declaration. Not only had two years passed without any positive measures to assist Argentina, but his country had on three occasions been called on to apply voluntary restrictions which in fact were beyond the scope of GATT. The more structural adjustment was required from developing countries, the more the latter had to insist that the 1979 Declaration be respected in a balanced manner.

The representative of Sri Lanka said that two decades earlier Pakistan's economy had been buoyant. It was only recently that external factors had led to its balance-of-payments difficulties. He therefore supported Pakistan's request.

The representative of Egypt said that his delegation had supported Pakistan's approach in the Committee and supported its present request in connection with paragraph 12 of the 1979 Declaration.

The representative of Pakistan thanked the delegations which had expressed support. He also expressed appreciation to the Community for its statement. He did not wish to enter into a debate which belonged, as the latter had said, to the Committee. However, the point his delegation had wanted to make was that in the 1979 Declaration there was a commonly agreed understanding, and his delegation expected this to be respected. It could not be proved through any formula whether balance-of-payments problems stemmed from internal or external factors, but in the 1979 Declaration there was a clear recognition that the trade restrictions imposed by developed countries could be serious. That was the case for Pakistan to a very large extent. He urged that developed countries stand by their commitment.

The representative of the United States said that his delegation associated itself with the Community's remarks on this matter. He recalled that these issues had been discussed during Pakistan's balance-of-payments consultation, and noted that the Committee's conclusions were stated in its report.

The Council took note of the statements.

7. United States - Identification of trade liberalization priorities for Brazil under Section 301 of the Omnibus Trade and Competitiveness Act of 1988¹
- Communication from Brazil (L/6517)

The representative of Brazil said that he would not repeat the arguments his delegation had made at the special Council meeting regarding Section 301 of the US Trade Act, but drew attention to his Government's statement (L/6517) on the identification of priority foreign countries and priority practices based on that law. Brazil was seriously concerned by the inclusion of some aspects of its foreign trade policy in a list of commercial practices which the United States considered to be barriers to US exports.

In order to correct serious imbalances in its external accounts, Brazil applied import control procedures which were fully justified under Article XVIII:B and were regularly examined by the Committee on

¹ During the consideration of this item, the Chairman reminded Council members of the statements made the previous day at the special Council meeting. He recalled that the discussion had been focused to a considerable extent on Section 301 notifications by the United States, and that it would seem to be clearly relevant to the present Agenda item.

The references to "super" and "special" 301 are those of the speakers.

Balance-of-Payments Restrictions. He recalled that in November 1987, the Committee's report on Brazil (BOP/R/172 and Add.1) had recognized its continued balance-of-payments difficulties and associated debt-servicing problems, and had not considered the Brazilian measures to be inconsistent with the General Agreement. That report, as well as its conclusions, had been approved by all members of the Committee and by all members of the Council, including the United States. Taking into account that new balance-of-payments consultations were already scheduled with Brazil, and that Brazil had always been willing to discuss these matters in the appropriate and competent bodies, the present US initiative seemed to undermine the well-established proceedings of the Balance-of-Payments Committee.

He said that this problem had to be viewed in the context of the acute foreign-debt crisis and its severe inhibiting and damaging implications for international trade. Brazil had one of the largest foreign debts in the world and in order to service that debt, had been obliged to generate, in the period 1983-1986, an accumulated trade surplus of US\$ 41.5 billion, which was still insufficient to cover total payments of US\$ 45.4 billion. While it would be highly desirable to generate huge surpluses through export growth alone, the escalation of protectionist measures against Brazil, such as those under discussion, made this impossible. His country was thus left with no other choice than to implement import controls, which would further hurt its development prospects and jeopardize its ability to generate trade surpluses in the future. It was regrettable that this sad state of affairs would severely affect US exporters' interests.

Notwithstanding these adverse factors, Brazil had given concrete proofs of its willingness to improve the situation by recently introducing far-reaching changes in its import régime, substantially reducing tariffs, promoting a 50 per cent cut in the number of products temporarily subject to suspension of import licences, eliminating para-tariff measures and simplifying import procedures. This was a continuous process aimed at meeting the needs of the current stage of development of Brazil's economy and with positive consequences for international trade.

Brazil considered that the matter under discussion should be examined within the multilateral framework of GATT. However, without accepting or condoning in any way a bilateral approach to this matter, his delegation had convincing arguments regarding the implications for other contracting parties of the measures Brazil had taken. These positive effects were particularly significant on the US market. Brazilian imports of US products had increased by more than 60 per cent in five years -- a rate of more than twice the global 23 per cent worldwide rise in US exports in the same period. Brazil's imports of US capital goods had increased 39 per cent in 1988, while imports from other markets had increased only 16 per cent. Chemical imports from the United States had grown by 65 per cent in one year. Brazil was the 17th largest importer of US products, and its participation in the US global foreign trade deficit had declined from 4.4 to 4 per cent in the last five years. With only two exceptions in this decade, the bilateral balance on current accounts had remained favourable to the United States, due to the debt service and other payments. The relative imbalance in the trade account had thus been largely compensated by Brazil's deficit in the bilateral current account.

As a continuous liberalization process in Brazil depended on equal initiatives from its trade partners, his Government had been participating in the Uruguay Round with the firm objective of seeking acceptable mechanisms to expand international trade. Regarding the exchange of concessions in the Round, Brazil had already implemented autonomous liberalization measures which demonstrated its intention to negotiate in good faith. The United States, however, had threatened to impose unilateral trade restrictions in such a manner as to improve its position, thus distorting the negotiating process and creating a climate of uncertainty with serious negative effects on the continuation of the Round. The US announcement, in the case of Brazil, threatened the entire Brazilian export sector, inhibited sales and led to commercial losses, thus contradicting the objectives established at Punta del Este in 1986 and violating the commitment undertaken by all, including the United States, not to introduce new trade restrictions.

The United States had also placed Brazil on a list of countries which, in the US view, did not offer adequate intellectual property protection. His Government faithfully complied with all the existing international conventions on this matter of which Brazil was a party. Brazil was also concerned that the US action had been taken precisely when the Negotiating Group on Trade-Related Aspects of Intellectual Property, including Trade in Counterfeit Goods, had begun the second phase of its work, based on the procedures agreed in Montreal in December 1988.

Brazil could not accept bilateral consultations within the framework of the internal law of any other country, and believed that adequate solutions to trade problems could be found within the available international norms and mechanisms. His country had never failed to engage in a constructive dialogue with any trade partner on any matter of mutual interest, thus reiterating its confidence in multilateralism and in the efficiency of the GATT dispute settlement mechanism.

The representative of the United States expressed concern that there continued to be a fundamental misunderstanding of US actions with respect to import licensing procedures maintained by Brazil. The United States had not ignored multilateral understandings to address this matter; it had simply determined its negotiating priorities with respect to Brazil, and was seeking constructive negotiations, not confrontations.

He then outlined the facts underlying the US complaint against Brazil. Brazil maintained a list of approximately 1,000 agricultural and manufactured items, imports of which were prohibited, including meat, dairy products, plastics, chemicals, textiles, leather products, electronic items, motor vehicles, and furniture. Brazil used its import licensing régime to implement company-specific and sectoral import quotas, which restricted market access for such items as machine parts, internal-combustion engine parts, and electrical machinery. Further, the complete lack of transparency of Brazil's licensing system created uncertainty for exporters to Brazil and inhibited market access.

Brazil called these measures "legal commercial practices", but the United States did not believe they would withstand close scrutiny in light of Brazil's obligations under Article XVIII or the 1979 Declaration on Trade Measures taken for Balance-of-Payments Purposes (BISD 26S/205). In its Section 302 investigation the United States would want to subject them to that scrutiny. Article XVIII:B provided that restrictions might not be applied "to prevent unreasonably the importation of any description of goods in minimum commercial quantities the exclusion of which would impair regular channels of trade". Restrictions had to be progressively relaxed as the country's balance-of-payments position improved, and eliminated when conditions no longer justified their maintenance. In the 1979 Declaration, the CONTRACTING PARTIES had reaffirmed that "restrictive import measures taken for balance-of-payments reasons should not be taken for the purpose of protecting a particular industry or sector". As set out in that Declaration, balance-of-payments measures had to be of a general character; they could not be used selectively to single out particular industries for import protection. The Brazilian practices cited by the United States as priorities did not appear to comport with these principles.

The United States was fully prepared to pursue these issues under the aegis of the GATT, including dispute settlement, if necessary, or through other appropriate mechanisms. It believed that a number of Brazil's practices and policies with respect to its import licensing régime were highly questionable in light of Brazil's obligations under Article XVIII. The United States hoped that in consultations with Brazil, it could make progress toward liberalising these practices. He understood that the Brazilian Government was considering a number of changes to its quantitative restrictions and licensing practices. A rational dialogue between the parties might lead to a better understanding on both sides and to an eventual resolution of this matter.

The United States recognized that Brazil has a serious debt problem and wanted to help solve it. In this regard, he took serious issue with Brazil's contention that US protectionism aggravated this situation, and he repeated that Brazil's exports to the United States had increased 19 per cent in 1988. Debt problems had to be solved in a manner that avoided unjustified forms of trade restraint. The United States' only objective was to reconcile these two concerns. Therefore, its action in no way undermined the GATT, but rather reinforced it. Brazil would have an opportunity to respond to the US concerns in consultations, which hopefully would resolve the issue.

The representative of Uruguay said that his delegation had not spoken on this matter during the special Council meeting because it preferred to do so in the context of the particular case involving Brazil. Uruguay fully supported Brazil's statement. Only the commitments assumed under the General Agreement were valid for contracting parties, and any discrepancies between a contracting party's laws and the General Agreement had to be resolved within GATT and under GATT law. US law did not exclude this possibility. Under GATT law, there could be no unilateral retaliation. The so-called "Fact Sheet" on US trade law distributed by the United States indicated that in investigations of violations involving GATT or other

trade agreements, the United States had to request dispute settlement proceedings under the General Agreement, if any were available. Thus the door was opened to the United States for dispute settlement to get underway.

The 1986 Punta del Este Declaration represented a political commitment to strengthen GATT and the multilateral trading system, but the United States had already violated the standstill commitment by considering retaliation against countries which had signed that Declaration. The identification of Brazil as a priority country under Section 301 was a judgement made by the United States on a unilateral basis, rather than one reached by the appropriate negotiating groups. Such an interpretation could not be made on a unilateral basis and even less so during the course of negotiations. The United States had identified certain problems with Brazil in the Negotiating Group on Non-Tariff Measures, and that was where such problems should be discussed. He stressed the astronomical figures cited by Brazil regarding its external debt, and asked how developing countries could service such debt exclusively by exports of goods. A better understanding of these problems was necessary. The good functioning of the multilateral system required that it be multilateral; unilateral action outside that system endangered it.

He said that the United States seemed to have adopted a conciliatory tone in its recent statements, and noted that the US Trade Act gave great power to the Executive branch regarding how the law would be applied. Uruguay hoped that it would be applied strictly within the multilateral framework of GATT. However, if necessary, contracting parties would have to bring their cases to the Council. For the time being there seemed to be sufficient good will and patience to see what would happen.

The representative of Japan said that on 25 May, the United States under the so-called "Super 301" provisions of the US Trade Act, had designated Japan as a priority foreign country concerning government procurement of satellites and supercomputers, and concerning technical barriers to trade in forest products. Japan deplored such unilateral action. The "Super 301" approach, which was to conduct bilateral negotiations against the backdrop of a possible resort to retaliatory measures, caused unnecessary resentment and friction between the designated country and the United States. Such an approach not only obstructed efforts to address matters in a constructive manner, but could even encourage protectionist forces. Japan had expressed its grave concern over the US measures and had made it clear that it had no intention to negotiate under duress. Japan had been responding in a constructive manner to problems raised by its trading partners when it deemed this appropriate. There would be no change in its approach of seeking solutions to such problems through cooperation.

He would not repeat the points he had made at the special Council meeting concerning the problems of "Super 301" vis-à-vis the GATT nor its broader implications. However, "Super 301" not only had ramifications for the trade relations between the United States and the country designated, but also challenged the basic principles on which the multilateral trading

system was founded. Japan found it encouraging that the United States had confirmed as its highest priority the successful conclusion of the Uruguay Round. Nevertheless, there was a grave danger of the US measures having a significant negative impact on the progress of those negotiations, irrespective of the United States' intentions.

The designation of Japan's trade practices under "Super 301" was neither appropriate nor justifiable in the following respects: 1) The United States referred to the closed nature of the designated country's market as the rationale for invoking "Super 301". As a result of the many market-opening measures taken by Japan to date, its market was very open. None of the "priority practices" identified could be considered to be trade barriers. 2) The designations were totally asymmetrical in the sense that the United States unilaterally demanded the country designated to rectify its trade practices, judging solely on the basis of the United States' criteria of "fairness", and despite the fact that the United States itself maintained import restrictive measures and practices including a very large number of grey-area measures. 3) It was widely recognized, even in the United States, that the US trade deficit stemmed largely from macro-economic policies, and that efforts in this area were essential to remedy the situation.

In Japan's view, the measures the United States was required to take in order to maintain sound external trade relations and to contribute to the success of the Uruguay Round were not unilateral designations of certain countries' practices based on "Super 301". Rather, the United States should discharge its responsibilities on macro-economic policies and should seek to strengthen the GATT multilateral trading system through consultations on an equal footing with its trading partners and through its active participation in the Uruguay Round.

He pointed out that should unilateral "retaliatory" measures based on "Super 301" be invoked, they would most likely be inconsistent with the General Agreement and would be in contravention of the Uruguay Round standstill commitment. Japan, therefore, strongly urged the US Administration to recognize the real implications of these unilateral measures, and to refrain from so-called retaliatory actions based on "Super 301". Japan reserved all its rights under the General Agreement with regard to any US unilateral measure that might be invoked.

The representative of Sweden, on behalf of the Nordic countries, recalled that on several occasions in GATT, these countries had already urged the United States to apply the Omnibus Trade Act of 1988 in accordance with its international obligations. In the statement by Finland on behalf of the Nordic countries at the special Council meeting, these countries had expressed their concern about the effects on the international trading system if unilateral actions were to be taken by the United States under the Act. It was their firm belief that in order to avoid trade frictions in general, and those currently under discussion in particular, the Round was the best available instrument for establishing

multilaterally agreed rules and means to deal with trade tensions. It was therefore imperative that all contracting parties increase their efforts considerably in order to reach a successful completion of the Round by the end of 1990.

The representative of Austria recalled that at the special Council meeting there had been ample discussion on the subject of Section 301 of the US Trade Act. His delegation shared the concerns expressed by Brazil, Japan and others, and strongly appealed to the United States and to all contracting parties to comply with their contractual obligations under the General Agreement and to refrain from taking unilateral measures. At the Council meetings in February and May 1989, his delegation had expressed its concerns about unilateral measures and their negative impact on the Uruguay Round. The final agreement reached in the mid-term review had been a difficult and delicate task, and everything should be done to avoid putting it in jeopardy. His delegation had taken note with interest and satisfaction of the US statement at the special Council meeting regarding the US Administration's commitment to the Uruguay Round.

The representative of Chile supported the argument made by Brazil. The "Special 301" allowed for greater access to markets for the United States' trading partners except where, in the US view, those partners maintained restrictive trade practices. This was a process which had to involve all contracting parties through multilateral negotiations. As a matter of principle, Chile objected to any type of negotiation where the principles and rules of GATT were not respected and where a threat of retaliation -- or retaliation itself -- was used as a method of achieving liberalization. The very existence of Section 301 could be interpreted as aimed at improving the United States' negotiating position. This would be in violation of the Uruguay Round standstill commitment. The reference to certain countries under Section 301 was discriminatory and also in violation of the General Agreement. Chile hoped that the US Administration would know how to use this very powerful tool without resorting to warfare, which would make success in the Uruguay Round impossible and would dismantle the multilateral trading system still in evolution. It was also hoped that Brazil and the United States could resolve the matter at hand within the framework of GATT.

The representative of Cuba fully supported Brazil's statement and recalled that at the Council meeting in February 1989 (C/163) there had been a discussion in which many contracting parties, including Cuba, had warned the United States of the dangers which the multilateral system would face if Section 301 were applied. Cuba again rejected this type of action and law of the jungle in defiance of all rules. The application of Section 301 represented a potential threat to the multilateral trading system and to the Uruguay Round negotiations. Present day practice was in contradiction to the United States' initiative regarding the Round. The arbitrary designation of and threat to certain countries created an unfavourable climate for those complex negotiations. Three countries had been thus designated, but others were being kept under watch, which made the future very uncertain. The measures taken by Brazil were appropriate,

duly justified and consistent with the General Agreement. Many developing countries were going through a difficult period, in part due to the magnitude of their external debt and an unfavourable external environment. The General Agreement represented the legal framework for all contracting parties, and priority should not be given to national laws which went against its spirit and letter. The US Trade Act should not be allowed to hang over the GATT like Damocles' sword or to become part of the GATT.

The representative of Korea recalled that on several occasions since September 1989, deep concern had been voiced by many delegations, including Korea, over a number of provisions in the US Trade Act which, inter alia, provided for unilateral actions inconsistent with the GATT. By designating three contracting parties as priority countries under Section 301, despite the repeated calls for the United States to implement its Trade Act in a manner consistent with the objectives of GATT and the Uruguay Round negotiations, the United States was not only undermining the GATT system but was also bringing further uncertainty into the world trade environment. Furthermore, the US action ran the risk of militating against the successful conclusion of the Uruguay Round.

Korea was deeply disappointed at the United States' recent action under the so-called "Special 301" of the Act which put his country, together with many others, on a priority watch list regarding their régimes on intellectual property. This kind of bilateral approach by the United States ran counter to the spirit of the Uruguay Round where negotiations on the trade-related aspects of intellectual property rights were being conducted. It was deplorable that the use of these bilateral measures by the United States would inevitably result in the improvement of its negotiating position within that Negotiating Group in contravention of its standstill commitment. His delegation would closely watch further US action in this regard, and reserved its right to raise this issue again should the need arise.

The representative of India said there seemed to be a contradiction between the US Administration's commitment to multilateralism and the measures envisioned under "Super 301" and "Special 301" on a bilateral basis, with the potential danger of that action resulting in unilateralism and measures inconsistent with the United States' GATT obligations. It did not seem that the United States had convinced any contracting party that the multilateral and bilateral approaches were consistent. Recent US action in regard to Section 301 had vitiated the environment that had been building to strengthen the multilateral trading system and for meaningful negotiations to that end. The US had violated the political commitment of standstill agreed at Punta del Este. India agreed with Brazil's position on the issues it had raised and believed that the dispute settlement mechanism under GATT was where complaints among contracting parties should be brought. India was encouraged by the US statement that it intended to use that mechanism for resolution of problems with its trading partners. India hoped and expected that the United States would adopt this course and would abandon the bilateral approach under "Super 301".

The representative of Thailand, on behalf the ASEAN contracting parties, said that these countries shared much of the concern expressed in the recent special Council meeting over the trend towards unilateralism in the international trading system and its effect on GATT -- both as a legal instrument and as an institution -- as well as on the Uruguay Round negotiations. As strong supporters of the GATT and the multilateral trading system, the ASEAN contracting parties wanted to see a successful conclusion of the Round, and were concerned that unilateral action and the threat of such would undermine the multilateral system and the Round. Unilateral action also violated the standstill and rollback commitments. The ASEAN countries strongly urged contracting parties to solve their trade disputes through the GATT dispute settlement mechanism.

The representative of Nicaragua said that a large majority of contracting parties had already stated clearly their feeling regarding Section 301. Nicaragua was greatly concerned by the identification of a country for bilateral negotiations due to restrictions adopted for balance-of-payments reasons and accepted by all the members of one of the regular bodies of GATT. Brazil's statement should be respected, and Nicaragua fully seconded that statement. The provisions of Article XVIII represented the only effective application within the framework of GATT of special and differential treatment in favour of developing countries. Without these provisions, the participation of the developing countries would be practically impossible; therefore, GATT was the only forum in which to discuss the measures that had been identified.

The representative of Canada recalled that at the special Council meeting, his delegation had made a statement on the risks to the GATT and the Uruguay Round of unilateral action or the threat thereof. Canada had taken note of the US statement regarding its commitment to GATT and to the Round. However, his delegation wanted to re-emphasize that if the United States or any other contracting party determined that an action by any contracting party was inconsistent with GATT obligations, it had the right to pursue that issue through normal and improved GATT procedures. If a contracting party wanted the removal of a measure which it thought to be unfair or adversely affecting its commercial interests, it should pursue that negotiation through the multilateral trade negotiations. Canada was not making any judgements on Brazil's or any other contracting party's measures, but to proceed unilaterally or to threaten unilateral action threatened GATT's credibility and diverted time and attention from the key work underway in the Uruguay Round.

The representative of Hong Kong recalled that at the special Council meeting there had been a full debate on the general issue of unilateral action or the threat thereof. He would not restate his delegation's views other than to remind the Council of Hong Kong's great concern in this matter and to repeat its hope that the United States would refrain from taking any retaliatory unilateral action under "Super 301" and that it would continue to realize its trade liberalization objectives -- and to settle any trade problems -- through the multilateral process of the GATT and the Uruguay Round.

The representative of Egypt recalled his delegation's statement at the special Council meeting that unilateralism was dangerous. Of greatest concern in the matter at hand were two issues -- the threat of unilateral action and its effects on regular and potential channels of trade, and the relationship between this particular case and the coverage of GATT balance-of-payments provisions. In the event that a contracting party established that its commercial interests had been adversely affected by particular measures, and such contracting party could establish a prima facie inconsistency of those measures with one of the provisions of the General Agreement, the proper multilateral mechanism designed to address a problem of this nature was paragraph 12:D of Section B of Article XVIII. Raising such a problem bilaterally attacked the very credibility of that mechanism. The US statement was encouraging in that it recognized the macro-economic and external financial difficulties Brazil faced; nonetheless, the question should be brought within the ambit of the multilateral system. Japan's position regarding bilateral negotiations on this question indicated that this method might not be the way to solve the problem. Egypt supported Brazil's concerns and hoped that this matter could be dealt with in a proper manner.

The representative of Hungary recalled that his delegation had already expressed its views on unilateral action and its possible negative effect on the ongoing Uruguay Round and on the multilateral trading system. Hungary hoped that the greatest possible self-restraint would be shown. His delegation shared the concerns and preoccupations expressed by Brazil, Japan, India and many other countries. Hungary wanted to believe that the identification of Brazil, Japan and India as priority countries under Section 301 was no more than a strange way of requesting consultations under GATT Articles XXII or XXIII:1.

The representative of Yugoslavia recalled that his delegation had already pointed out the possible harmful consequences on the multilateral trading system and on the Uruguay Round of unilateral and retaliatory measures. The US action regarding Brazil was arbitrary and inconsistent with GATT, and Yugoslavia shared the concern expressed by many delegations. He suggested that the United States refrain from such action and initiate consultations with Brazil and other countries concerned in order to resolve this matter. Should such consultations not be successful, the United States should put this matter to GATT dispute settlement procedures.

The representative of Pakistan recalled his delegation's statement at the special Council meeting that the worst threat to the GATT were the attempts to modify its basic principles in order to suit the requirements of individual countries. Pakistan shared the concerns expressed by many delegations about the ramifications of the threat of unilateral action on the GATT and on the Uruguay Round. His delegation had noted Brazil's statement that its measures had been examined in the Balance-of-Payments Committee and that the Committee was again scheduled to examine those restrictions. Pakistan hoped that the GATT mechanism, both in the current established GATT system and within the Uruguay Round, would be used by all parties should they have cause for complaint against particular provisions.

Pakistan appealed to all contracting parties to avoid unilateral measures, confrontation and threats, and emphasized that the GATT dispute settlement mechanism as well as the Uruguay Round were the proper avenues for the United States to pursue any actions it considered necessary to fulfil its GATT rights.

The representative of Peru reiterated what his delegation had said at the special Council meeting. Peru was seconding the multilateral trading system represented by GATT and was against unilateral measures. The position taken by the United States against Brazil was contrary to the spirit of the General Agreement and to the 1986 Punta del Este standstill and rollback commitments which prohibited participants from taking measures in order to improve their negotiating position.

The representative of Mexico recalled his delegation's statement at the special Council meeting and said that it applied to this item as well. Mexico also shared the statements by other delegations who had expressed their concern on this matter.

The representative of Turkey repeated his delegation's views on Section 301: Turkey was against any trade-restricting or distorting measures inconsistent with the provisions of the General Agreement; trading partners should avoid discriminatory or autonomous actions which undermined the principles of GATT and the integrity of the multilateral system; problems should be dealt with and resolved within the framework of the Uruguay Round and the multilateral system. The recent US statements on this matter seemed to be encouraging, and Turkey hoped that the United States' intentions for the application of "Super 301" would not lead to the undermining of the Uruguay Round negotiations or bring uncertainty to the multilateral trading system.

The representative of Czechoslovakia confirmed his delegation's statement at the special Council meeting regarding unilateral and retaliatory action.

The representative of Australia referred to his delegation's statement at the special Council meeting. It was not within the spirit of the multilateral system to use unilateral measures to deal with matters such as the one at hand. Article XXII was the mechanism through which contracting parties should seek to settle trade disputes among themselves.

The representative of Colombia recalled that there had been a debate on unilateralism at the beginning of the February 1989 Council meeting (C/163). His delegation had stated that the spectre of unilateralism would remain as long as the General Agreement was not the basic rule underlying all contracting parties' trade actions. The consequences of unilateralism undertaken by a major contracting party were now apparent. Colombia was deeply concerned by this situation, and his delegation associated itself with Brazil's statement and with the comments made by Uruguay and Chile.

The representative of Switzerland referred to his delegation's statement at the special Council meeting and said that it applied to the present item as well.

The representative of Argentina reiterated his delegation's statement at the special Council meeting and supported the statements by many delegations on the present item. Argentina fully agreed with the statements by Brazil and India on this item.

The representative of Romania shared the views expressed on this item. His delegation had recently pointed out the serious consequences of unilateral action or the threat of retaliation. Trade problems which arose between contracting parties should be carefully considered on the basis of contracting parties' rights and obligations and the rules and provisions of the General Agreement.

The representative of the European Communities fully supported Brazil's démarche. It was difficult to continue to express faith in multilateralism when one was put on a list such as the one under Section 301. It seemed, however, that Brazil was putting its request in a rather hopeless way. The discussion in the special Council meeting had nothing to do with the present one. The former had to do with policies without sanctions; the latter had to do with consequences and repercussions that would logically lead to a sanction. Firstly, one had to pay tribute to the United States for the inherent transparency which flowed from its democratic procedures. The United States had made available something which was part of its domestic internal policies, and this should be borne in mind in considering the listing of countries under Section 301. In its communication in L/6517, Brazil referred to action undertaken by the United States and then stated a series of justifications. It was important to know whether the publication of the list by the United States was, in itself, in contravention of the United States' GATT obligations or of the principles of the General Agreement. This, however, had nothing to do with Brazil's justifications for its own measures, and this confusion of what elements provoked which measures -- as had been done in the case on hormone-fed beef where the United States claimed that its action was in response to the Community's action -- should be avoided. Brazil's logic was somewhat difficult to follow. The Council managed the General Agreement, and if the United States was in violation of a political commitment under the Uruguay Round, that should be examined in the Surveillance Body. There was thus no need for a justification or apology for its own policy as applied here. The argument in the framework of the Council that the US action undermined the Uruguay Round was misplaced. Brazil was right in taking this case through the multilateral system, i.e., the GATT Council, and it was hoped that it could make use of all the possibilities offered in the multilateral process, taking this matter right up to a panel or equivalent body if necessary. For the time being, the Community saw nothing specific indicating that the United States was not actually fulfilling its GATT obligations or was morally in contradiction with the spirit or letter of the General Agreement. Therefore, in order to clarify the position, the Community supported Brazil so that discussion on this matter did not get bogged down in professions of faith. One could be in good faith and still be wrong.

The representative of Nigeria said that his delegation's concern in this matter was the United States' threat of unilateral action. No contracting party had the right to coerce another contracting party into negotiating. However, the US statements at the special Council meeting and at the present meeting were encouraging.

The representative of Brazil expressed gratitude to those delegations which had supported Brazil in denouncing the danger of unilateral action to the whole of the multilateral trading system. This showed a solidarity with a basic principle underlying that system. Delegations which had spoken in this regard were first and foremost acting in their own interest, because what was happening to Brazil now could afflict the whole of the system in the future. His delegation had noted with satisfaction the virtual unanimity in the concerns expressed both on the general, and on the more specific and concrete, aspects of the actual application of Section 301. Even Japan, the third country involved, had made its views known on this particular problem. The Community had raised interesting elements which deserved careful thought, including by the Brazilian authorities. Brazil's sole intention in its communication (L/6517) was to reiterate the fact that it submitted itself entirely and fully to the procedures established in the General Agreement. His country could admit no other possibility than maintaining and defending the General Agreement, even though this might be very costly to it, as it had been in the past. He did not think that this was the moment or the appropriate place to discuss in detail the points raised by the United States, as this might lead to an erroneous interpretation of Brazil's position. The General Agreement provided appropriate bodies for that purpose and, if necessary, his delegation would put its views forward there. The US statement to the effect that it was fully prepared to use GATT mechanisms was without any doubt a very positive one. However, a very simple way for the United States to dispel the doubts and concerns that had been voiced in this regard would be simply to withdraw publicly any reference to the possibility of unilateral retaliation by the United States. This would restore full credibility to its statements. Brazil would await with optimism a multilateral legal outcome of this issue. If the United States' attitude could be condemned because it departed from the system, there was still time to prevent the error from becoming any worse. It was with this in mind that he suggested that the Council revert to this issue at a future meeting, to provide an opportunity to judge whether the statements made thus far had become a reality to the benefit of all concerned -- even the United States which, like all contracting parties, had an interest in maintaining, defending and improving the existing system.

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

8. United States - Identification of India as a "priority country" under "Super 301" provision of the Omnibus Trade and Competitiveness Act of 1988²
- Communication from India (L/6525)

The representative of India recalled that on 25 May 1989 the US Government had announced its decision to identify, under the "Super 301" provisions of its Omnibus Trade and Competitiveness Act of 1988, six priority practices and three priority countries, of which India was one. Two of the listed practices were trade-related investment measures in India that prohibited or burdened foreign investment, and barriers to trade in services, specifically the closure of India's insurance market to foreign insurance companies. Following this identification of the so-called trade liberalization priorities, the US law provided rigid deadlines for commencement of investigations -- which had already been announced -- and for seeking negotiations to eliminate the identified practices. The areas for which India had been identified were not covered by any international understanding or agreement; his country had assumed no international obligations in these areas. What was particularly disturbing was the possible linkage with trade flows covered by GATT. In his Government's view, the decision to identify India as a priority country firmly set the US authorities on a course which could result in actions inconsistent with the United States' obligations under the General Agreement. In light of the precedent in a similar case (item no. 7 of the present meeting); India believed there was a possibility of the US Government eventually taking GATT-inconsistent actions.

The ramifications of the US decisions for the multilateral trading system had been discussed in great depth at the special Council meeting. The Council had heard contracting parties' views on the deleterious consequences of these actions on the health of the multilateral trading system and the negative impact on progress in the Uruguay Round. Participating countries would find it extremely difficult to negotiate under threat of unilateral retaliation. The United States' response to the debate had indicated the present US Administration's commitment to the strengthening of the multilateral trading system, yet that country had justified bilateralism on its own. There was some contradiction in this. Unilateralism was only a step away from bilateral resolution of problems, particularly between unequal partners. Moreover, the fears and apprehensions expressed by various delegations about the consequences of Section 301 measures, coupled with various statements about the US authorities' intentions and the purposes of the provision, were not at all

² During the consideration of this item, the Chairman reminded Council members of the statements made the previous day at the special Council meeting. He recalled that the discussion had been focused to a considerable extent on Section 301 notifications by the United States, and that it would seem to be clearly relevant to the present Agenda item.

The references to "super" and "special" 301 are those of the speakers.

allayed by the United States' statement. What was being questioned was not the desire of the US Government -- or any other government, for that matter -- to seek changes in the present trading régime or liberalization of trade, but the methods being employed to secure that change.

Contravention of the standstill commitment was bound to vitiate the environment of negotiations. His authorities viewed these developments with grave concern. What deepened that anxiety was the threat of unilateral retaliation for securing changes in India's domestic macro-economic policies, which were crucial to the realization of India's development objectives of growth and removal of poverty. His country could not accept any dictation on these matters from any source. The United States' threat of unilateral retaliation in India's case, involving as it did possible violation of GATT rights, was for securing changes in areas not covered by GATT. This decision was already causing uncertainties for India's trade. India urged other contracting parties to join it in calling upon the United States to abandon the course on which it had embarked through initiation of the process under Section 301 and to desist from taking any measures which were GATT-inconsistent.

The representative of Egypt said that while this matter was not the same case as that in item no. 7 relating to Brazil, as the matter at hand clearly involved areas which did not fall within the purview of the General Agreement, Egypt's concerns were that any action by the United States would lack GATT justification, and that the threat of such action impinged on the process of the Uruguay Round negotiations. Countries should negotiate on the basis of exchanging mutual benefits and not on the basis of unilateral threats.

The representative of Nigeria said that his delegation's concern in this matter was the United States' threat of unilateral action. Nigeria shared the views expressed by many delegations that this might not be the best way to solve existing problems. His delegation did not believe that any contracting party had the right to coerce another contracting party into negotiating. However, the United States' comments at the special Council meeting and at the present meeting were encouraging.

The representative of Brazil recalled that at the special Council meeting, contracting parties had expressed concern with some aspects of the US Trade Act on a general level. Now, the Council was dealing with some of the practical applications of the so-called "Super 301". Under Item no. 7, the Council had just discussed Brazil's complaint against that clause, and was now taking up another practical example of its implementation. Based on its own criteria, the US Government had also singled out India for action to be initiated on the grounds that India's practices in trade-related investment measures and in services were not acceptable to the United States. Investments and services were not contemplated in the General Agreement; how, therefore, could trade be used to pressure a country in this area? He repeated that one contracting party had no right to act unilaterally and outside the General Agreement, and asked how contracting parties could reinforce the system by breaking its basic legal pillars.

In the case at hand, the areas indicated were currently being negotiated in the Uruguay Round. India's position differed from that of the United States, but this was part of the negotiating process and was perfectly in line with multilateralism. What was not acceptable was forcing a country to negotiate under the pressure of the threat of eventual sanctions should that country not change its position so as to meet another participant's preferences and interests. This case involved an undeniable breach of the standstill commitment, particularly paragraph (iii), since trade measures were being used to impose on India the US views in these two sectors and thereby to enhance the US negotiating positions. Brazil, like the large majority of contracting parties who had expressed concern on this issue, could not ignore these actions. It was imperative that they be removed so that the Uruguay Round could progress for the benefit of all.

The representatives of Cuba, Yugoslavia, Pakistan, the European Communities, Chile, Sweden on behalf of the Nordic countries, Korea, Thailand on behalf of the ASEAN contracting parties, Canada, Hong Kong, Hungary, Peru, Mexico, Czechoslovakia, Argentina and Romania said that their statements under the previous agenda item applied also to the present item.

The representative of Cuba seconded fully India's statement. Cuba was particularly concerned by the use of coercive trade measures used against a country in areas which were not within GATT's competence and which were currently under negotiation in the Uruguay Round.

The representative of Yugoslavia noted that the US action regarding India covered the areas of foreign investment and insurance which, by their very nature, fell under the scope of the sovereign rights of each country to decide on its own policy of development. At the same time, these were the new areas for negotiation in the Uruguay Round, which made the purpose of the US action even harder to understand.

The representative of Nicaragua seconded the statement by India.

The representative of Pakistan said that his delegation's statement in the special Council meeting also applied to the present item. Pakistan urged that actions or steps prejudicial to a harmonious conduct of the Uruguay Round be avoided.

The representative of the United States said that he wanted to address his comments to points raised on this issue, and in particular to India. With respect to the issue of threats of unilateral action, he wanted to be very clear that the US Administration had made no threats of retaliation as part of its recent action. The US Trade Representative had stated very clearly that retaliation was not the United States' objective. The United

³Item no. 7: United States - Identification of Trade Liberalization Priorities for Brazil under Section 301 of the Omnibus Trade and Competitiveness Act of 1988.

States was not interested in closing its market or in using its trade laws as a pretext for protection. It was the United States' firm belief that it would have failed in its efforts if retaliation were ultimately to occur. The United States stood ready to reach accommodation on this matter and would do everything it could to avoid unilateral action.

Regarding the question of whether US actions in this matter violated the spirit of multilateralism, the US Administration intended to place a great deal of faith in multilateral procedures. Where GATT provided a mechanism to address its concern, the United States would expect to bring this matter to GATT for appropriate consultations and, if necessary, dispute settlement. Where GATT did not currently address its concerns, but the matter was being negotiated in the Uruguay Round, the United States was of the view that the Uruguay Round was an appropriate forum to pursue a negotiated solution. The United States might pursue separate bilateral consultations with India on the same subject, but the US position in such consultations would be entirely consistent with, and in furtherance of, the objective of a successful Uruguay Round. It was therefore unfair to state, as some had, that the United States was pursuing its objectives totally outside the framework of multilateralism. In fact, the United States' intention would be to pursue vigorously Uruguay Round agreements, and it had every hope, and every reason to expect, that the agreements reached in the Uruguay Round would fully address US concerns on a broad range of trade matters.

Regarding the US commitment to multilateralism, he said that the Uruguay Round remained the principal priority of the US Administration. In setting its priorities, the Administration emphasized that US trade interests were best served by a global trading system based on clear, enforceable rules applied equally to all participants. The most effective way to advance those interests was through the international framework of GATT rules. The Uruguay Round directly addressed many of the most significant trade barriers and distortions and provided the best opportunity to expand and strengthen multilateral rules. It also afforded an opportunity to negotiate the elimination of many of the types of barriers enumerated as priority practices under "Super 301".

The representative of the European Communities said that whether this matter was within GATT's competence or not, in view of the regulations and legislation of India, it was important to know whether the US step was or was not compatible with the obligations, provisions and spirit of the General Agreement, in particular at the moment when the United States' move led inexorably to actions in the trade area. And if this did lead to concrete action, what would be the result? Sanctions in the trade area? Whatever the result, the publication of the list in question had created a great many problems, as it placed the United States' trade partners -- among them India -- in an impossible position. Either India agreed to consultations with the United States -- and it was hoped that the United States would take the initiative to do this within the framework of GATT -- or there would be many difficulties. It was important not to get into an inextricable situation, to confuse measures taken in the trade field with

the competence of GATT. He had already spoken of the need to exhaust all possible multilateral procedures, leading normally to the establishment of a panel to sort out the issues so as to enable contracting parties to assume their responsibilities and to decide collectively on the basis of the preparatory work carried out. The Community and its member States seconded fully India's démarche, although it was not clear what should be done under the circumstances. Apparently the origin of the step taken by the United States lay outside GATT and could, sooner or later, lead to that country's taking concrete actions which would be incompatible with the United States' GATT obligations, unless it obtained prior authorization for such actions.

The representative of India expressed his delegation's gratitude to Egypt, Nigeria, Cuba, Yugoslavia, Nicaragua, Pakistan and the Community for their having supported India's stand on this issue, and to others who had done so prior to the consideration of this item. There appeared to be overwhelming support on this subject, and he agreed with Brazil that those who had spoken had done so out of their own interests. India was somewhat encouraged by the US statement that it was not the Administration's intention to take any unilateral measures, and hoped this meant that if no bilateral discussions took place, no unilateral measures would be taken. There seemed to be a contradiction between the process set in motion under Section 301 and the United States' commitment to the resolution of problems through the multilateral process. There was no doubt that the United States had concerns which it wanted to address in the multilateral fora. India could not understand the United States' claim that the bilateral track which had been undertaken under "Super 301" was of major support to the multilateral process. Nevertheless, India took it in good faith that no unilateral action would be taken by the United States in the Section 301 process. He asked that the Council keep this matter on its agenda so that the issue could be kept under constant review and surveillance.

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

9. Export of Domestically Prohibited Goods (C/W/580, L/6459, L/6467)

The Chairman recalled that at its meeting on 10 May, the Council had agreed to continue the consultations with interested delegations. There had since been several consultations which contemplated the establishment of a working group to examine the export of domestically prohibited goods and other hazardous substances. He considered that progress had been achieved, but further consultations were needed.

The Council took note of this information and agreed that the Chairman would continue the consultation process on this matter.

10. Austria - Tariff reductions (L/6509)

The Chairman drew attention to L/6509 containing a communication from Austria concerning a list of proposed tariff reductions.

The representative of Austria said that the federal law providing for this broad tariff reduction measure had been passed on 27 April 1989. The autonomous reductions of a very large number of tariff rates for manufactured products would enter into force on 1 January 1990 and tariff cuts would be made effective on that same date without any staging. These reductions applied to imports of about 140 billion Austrian Shillings (approximately US\$10 billion) or between 37 and 38 per cent of overall manufactures imports. On average, the tariff incidence on those items covered by this measure would be lowered by about 30 per cent. A close analysis showed that the highest weighted average tariff reduction for a chapter would not be less than 64 per cent and the comparatively smallest cut for a chapter still around 15 per cent. Not a single chapter of the manufactures sections of the Customs Tariff had been excluded, although the number of tariff rates to be slashed varied greatly as between different chapters. The tariff reductions were to be taken autonomously and on a most-favoured-nation basis. They would be limited as to time. Austria was prepared to negotiate their consolidation in the Uruguay Round tariff negotiations.

The global trade policy situation was in precarious equilibrium. On one tray of the scales there was protectionism, unilateralism and restraint of trade; on the other there was free trade, openness, multilateralism and competition. A small grain put onto either tray could tip the balance one way or the other. By adopting the measures just described, Austria hopefully had put its grain onto the correct tray.

The representative of Japan said that his delegation welcomed this autonomous m.f.n. tariff reduction. Japan noted from L/6509 that it was meant as an advance contribution to the tariff negotiations exercise of the Uruguay Round on the basis of a harmonization formula, an approach which Japan also favoured.

The representative of Bangladesh welcomed Austria's decision and urged Austria, in case the envisaged tariff reduction would lead to an erosion of the special preferences for the least-developed countries, to institute an appropriate mechanism to restore and maintain those preferential margins.

The representative of Austria assured Bangladesh that the margins would be maintained in Austria's scheme under the Generalized System of Preferences.

The representative of New Zealand welcomed Austria's reductions which, he noted, affected products in CCCN chapters higher than 24. His delegation was interested in the preceding chapters.

The Council took note of the statements and of the information in L/6509.

11. Uruguay import surcharges

- Request for extension of waiver (C/W/596, L/6521)

The Chairman recalled that by their Decision of 24 October 1972, 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 1989. He drew attention to Uruguay's request (L/6521) for a further extension of the waiver, and to the draft decision in C/W/596.

The representative of Uruguay said that further information which he had received the same morning confirmed that Uruguay's tariff régime had developed towards consistently lower levels and greatly improved market access. Until 21 October 1974, a maximum surcharge of 300 per cent had been applied. After that, successive reductions had brought the figure down to 35 per cent by 31 May 1989. For a number of years, the application of prior deposits had been dropped for import quotas. This virtually continuous progress justified the present request. Intense work was underway on the part of his Government, and Uruguay was heading in the right direction.

The representative of the United States said that his delegation was heartened by the previous statement, particularly the latter part. His delegation had been concerned about this waiver which had been in effect since 1972, primarily about the lack of information of the type that had just been supplied. Such information was necessary to understand properly what Uruguay was doing. The United States wanted to know how much longer Uruguay believed that it would need the waiver before it could finalize its tariff schedule and begin Article XXVIII negotiations with affected contracting parties. The United States would appreciate receiving a list of tariff levels currently applied, including the surcharges, compared with the original bound level on each item in Uruguay's GATT tariff Schedule XXXI. The United States would also like to know about Uruguay's intentions once it had completed the "adjustments" to its new tariff schedule and whether this implied changes to Schedule XXXI under Article XXVIII of the General Agreement. And finally, his delegation would be interested in knowing how Uruguay viewed the possible need to renegotiate its tariff schedule in light of the Harmonized System. His delegation now formally requested Uruguay to supply this information promptly to contracting parties. He said that in trying to be supportive of Uruguay in its efforts to restructure and liberalize its tariff régime, his delegation thought that a six-month extension would be sufficient for Uruguay to complete its efforts. His delegation looked forward to the resolution of this matter and hoped that consideration of this item would not be necessary in the future.

The representative of the European Communities said that requests for extension of waivers were a serious matter. The Community believed that such extensions should not be open-ended and should have time limits attached to them. The Community had not been entirely persuaded by the reasons advanced for the present request, but had been heartened by the reference to the intense work pursued by Uruguay. In this respect, his delegation not only wished to be associated with the US request for information but also would expect not to have to consider another request for extension of Uruguay's waiver.

The representative of Cuba seconded Uruguay's request. A developing country such as Uruguay had to make a doubled effort to fulfil all the necessary and complex procedures. She hoped that the Council would agree to grant Uruguay an extension until 30 June 1990, and could not see any justification for only a six-month extension when the usual practice called for one year.

The representative of Argentina said that the reasons explained by Uruguay were perfectly clear and that his delegation could second the request for extension of the waiver. Moreover, he thought that the "age" of a waiver was not necessarily the most important element to be taken into consideration in examining such requests, as other waivers were much older. One should concentrate on the content of the request.

The representative of Chile said that considering Uruguay's efforts and progress in preparing its new schedule, and that the waiver was not of a protectionist nature, his delegation supported Uruguay's request for a full year's extension.

The representative of Brazil associated his delegation with others which had supported Uruguay's convincing arguments. His delegation knew how difficult and complex it was for a developing country to carry out time-consuming domestic adjustment. Consequently, it would be appropriate to grant an extension for one year, as usual.

The representative of Mexico said that having examined Uruguay's request in the light of its statement at the present meeting, his delegation agreed that the Council should approve the request as presented.

The representative of Colombia agreed that the "age" of a waiver should not enter into consideration. His delegation would also insist that Uruguay's development needs be taken into consideration. Colombia agreed with the one-year extension practice in such cases.

The representative of Pakistan said that his delegation was convinced that Uruguay's waiver was not of a protectionist nature and appreciated the steps taken by that country. Pakistan therefore supported the request.

The delegation of Nicaragua said that on the basis of the efforts described as being taken by Uruguay, Nicaragua seconded the request for extension.

The representative of Uruguay thanked the delegations that had seconded Uruguay's request. His delegation had listened carefully to the remarks by the United States and the Community, which had expressed legitimate and reasonable concerns. Uruguay had asked for a one-year extension. This was perhaps on an arbitrary basis, not only because previously it had been for one year, but quite simply because his delegation did not want, at the end of six months, to have to ask for a further extension of two months. It would be much simpler to grant the

extension for one full year. This factor should not diminish in any way the efforts which were underway at present in Uruguay, which had an extremely complex tariff system. He hoped that the Council would forgive him for not explaining how this had functioned. Uruguay was now simplifying the system and bringing it closer to Schedule XXXI. For these reasons, it was necessary to ask for a one-year extension. From the figures that he had given, it could be seen that a yearly liberalization of the taxes was being carried out unilaterally. He hoped to have the replies to the United States' questions in the near future. It was quite certain, however, that Uruguay was going to fulfil strictly its commitments as a contracting party.

The Chairman said that he had noted a considerable amount of support for a one-year extension and that helpful assurances had been provided by Uruguay, which had also said that the replies to the questions put forward during the discussion would be forthcoming in the near future. He thus proposed that the Council take note of the statements, approve the text of the draft decision in C/W/596 extending the waiver until 30 June 1990, and recommend its adoption by the CONTRACTING PARTIES by postal ballot.

The Council so agreed.

12. Harmonized System - Requests for waivers under Article XXV:5

- (a) Bangladesh (C/W/598, L/6523)
- (b) Israel (C/W/592, L/6515)
- (c) Malaysia (C/W/595, L/6520)
- (d) Mexico (C/W/599, L/6524)
- (e) Pakistan (C/W/593/Rev.1, L/6516)
- (f) Sri Lanka (C/W/589, L/6502)

The Chairman drew attention to the communications from Bangladesh, Israel, Malaysia, Mexico, Pakistan and Sri Lanka in the L/.... documents 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 Commodity Description and Coding System.

The representative of Bangladesh recalled the July 1988 Council Decision to grant Bangladesh a waiver until 30 June 1989 to allow it to implement the Harmonized System. Intensive work was being carried out by the competent authorities in Bangladesh in that respect. However, due to technical difficulties, it had not been possible to complete and distribute the required documentation to contracting parties. Bangladesh had also consulted with the Customs Cooperation Council in Brussels. The required documentation was in the final stage of preparation. The GATT Secretariat was also lending its assistance. He hoped that the said documentation would be circulated as soon as possible. For that reason, Bangladesh was seeking an extension of the waiver. He recalled that in acceding to GATT in 1972, Bangladesh had not carried out the necessary negotiations for establishing its schedule of concessions. In accepting provisionally a schedule under the purview of which Bangladesh's trade had been conducted until 1971, it was aware that the obligations went much beyond its capacity

to meet them and had accordingly reserved its position to negotiate a schedule through the necessary modifications of the provisional schedule. For practical reasons, Bangladesh now informed the CONTRACTING PARTIES that it would undertake concurrently both the Harmonized System and Bangladesh's Schedule negotiations.

The Chairman drew attention to the draft decisions contained in the documents: C/W/598 - Bangladesh, C/W/592 - Israel, C/W/595 - Malaysia, C/W/599 - Mexico, C/W/593/Rev.1 - Pakistan and C/W/589 - Sri Lanka. 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 (L/5470/Rev.1).

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

13. United States - Trade measures affecting Nicaragua
- Panel report (L/6053)

The Chairman said that this item was on the Agenda at the request of Nicaragua.

The representative of Nicaragua noted that in addition to the Panel report in L/6053, four other documents were also before the Council in connection with this item. These were C/W/506 containing Nicaragua's position on the Panel report, C/W/522 containing a communication from Nicaragua, C/W/524 containing a draft decision submitted by Nicaragua, and C/W/525 containing a statement by a group of Latin American contracting parties. She recalled that on 1 May 1985, the US President had declared a national emergency and had imposed a series of economic sanctions against Nicaragua, chief among which was a prohibition on all imports into the United States of goods and services originating in Nicaragua and also of all exports from the United States of goods to or intended for Nicaragua, except for those intended for the counter-revolutionary forces. The measures had also included the suspension of all transactions relating to air and sea transport between the two countries. The US trade embargo and other coercive measures taken under Article XXI of the General Agreement had been periodically renewed for one-year periods, the latest renewal having effect until 1 May 1989. On 25 April 1989, the US President had sent a message to Congress extending the national emergency and prolonging the economic sanctions, this time indefinitely. She read out an official US document which stated that trade sanctions were an essential element of US policy regarding Nicaragua, and that in the US view, present conditions in Nicaragua did not justify the lifting of the trade sanctions. It went on to state that if Nicaragua fulfilled its Esquipulas commitments and held free, fair and open elections, this might resolve the emergency which had led the US Administration to impose trade sanctions.

She said that the renewal of the embargo should be notified to the GATT and duly justified by the United States. The text which she had just read out did not refer to the protection of the United States' essential security interests, but exclusively to Nicaragua's internal matters, those of a sovereign country, and therefore infringed the fundamental principles of the United Nations Charter and other instruments of international law. As such, it could not be justified under Article XXI. Her Government had not only fulfilled the political commitments undertaken at Esquipulas and in El Salvador, but it had also undertaken a range of economic measures aimed at redressing the ravages caused by a mercenary war and by unprecedented economic and financial pressures of which it had been the victim. These were courageous measures aimed primarily at curbing hyper-inflation and encouraging exports, and they centred on the reduction of public expenditure, shrinking the money supply and periodic devaluations. While the international community had recognized and hailed the efforts her Government was making in all areas and was seeking ways of displaying its solidarity, the United States was continuing to apply measures the sole purpose of which was destabilisation. It was important to add that in Nicaragua, fresh voices -- including from the political opposition and the Catholic hierarchy -- were being raised against the embargo. It was time for the CONTRACTING PARTIES to shoulder their responsibility and to take a decision, once and for all, on measures which tarnished GATT's prestige and credibility, and which, combined with all the other recent unilateral measures, endangered the Uruguay Round negotiations and the multilateral trading system itself.

The representative of Cuba said that her delegation could not but speak out each time Nicaragua brought its fair request to the Council. Nicaragua's statement provided a full picture of its reform and of the measures being put into effect, and also made clear its reaction to the US official view. In her delegation's view, it was time for the CONTRACTING PARTIES to adopt appropriate measures in relation to this Panel report which had been before the Council since 13 October 1986 and on which no action had been taken.

The representative of the United States said that his delegation was somewhat surprised, two and a half years after the first consideration of the Panel report, that Nicaragua had decided to bring this issue back to the Council. He recalled that the Panel had confirmed that the United States was within its rights to invoke Article XXI. The US Government had always supported adoption of the Panel report as it stood; no other resolution of the issue was realistic at this time. The United States therefore renewed its request for adoption of the Panel report. The United States had not changed its opinion that the solution to this matter did not lie within the GATT.

The representative of Colombia noted that the Panel report had been before the Council for quite some time. He drew attention to the changes that had come about in Nicaragua since then, as just explained by its representative, which made even more unwarranted the failure to apply the Panel's conclusions that the embargo be lifted as soon as possible. This would aid Nicaragua's economy and help it move in the political direction taken over the previous few months.

The representative of Brazil said that Latin America was faced with two serious problems -- external debt and peace in Central America. If for the first, a solution was still far away, recent peace-oriented initiatives were interesting and had awakened hopes. As for trade, it would also contribute to the progress of peace in the region if one could recognize the progress which had come about and Nicaragua's tremendous efforts aimed at re-establishing conditions for economic growth, and if one could cooperate in this way to have the measures -- which had never been approved and which had been taken outside the purview of the UN Charter -- lifted. He recalled that Brazil had an unequivocal stand on this matter. The time had come for the Council to find a solution in a way that would increase the chances of achieving peace in Latin America.

The representative of Chile said that the only way to guarantee free trade was by full respect for and compliance with the GATT dispute settlement procedures. Chile supported Nicaragua's request and called on the United States to comply with the Panel's findings and conclusions.

The representative of Uruguay said the inclusion of this item on the Agenda was timely. This issue was in the forefront of the minds of Latin American countries. This problem had been brought to the GATT by Nicaragua and could not be solved solely by the adoption of the Panel report and then filing it away. The solution could only be ensured by the immediate lifting of the US embargo.

The representative of Mexico said that his country agreed that this agenda item was most relevant. As a member of the international community and a Latin American country, Mexico had a particular interest in seeing peace and economic development promoted on the Continent. On many occasions, reference had been made to the rôle to be played by trade in promoting both peace and economic development. Mexico agreed that it would be most useful and highly appropriate to see this embargo lifted as soon as possible, if not immediately.

The representative of Romania said that her country's constant and unwaivering position was to speak out against any form of sanctions or trade restrictions which were applied for non-economic reasons outside the framework of GATT rules. Romania therefore supported Nicaragua's request and believed that the embargo should be lifted as soon as possible.

The representative of Argentina said that his delegation fully agreed with the points made by Uruguay and Mexico.

The representative of Peru said that his country also supported the request made for the immediate lifting of the embargo which had been imposed on Nicaragua, thus reiterating Peru's position as stated at previous Council meetings as well as in other fora.

The representative of India said that his delegation agreed with Nicaragua's statement and fully supported its request.

The representative of the European Communities said that the positions on this matter had not changed, and that there seemed to be an impasse. The last part of the Panel's report did in fact raise many questions; this was inevitable. Everyone knew the positions of all concerned with regard to Article XXI, which the United States had invoked. The Community had said that this was at the discretion of governments, which did not necessarily mean an arbitrary step or measure. The US representative had said earlier that the solution did not lie within the purview of GATT. However, at some stage it would be essential to find some sort of GATT answer to this question, if only through the adoption of the report, with or without consequences. This was not a good thing for GATT. Perhaps the two parties should be encouraged to talk to each other if only to find a modus vivendi which would accommodate the Council until a solution was found. He made an appeal that the Council urge both parties not to turn their backs on each other but rather to look each other squarely in the face and to speak to each other, without knowing if one would find a GATT solution in the long term.

The representative of Nicaragua thanked all the delegations which had given their support to the position of her country every time this issue had been on the agenda. Referring to the Community's statement, she said that, with all due respect for its representative and knowing that the Community was making tremendous efforts to contribute to the solution of the situation in Central America, his invitation to Nicaragua to institute a dialogue had prompted her to refer to an article in the "Journal de Genève" of the same day which read: "Washington rejects the request made by Mr. Ortega for dialogue". These requests for dialogue were being repeatedly made by Nicaragua's President. Possibly GATT would be the most propitious place to establish a dialogue, and Nicaragua would certainly not raise any objections.

As to the Panel report, her delegation had repeatedly stated the reasons why it could not be adopted unless complementary decisions were also taken. The report contained very positive elements which Nicaragua felt should be taken into account in any event, whether the report was adopted or not. These were primarily set out in paragraphs 5.16 and 5.17 of L/6053. Unfortunately, however, the Panel had been unable to fulfil its fundamental tasks under Article XXIII, namely: (a) to make findings as to whether or not the United States was complying with its obligations under the General Agreement (para. 5.3); and (b) to make findings as to whether the embargo nullified or impaired benefits accruing to Nicaragua under the General Agreement (para. 5.11). As the report explained, this had been due to the limitations imposed by the Panel's terms of reference. To adopt the report without any further decisions by the Council to redress this situation would create an extremely dangerous precedent. It would mean that the CONTRACTING PARTIES refused a contracting party's right to have its complaint examined in accordance with Article XXIII:2 -- a right which, in the case of the application of Article XXI, was recognized by the CONTRACTING PARTIES in the Decision of 30 November 1982 (BISD 29S/23).

In conclusion, she stressed the fact that the renewal of the embargo had occurred under conditions different from those which had prevailed in 1985 when it had been imposed. Firstly, because political conditions in Central American were different; secondly, because, in GATT, there were improved dispute settlement procedures. The difficulties which the Council had faced when establishing the terms of reference for the Panel would be easily resolved with the improvements adopted in April (L/6489). The CONTRACTING PARTIES had to impose a limit on the irresponsibility with which the United States claimed to interpret the provisions of Article XXI. She said that she used this expression because in the past there had been a reference to the fact that the responsible use of these provisions constituted their force.

The representative of Sweden, on behalf of the Nordic countries, said that it was unavoidable in today's inter-dependent world that conflicts and contentions arose between nations. The Nordic countries believed that it was more important that channels be kept open and that parties involved in disputes be willing to talk and consult with each other. The Nordic countries therefore found the proposal put forward by the Community to be a very wise one and hoped that the parties would find a way to begin a dialogue.

The representatives of Colombia, Mexico, Chile and Cuba supported Sweden's statement in support of the Community's suggestion that the Council find ways to institute a dialogue.

The representative of Nicaragua reiterated her country's willingness to enter into any type of consultation, bilateral or multilateral, under the Council's auspices or the Director-General's good offices, or in any other manner that the Council decided. Her delegation would always remain open and ready to find a way that would lead to a satisfactory resolution of this conflict which was prejudicial not only to Nicaragua, but detrimental to the GATT as a whole.

The representative of Cuba said that the facts bore out the reality that the Council had not been able to bring the United States to lift the embargo immediately. This being the case, her country supported the Community's suggestion.

The representative of the European Communities said that he was taken aback by the conclusions which had been drawn from his suggestion of appeasement. Nicaragua had spoken of a sort of dialogue at the planetary level between the United States and Nicaragua. He had been more modest and had not spoken of consultation. If one tried to formalise this into some sort of procedure -- for example, under the Director-General's auspices -- it would not work, and that would put the United States in an embarrassing situation. He had merely suggested that the two parties sit down and talk. Between members of the same world community, that should be possible without a formal framework. The GATT had good manners, which meant trying tactics which would cool the situation so that the Council would not consistently and constantly be faced with this very thorny issue.

The representative of Nicaragua said that the Council was assembled to solve problems of crucial importance to Nicaragua. In this regard, she reiterated the need for the CONTRACTING PARTIES to adopt a firm stand on this issue.

The Chairman suggested that the Council take note of statements and that delegations reflect on the issues which had been touched upon at the present meeting.

The Council so agreed.

14. United States - Section 337 of the Tariff Act of 1930
- Panel report (L/6439, L/6487, L/6500, L/6529)

The Chairman recalled that in October 1987, the Council had agreed to establish a panel to examine the complaint by the European Communities. At its meetings on 8-9 February, 6 March, 12 April and 10 May, the Council had considered the Panel's report (L/6439), and on 10 May had agreed to revert to this item at the present meeting.

The representative of the European Communities recalled that at the May Council meeting, the Community had formally requested the United States to unblock the adoption of the Panel report at the present meeting.

The representative of the United States recalled that at previous Council meetings, the United States had expressed substantive concerns with the Panel report. These concerns were made more serious by the fact that Section 337 involved an area of intellectual property law which the US Administration, Congress and private sector were actively interested in during the course of the Uruguay Round. It was also a complex area in which differences in legal systems might not make the report's implications readily apparent. His authorities, at very senior levels, had reviewed the report and knew of no acceptable means at this time of reconciling the report with domestic commercial and political interests. If the report were to be adopted, there was no present prospect that most of its elements could be implemented. Therefore, his delegation believed it would be hypocritical to consider its adoption without the intention or ability to adopt its results. His delegation, therefore, was not in a position to accept adoption of this report at the present meeting.

He assured the other parties to this dispute that the United States had not and would not close the door to discussion on this matter. It was willing and in fact eager to consult with them and to discuss mutual concerns which underlay the current impasse. The United States was interested in pursuing a better international understanding regarding all aspects of intellectual property protection, including border enforcement issues. The United States' difficulties on this matter should in no way be interpreted as a statement of opposition on dispute settlement matters -- later in the present meeting, he would have an opportunity to discuss other items which would indicate how far the United States was willing to go to

make this process work. Finally, he referred to his Government's request (L/6529) that the report be derestricted at the present meeting so that it could be shown to and discussed with US industry and Congress.

The representative of Japan said that his delegation had repeatedly expressed its concern at the United States' attitude with regard to the adoption of the report. Japan was concerned that delays in adopting panel reports was becoming a normal pattern of practice in the GATT. The United States bore a major responsibility in this. Japan therefore urged the United States to unblock the adoption of the report.

The representative of the European Communities said that his delegation appreciated the United States's honesty in the sense that it had said that it could not adopt the report because it would not be able to implement it. The practical difficulty for the Council was that it was confronted with a situation where this matter was rapidly going into a state of limbo: this was the fifth time, six months after being presented, that the report could not be adopted despite the very strong support to do so expressed at previous meetings by many delegations other than the United States. The United States' arguments, which had been made orally and circulated in writing, were not convincing either to the Community or to others. The Council was faced with the contradiction that the United States insisted that the dispute settlement procedures be followed by others, and not when it came to its own cases. Perhaps, as the United States had said, it was impossible for it to adopt the report. Where did that leave the Council? This case would not go away; it had been brought to the Council as a consequence of the Community's own internal legislative process under which due complaints were brought in the first instance; this had led to a request for an Article XXIII procedure which had run its due course and this process now required to be completed internally by the Community. The derestriction of the report could be welcomed on its merits of making the report available to others; but it did not go far enough. The Director-General had referred, at the special meeting of the Council, to a contracting party's refusal to adopt a report four times in a row. The rules that applied to others should also apply to the United States. The Community wanted to know what the next step in July would be, and what would happen in the autumn when the Council would inevitably come back to this matter. To avoid making a mockery of the procedures, work had to be done to resolve the issue satisfactorily and to make sure that the dispute settlement procedures did not fall into disrepute.

The representative of Switzerland recalled that his delegation had spoken many times in favour of the adoption of this excellent and well-founded report. The accumulated delay in adopting it was of great concern to his delegation, which hoped that the procedure would be carried out to its entire and successful completion. His delegation hoped that the report would be widely distributed in order to favour its final adoption.

The representative of Mexico reiterated his delegation's position that the report should be adopted. Mexico saw no reason why the document should not be derestricted.

The representative of Chile recalled that each time this report had been discussed, Chile had stated that it saw no problem with its adoption. Moreover, a change of attitude on the United States' part would be very favourable for the credibility of the GATT dispute settlement system.

The Chairman said that a number of references had been made to the US request for the derestriction of the report (L/6500). The United States had indicated that it was open to discussion on the adoption of the report. He wondered whether one should consider the possibility of some informal discussion on this particular issue prior to the next Council meeting. He suggested that the Council take note of the statements, and agree to revert to this matter at its next meeting and to derestrict the Panel report in L/6439.

The representative of Jamaica said that he had no difficulty with these suggestions. He understood that US Congressmen were sometimes part of the US delegation, and consequently had access, in the room, to the documentation on a restricted basis. Moreover, as the Congress had such an important rôle in the US trade policy process, he asked whether it was really necessary to say that restricted documents could not be seen by Congressmen. Or was the issue that of derestriction to the private sector?

The representative of Brazil said that his delegation agreed with the Chairman's conclusions and was disappointed that the report could not be adopted at the present meeting.

The representative of the United States replied to Jamaica's question that the US Government respected GATT's confidentiality and that GATT documents were only distributed to officials with appropriate clearance in the Executive branch. Although Congressional advisors took part in delegations, his Government's policy was that GATT documents were made available only to members of the Executive branch.

The Chairman said that having heard no objection to his earlier suggestions, he proposed that the Council so agree.

The Council so agreed.

15. Canada/Japan: Tariff on imports of spruce, pine, fir (SPF) dimension lumber
- Panel report (L/6470, L/6528)

The Chairman recalled that in March 1988, the Council had established a panel to examine the complaint by Canada. At its meeting on 10 May, the Council had considered the Panel report (L/6470) and had agreed to revert to it at the present meeting. He drew attention to a recent communication from Canada (L/6528).

The representative of Canada recalled that at the Council meeting in May, his delegation had indicated its disappointment with the outcome of the Panel's deliberations. He said that in its conclusions, the Panel had left unanswered fundamental questions put forward by Canada; in

particular, the Panel findings did not address the issue of de facto discrimination. Canada had also voiced its concern that the Panel's interpretation of the m.f.n. obligation in Article I gave precedence to the notion of tariff classification over the concept of "like product" referred to in the Article. Canada had considered that the issues raised by the Panel report were sufficiently serious that contracting parties should have further time to consider its implications.

His authorities continued to have serious concerns over the interpretations contained in the report, in particular, that these interpretations could alter the rights and obligations of contracting parties under Article I:1 of the General Agreement as these had generally been understood. These concerns were set out in L/6528. He stressed that Canada was concerned with a matter of principle, namely, that the interpretation contained in this report could preclude a contracting party from exercising its rights under Article I:1 for equal treatment of like products if the products involved were not specifically identified in the tariff classification system of the importing contracting party. Canada asked other contracting parties to consider the possible implications of the conclusions in this report for the General Agreement, and believed that these issues warranted further time for consideration.

The representative of Japan said that Canada's interventions were usually motivated by an intention to strengthen the GATT system and its dispute settlement procedures. Canada's statement made his delegation wonder, however, if Canada's support of the GATT system applied only when its own direct interest was not involved. Submission of a paper such as L/6528 at the present stage resulted in delaying the procedures. While the paper was new, its content was not. Canada appeared to be trying to re-open deliberations of a problem which had already been discussed in the Panel. By obstructing adoption of this report, Canada was not only undermining the credibility of the GATT and its dispute settlement procedures, but also the credibility and high prestige which Canada enjoyed. Japan urged Canada not to stand in the way of the adoption of the report at the present meeting.

The representative of New Zealand said that Japan's statement and its political concerns were very important to New Zealand. Like Canada, New Zealand had a problem in this case, which involved an apparently obscure product and a non-finding by the Panel, which if adopted by the Council, could weaken the GATT. While New Zealand had only a small commercial interest in the product in question, it had real concerns about the principle involved.

It was important to understand the logic underlying the Panel's finding. He quoted from the Panel Chairman's statement at the May Council meeting: "... in the framework of the Harmonized System, contracting parties enjoyed a large measure of freedom in determining further details of their tariff classifications. ... If a contracting party considered that an abusive use had been made of such discretion ..., it could lay a claim for equal treatment under Article I:1 [It] appeared normal that such a claim be brought ... on the basis of the classification of the importing country."

New Zealand considered that logic to be a tautology. It seemed to say that if a contracting party did not like the way another contracting party had classified a product of interest to the former, and if it considered that the tariff classification breached the like-product provision of Article I:1, that would nevertheless be the tariff classification used as the basis for the claim of likeness. That seemed to be a logical circle no exporting country could penetrate. In New Zealand's view, such logic was dangerous in two areas, namely, natural resource products and high-technology manufactured goods. In the latter area, the concept of the good in question might not exist in the tariff classification of the importing country, yet the claim of likeness would still be judged on the basis of the importing country's tariff classification and, therefore, that country's decision regarding likeness. New Zealand was not challenging the authority of the importing country to determine tariff classification at that level of disaggregation. However, the Panel's findings created the potential for an interpretation that the freedom of customs authority was not subordinate to the fundamental like-products provision. New Zealand recognized that there was a balance to be struck between the desire to facilitate the adoption of panel reports and the real possibility that from time to time, there might be a panel report which did not strengthen the General Agreement. Every GATT legal issue had to be considered on its merits. Therefore, with full respect for Japan's statement, New Zealand urged contracting parties to reflect carefully on this matter and on whether -- as New Zealand felt was the case -- the adoption of this report might weaken the General Agreement.

The representative of Australia recalled that when the Council had first considered this report, his delegation had expressed reservations on it. After further examination, Australia had the following reservations concerning the report. First, a GATT panel report should be designed so as to enable the parties to resolve a dispute; this did not seem to be the case for the report in question, and his delegation urged Japan and Canada to continue to pursue this course. Australia's primary concern about the structure of the argument in the report related to the same point raised by both Canada and New Zealand. It seemed silly that the dispute over competition between like products had been ruled out of consideration simply because of the assessment that the structure of the tariff did not allow for a judgement to be made. Thus the Panel had not been able to assess what the trade dispute was about, rather than avoiding such an assessment simply because there was a definitional position. This seemed an excessively legalistic approach which avoided the point. Tariff differentiation was a legitimate tool of trade policy; however, there was obviously scope in national tariffs for governments to differentiate between products in a discriminatory manner.

The issue of whether it was legitimate, in the context of Article I, to apply different rates of duty to like products of differing origins was an extremely important one. The concept of like products was particularly troublesome in the GATT and not only in relation to Article I. Considerable care needed to be taken in considering issues of this nature which related to a particular set of circumstances, and in adopting decisions which, in accordance with traditional GATT practice, could be expected to have broad future application.

The report relied heavily on an assessment of issues related to tariff structure and tariff classification. As a general principle, the treatment accorded to particular goods was more important than the classification of goods within a tariff structure. Tariff classification systems were not designed with Article I rights in mind. In Australia's view, the question of how likeness should be interpreted for Article I purposes remained open, despite the Panel's findings. Australia would not oppose adoption of this report if there were a consensus to do so. However, the principles upon which the Panel had arrived at its conclusion in this case might not necessarily be appropriate in future disputes of a similar kind, nor should this report give any endorsement to practices involving splitting of tariffs in a discriminatory manner. Should the report be adopted, Australia considered that the Council should adopt a decision which placed on record that the adoption of the report was aimed at furthering the objective of conciliation and that it should not be taken to provide precedents for the operation of Article I or the future interpretation of the term "like products".

The representative of Argentina recalled that at the May Council meeting, his delegation had also expressed reservations concerning certain parts of the Panel report. He said that there was an error in paragraph 3.27 of the report, in that Argentina applied a 32 per cent tariff on other pines and larch. His delegation was very deeply concerned by the Panel's conclusions in determining like products in the customs definition of the importing country. These criteria had been used by previous panels on the same type of subject where the physical origin of the product was considered as well as the practices of other contracting parties. Therefore, like other delegations, Argentina considered that these issues merited much more thought, and would have serious difficulty in agreeing to adopt the report at the present stage.

The representative of the European Communities said that his delegation had studied Canada's communication in L/6528 and was rather disappointed with Canada's attitude. The Community did not think that statements by other delegations which were close to Canada's position were particularly helpful. There seemed to be an impression that a panel report was good only if the complaining party won. As a matter of principle, the Community did not share this view. The Community had seen no new arguments in L/6528 which had not already been made to, and dealt with by, the Panel.

Specific points raised by Canada had been highlighted by the Chairman of the Panel in his introduction of the report. The Community had made its position of principle clear, both in the Panel and in the Council. Contracting parties obviously had a certain degree of discretion regarding their tariff classifications. Negotiated tariff concessions were, and had to be, based on this tariff classification and not on an abstract concept of like products. It was therefore evident that any claim under Article I challenging the tariff treatment of a contracting party had to take that contracting party's tariff classification as a starting point. Otherwise, a contracting party could never be certain of whether its classification was in conformity with its GATT obligations. The acceptance of Canada's approach could only act as a disincentive to future tariff negotiations,

and in that way add a considerable degree of legal uncertainty in the GATT. The Community therefore urged Canada and the other contracting parties who had intervened on this matter to reflect and to agree to the adoption of this report not later than at the next Council meeting.

The representative of Brazil said that his delegation had certain reservations on this matter and wanted to examine Canada's statement as well as L/6528 in greater detail. Brazil suggested that the Council revert to this matter at its next meeting.

The representative of Chile said that on principle, her delegation supported the adoption of all panel reports, and for this reason, Chile would not object to the adoption of the present report should there be a consensus to do so. However, this dispute involved a matter which was different from previous cases, and Chile would therefore not object to additional time being provided for examination of the report. The problem was what would happen, for example, in a hypothetical case where a panel reached the conclusion that the m.f.n. clause was no longer acceptable. Should that conclusion be accepted *mutatis mutandis*? Chile considered that this problem went beyond the Council's mandate and suggested that it be taken up in the Negotiating Group on Dispute Settlement.

The representative of Finland, on behalf of the Nordic countries, said that they saw the value in having more time to study further the arguments put forward by Canada on the Panel's interpretation of Article I:1. It would seem reasonable to revert to this matter at a later time.

The representative of the United States said that his delegation had taken note that like the United States, several other delegations had difficulties in accepting panel reports at the present meeting. The United States recognized that these countries had the sovereign right not to accept reports which they found politically difficult. The United States understood, as a general proposition, that a contracting party might seek to block adoption of a panel report on the grounds that it had serious substantive difficulties with the panel's findings, as the United States had noted on agenda item no. 13. However, his Government supported Japan's position with respect to adoption of the report presently under consideration.

The representative of Nicaragua referred to the earlier discussion under item no. 13 concerning her country's complaint against the United States. Nicaragua could not accept that a panel would not analyze or scrutinize a contracting party's recourse to one of the provisions of the General Agreement; it was precisely the purpose of a panel to see whether a contracting party had violated those provisions. A panel should also examine whether the benefits accruing to a contracting party had been nullified or impaired because of the application of certain measures. This had not been done in her country's case, and it was for that reason that Nicaragua did not believe that the report could be adopted without contracting parties having had an opportunity to consider those particular aspects.

The representative of Canada said that his delegation took exception to the characterization by Japan that Canada was undermining the credibility of the GATT and its dispute settlement procedures as well as the credibility and prestige of Canada itself. Canada had always been a strong supporter of the GATT dispute settlement system and had worked hard with other contracting parties to strengthen its effectiveness. Not only had Canada not stood in the way of adoption of panel reports that had found Canadian measures to be inconsistent with the GATT, but had taken the further step of removing its GATT-inconsistent measures in order to implement panel recommendations -- in the case of the panel reports on Canada's liquor boards⁴ and on its measures on salmon and herring⁵, both of which had found against Canada and had had serious implications for Canadian practices. The case at hand was different, as it raised, in Canada's and in some other delegations' views, serious concerns about the interpretation to be given to Article I. For these reasons, Canada had requested additional time to consider the report.

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

16. Norway - Restrictions on imports of apples and pears
- Panel report (L/6474)

The Chairman recalled that in March 1988, the Council had established a panel to examine the complaint by the United States. At its meeting on 10 May 1989, the Council had considered the report of the Panel (L/6474) and had agreed to revert to it at the present meeting.

The representative of Norway said that after further study of the Panel report and of the Panel Chairman's statement at the Council meeting on 10 May, his authorities were still surprised by the Panel's findings and conclusions. The Panel had taken a very narrow and schematic view and did not seem to have attached any weight to the extensive documentation provided by his authorities to substantiate the claim that its legislation had been and was of a mandatory character. The Panel had only made the simple finding that the Act of 1934 relating to the provisional ban on imports was not mandatory by its wording. But this, as also was evident from the report, had not been contended by his authorities during the Panel proceedings. Norway had extensively demonstrated, however, that its legislation was of a truly mandatory character, insofar as it "imposed on the executive authority requirements which cannot be modified by executive action" -- language taken from a Working Party agreement in 1949

⁴ Import, distribution and sale of alcoholic drinks by provincial marketing agencies (L/6304)

⁵ Measures on exports of unprocessed salmon and herring (L/6268)

(BISD II/49, para. 99, at 62) and pronounced as a criteria for legislation to be mandatory. The Panel itself had cited this argument in its findings (para. 5.6). Norway had provided extensive documentation to prove that under its constitutional system, and given the division of powers between its Storting (Parliament) and Government, successive Governments in Norway had never had, during the period in question, any discretion to alter the level and form of the restrictions; this authority was held by the Storting itself. His delegation was therefore disappointed that the Panel had failed to recognize this and had confined itself to a narrow examination of the wording of the Act of 1934. In the Norwegian constitutional system, legislation was in effect mandatory. Consequently, the Panel should have reached the conclusion that it was mandatory also in the sense of Norway's acceptance of the Protocol of Provisional Application.

Norway attached great importance to a well-functioning dispute settlement system and was willing to play its loyal part in it, even when this went against Norway's interests. Although Norway did not agree with the Panel's conclusions, it would not object to the adoption of the report if that were the wish of the Council. In so doing, Norway hoped to set an example for other contracting parties, including its opponent in this case. Norway was prepared to bring its measures on apples and pears into conformity with its obligations under the General Agreement. He could not say now how this would be done; changing the import régime for apples and pears was a complex and difficult task technically as well as politically. Changes would have to be presented to the Storting for its scrutiny and adoption. This process would inevitably take time, and Norway's acceptance of the report would have to be based on this understanding. This case had aroused considerable uneasiness in agricultural and rural areas in Norway, so much so that a protest campaign against it had collected more than 200,000 signatures -- a high figure for Norway. This case touched upon vital interests in Norway, including non-economic factors such as rural development, environment and social aspects.

The representative of the European Communities said that the Community appreciated the considerable efforts -- mainly political -- undertaken by Norway in not opposing the adoption of this report should there be a consensus to do so, particularly as such action went against Norway's interests and would give rise to considerable problems for that country. Norway had shown courage in its readiness to abide by its GATT obligations. The Community appreciated the difficulties and problems which adoption of this report would entail for Norway, and noted that this understanding was recognized. It would not be appropriate to press Norway on its implementation of the report; no-one could do the impossible. He recalled that Japan, in another matter, had faced popular petitions but that these had not prevented it from accepting the Panel's conclusions on that issue. Such action bode well for the continuation of a renewed vigour in GATT.

The representative of the United States expressed his delegation's appreciation to Norway for its attitude in this case. The United States was encouraged by Norway's statement and had taken note regarding the beneficial effects which that action could have on other contracting parties regarding the effectiveness of the dispute settlement system. In the United States' view, the report was legally very straightforward. It broke no new ground, but merely reaffirmed what numerous panels, going back to GATT's earliest days, had said. However, the United States could understand that the acceptance of this report was not simple for the Norwegian Government politically, and was grateful that Norway could accept its adoption. In response to Norway's comments regarding implementation, the United States understood that this would not be a simple matter, but hoped that Norway would diligently pursue this task.

The representative of Korea noted that Norway had said it would not stand in the way of adoption of this report despite the difficulties arising from the differences in interpretation and application of the relevant domestic law. Korea welcomed Norway's forthcoming and sincere attitude which demonstrated its firm commitment to the rules and disciplines of GATT, including the dispute settlement procedures. Korea had also noted that Norway needed time to implement the Panel's recommendations which, in light of the length of the time the import régime had been in place, was understandable. Such time should be allowed by the CONTRACTING PARTIES, with the anticipation that the recommendations would be implemented within a reasonable period of time.

The representative of Switzerland said that his delegation commended the courageous decision taken by Norway, which would have considerable repercussions for that country and would be politically, economically and socially difficult to implement. In the light of this difficult situation, Norway's request for time to implement the Panel's recommendations should be met with understanding.

The representative of Austria appreciated Norway's readiness not to object to the adoption of this report. This proved Norway's respect for the dispute settlement procedures. All were aware of the sensibilities of the agricultural sector, and Austria fully understood the problems Norway might have in implementing this report.

The representative of Japan said it should be recognized that the Uruguay Round Negotiating Group on Agriculture was aiming at bringing all measures affecting trade in agriculture -- including those dealt with by this report -- under more effective GATT rules and disciplines. Japan welcomed Norway's acceptance of the adoption of this report.

The representative of Canada said that his country had made a third-party submission to this Panel, supported the Panel's findings, welcomed Norway's acceptance of the adoption of the Panel report and noted Norway's request for a reasonable period of time in which to implement the Panel's recommendations.

The representative of Australia congratulated Norway for accepting the adoption of the report. He said that the question of adoption was

different from that of implementation. The latter was a matter for consultation between the parties concerned. His delegation noted Norway's statement that it would need time to implement the Panel's recommendations, but looked forward to a report to the Council following consultations between the United States and Norway about what steps would be taken. He said that paragraph 5.9 of the report contained an error regarding Australia; his country had, in fact, notified the legislation referred to in that paragraph.

The representative of Israel congratulated Norway for its acceptance of this report. It was a good signal to the world when a small contracting party took the necessary decisions to show that dispute settlement in GATT was alive. Norway's decision warranted special merit considering the difficulties involved in the implementation of the report.

The representative of Nicaragua congratulated Norway for its very responsible and brave attitude and for its readiness to adjust its measures to GATT rules and provisions.

The representative of New Zealand congratulated Norway and supported the adoption of the report.

The representative of Yugoslavia welcomed Norway's decision and noted with sympathy Norway's statement that it would need time to implement the Panel's recommendations.

The representative of Finland, speaking on behalf of Sweden, Iceland and Finland, congratulated Norway on its decision. These countries understood that this was a politically difficult case for Norway and considered that Norway's request for time to implement the report was warranted.

The representative of India congratulated Norway for its decision.

The Council took note of the statements, adopted the Panel report in L/6474 and agreed that in accordance with the procedure adopted by the Council in May 1988, the report was thereby derestricted.

The representative of Norway said that his delegation hoped that this case might contribute to an even stronger and well-functioning dispute settlement system in GATT.

The Council took note of the statement.

17. European Economic Community - Restrictions on imports of dessert apples - Complaint by Chile
- Panel report (C/W/601, L/6491)

The Chairman recalled that in May 1988, the Council had established a panel to examine the complaint by Chile. At its meeting on 10 May 1989, the Council had considered the report of the Panel (L/6491) and had agreed to revert to it at the present meeting.

The representative of the European Communities recalled that when the Panel report had first been discussed in the Council, the Community had asked for time to study its implications in their full detail. That examination had now been completed. The implications of the report for the Community were considerable and rather technical. Therefore, he proposed that the Community make available in writing its observations on these points.⁶ On one point -- the fundamental issue of a new interpretation given to Article XI:2 -- his delegation wanted to make some additional oral comments due to the gravity of the issues involved. The Panel had elected not to take account of the conclusions reached and the arguments put forward by an earlier panel on the same product and with the same country in 1980 (BISD 27S/98). It had in fact reversed the interpretation that the Community's régime effectively amounted to the necessary condition under Article XI:2(c)(i) for justifying the maintenance of restrictions. In effect, while the 1980 Panel had found that the Community did restrict quantities of apples permitted to be marketed within the meaning of Article XI:2, the present Panel had come to an opposite conclusion. This raised very serious difficulties for the Community, which was bound to be deeply concerned by an interpretation which went well beyond the accepted and well-established view of the scope of Article XI, and which was not based on the text of Article XI itself. Whatever the outcome of the debate on this item, the Community had to make it abundantly clear that the arguments used by the present Panel on Article XI and its interpretation could not bind the Community in the ongoing Uruguay Round negotiations on agriculture. In the Community's view, what was stated in the Panel report pre-empted those negotiations. The impact of the Panel's conclusions -- and in particular the arguments used -- on the future negotiations were extremely difficult to assess at the present time.

It would be normal and logical for more time to elapse before the report was adopted, insofar as the subject of the report was logically a matter for the ongoing discussions in the negotiating groups both on agriculture and on dispute settlement. However, since the Community was anxious to ensure that dispute settlement procedures operated as efficiently as possible, should there be a consensus to adopt this report, the Community would not stand in the way of its adoption, on the clear understanding that what was argued in the report, particularly in regard to Article XI and its interpretation, would not be held against the Community and should in no way compromise the Community's position. If in the light of ongoing discussions in the Uruguay Round it became necessary to come back to discuss these issues further, the Community would feel fully within its rights to present its views to participants to ensure that they had equal value in any arguments presented against the Community in the negotiations.

The Council took note of the statement, adopted the Panel report in L/6491 and agreed that in accordance with the procedure adopted by the Council in May 1988, the report was thereby derestricted.

⁶ Subsequently issued as C/W/601.

The representative of Chile said that his delegation understood that the Council, in adopting this Panel report, had also adopted the recommendation in its paragraph 12.36 regarding compensation. Since the Dillon Round of trade negotiations, Chile had possessed initial negotiating rights for exports of fresh apples to the Community until 31 July of every year. Chile's interest was to ensure those exports for that and other marketing periods. The Panel had determined that the Community's restrictions were inconsistent with its obligations under Articles X, XI and XIII. The restrictions applied by the Community against Chile had nullified and impaired the value of concessions granted to Chile over the period during which restrictions had been applied. At the same time, there had been nullification and impairment of Chile's expectations of access to the Community's market free of quotas. Such restrictions had, in fact, affected the competitive relationship which would have prevailed between Chile and other suppliers in the absence of such restrictions. Adoption of the Panel report led Chile to the conclusion that there was a case of nullification and impairment of the benefits which Chile had the right to expect. Thus, in the light of Article XXIII, Chile could expect compensation. The Panel had recognized that the Community and Chile could negotiate compensation consistent with the provisions of the General Agreement. He said that compensation would have been appropriate even if the Community had justified its restrictions under Article XIX. Chile thus asked the Community to agree to bilateral consultations with a view to finding a mutually satisfactory solution in order to deal with the adverse economic effects suffered by Chile as a result of the Community's restrictions on imports of dessert apples imposed in 1988.

The representative of Australia welcomed the Community's decision to agree to the adoption of this Panel report, particularly in view of the need for the major players in agriculture to demonstrate their bonam fidem and to operate with one standard and on one level. His delegation had noted the Community's statement and took it as a statement of national position. It was the legitimate right of any participant in any negotiation and at any time to state its position and what its interest on an issue would be in the future.

The representative of Argentina welcomed the Community's position in accepting the Panel's conclusions and recommendations. Adoption of this report was a step towards the strengthening of GATT's dispute settlement system. Argentina had taken note of the Community's statement, which it considered to be one of national position. His delegation fully supported the Panel's conclusions.

The representative of Finland, on behalf of Iceland, Norway and Finland, said that these countries had agreed to the adoption of this report and had indicated their support and respect for GATT's dispute settlement system. The Community's arguments merited careful consideration. Since the report raised a number of issues which were particularly sensitive in the current context of the ongoing Uruguay Round negotiations on agriculture, Iceland, Norway and Finland had certain hesitations about some of the Panel's conclusions and consequently did not consider that they prejudged their own views as to the proper application

of Article XI, or their position in the forthcoming negotiations in the Uruguay Round on the strengthened and more operationally effective rules and disciplines that should govern international trade in agricultural products.

The representative of the United States said that as a third party in this dispute, his country welcomed the Community's decision to agree to the adoption of this report.

The representative of Uruguay welcomed the adoption of the report, which was very clear. His delegation shared Argentina's interpretation of the Community's statement. The Panel had made an interpretation of Article XI which would no doubt come up in the Uruguay Round negotiations on agriculture. Uruguay exhorted the Community to agree as soon as possible to Chile's request for bilateral consultations on the question of compensation.

The representative of New Zealand welcomed the adoption of the report and acknowledged the high level of responsibility shown by the Community in accepting a report with which it had some difficulty. However, the arguments adduced by the Community had, in New Zealand's view, already been considered by the Panel and were reflected in large measure in paragraphs 12.1 and 12.9 of the report.

The representative of Canada said that, as a third party and one that had previously supported adoption of this report, Canada, too, welcomed the Community's decision. Like other speakers, particularly Argentina and Australia, her delegation had taken note of the Community's statement as one of national position.

The representative of Colombia welcomed the adoption of this report and the Community's constructive attitude. Colombia supported Chile's request for consultations to negotiate compensation with the Community and hoped that the Community would soon be ready to agree to that request.

The representative of Austria said that the Community's decision reflected its respect for the dispute settlement system. His delegation would study thoroughly the Community's statement that this Panel report could not prejudice either the Uruguay Round negotiations or future panel cases. Austria had noted the statements by Australia and Canada that each contracting party had the right to make its position clear at any time.

The representative of Brazil congratulated Chile and the Community for their constructive attitude regarding the adoption of this report, and noted that the Community's statement had been made as one of national position.

The representative of Hungary welcomed the Community's decision and shared the remarks made by Australia and Argentina, among others.

The representative of Switzerland said that his authorities were still studying this report and would do this along with the Community's comments. The Panel's conclusions should not, in Switzerland's view, prejudice the Uruguay Round negotiations in regard to Article XI, particularly in the area of agriculture.

The representative of Nicaragua welcomed the adoption of the report and supported Chile's request for consultations with the Community regarding compensation.

The representative of Thailand welcomed the adoption of this report and the Community's constructive attitude, and acknowledged the Community's statement.

The representative of the European Communities, in response to Chile's request that the Community consider compensation, said it was the Community's view that the question of compensation was without foundation in this particular case. There was no premise for requesting compensation for a measure which had lapsed on 31 August 1988. In no sense, based on any of the practices followed hitherto in dispute settlement procedures, could it be claimed that compensation could be due in this particular case. Referring to the Community's written observations (C/W/601), he said that these were the Community's preliminary observations, and his delegation reserved the right to return with more detailed and circumstantial points at a later time.

The representative of Chile quoted paragraph 12.36 of the report with respect to the issue of compensation as follows: "The Panel endorsed the views contained in this note. It recognized that it would be possible for the EEC and Chile to negotiate compensation consistent with the provisions of the General Agreement ..." However, the Panel had not considered that it would be appropriate for it to make a recommendation on this matter. He stressed that the Panel had recognized that it would be possible for the Community and Chile to negotiate compensation consistent with the provisions of the General Agreement.

The Council took note of the statements.

18. European Economic Community - Restrictions on imports of apples - Complaint by the United States
- Panel report (C/W/601, L/6513)

The Chairman recalled that in September 1988, the Council had established a panel to examine the complaint by the United States regarding the Community's restrictions on imports of apples. The Panel report was before the Council in L/6513.

Miss Liang, a member of the Panel, introduced the report on behalf of the Panel Chairman. She said that the Panel had met twice with the two parties to the dispute, had heard the views of one other interested

contracting party and had presented its report to the parties on 25 May 1989. The report contained a summary of the pertinent facts in the case, the main arguments of both parties and of the third party, the Panel's findings and its conclusions. The main conclusions of the Panel were that the EEC restrictions on imports of apples were inconsistent with Article XI:1 and were not justified by Article XI:2, and that the operation of a back-dated import restriction in respect of "other countries", including the United States, was inconsistent with Articles XI and XIII. She drew attention to the fact that the measures examined by the Panel had expired on 31 August 1988, and stressed that the Panel's conclusions and the reasoning set out in its findings had been arrived at and adopted unanimously by the members of the Panel.

The representative of the United States said that the dispute at hand was narrower than the case involving Chile's complaint (item no. 17), as it covered only Article XI. The conclusions of the two Panels were identical in this regard. Since the Community had already agreed to the adoption of the Panel report regarding Chile's complaint, the United States hoped that it would do the same for the report at hand.

The representative of the European Communities said that it would be normal in the present circumstances, as this Panel report had just been presented, for the parties to have time to study it carefully in all its detail. It was not to be assumed that one panel, even if it covered the same product as another panel, automatically followed the same path as that other panel, however closely identified the two might be in terms of the measures involved. All contracting parties had to be aware that the contents and the arguments presented in the report at hand, just as in the report previously discussed under item no. 17, presented the Community with considerable difficulties. In both reports there was a major problem over the interpretation of the key article in the agricultural area, Article XI. The Community had grave concerns, particularly in view of the reversal of earlier arguments used in relation to the restrictions operated by the Community internally on the marketing of apples. The position taken by the present panel was contrary to that taken by an earlier panel in 1980 (BISD 27S/98). The Community was again worried by the fact that there was no textual basis in the General Agreement for the new interpretation. The views expressed in the case at hand were therefore those of the Panel, and there appeared to be no basis in the General Agreement to support them. It would be logical and reasonable to allow sufficient time to evaluate fully the implications of what, for the Community, was an important issue. Thus there was a strong argument for delay. However, the Community was aware of the link with the earlier panel and it would seem churlish to deny that the same arguments for accepting the adoption of that report were not relevant in the present case. The Community was therefore willing, in the event that there was a clear consensus to do so, to adopt the report on this first occasion, on conditions closely similar, if not identical, to those it had applied in the case of the Panel report on Chile's complaint (L/6491). These conditions were: (1) that the observations relative to Chile's report, which were largely but not entirely consonant with the observations that would apply to the present report (L/6513), be

circulated⁷ to contracting parties and be reflected in the Council Minutes. These observations were the Community's preliminary views, and his delegation reserved the right to state to the Council a more complete and circumstantial position. (2) The arguments advanced in the present report could not prejudice in any way the Community's negotiating position in the Uruguay Round. (3) The Community did not consider that the arguments used or the conclusions reached in this report, any more than those in the report on Chile's complaint, could effect the Community's rights under the General Agreement, particularly as regards Article XI. On that understanding, and assuming that there was a clear consensus in favour of adopting the report, the Community would not stand in the way of such action.

The representative of Chile agreed with the Community that where the same reasons existed, the same dispositions existed. If the Community had agreed to adopt the Panel report on Chile's complaint, it should do so as well for the present Panel report. Chile supported that action. As the Community had made serious reservations, the legal scope of which was still to be examined, his delegation reserved the right to reply in writing to the Community's observations. In Chile's view, the reports were either adopted or not adopted. Once a panel report was adopted, it became a precedent as such.

The representative of Australia reiterated what his delegation had said under item no. 17. His delegation noted the Community's statement as one by a single delegation, and noted that the report would be adopted. Australia considered that any participant in the Uruguay Round could make a statement at any time about its intentions for negotiation there. However, on the basis of the brilliant clarity of the present Panel report, the Community should not think that it could continue to apply the measures it had previously applied.

The representative of Canada said that having made a third-party submission in this case, Canada welcomed the Community's position on adoption of this report at its first consideration by the Council. Canada noted the Community's statement and considered it to be one of national position.

The representative of New Zealand welcomed the Community's prompt adoption of this report which was clear and concise, as were its requirements. New Zealand had listened carefully to the Community's observations, which it considered to be a statement of national position. His delegation noted the additional observation concerning Article XI and was pleased that the Community had accepted the clear recommendation of the Panel report with respect to that Article.

The representative of Hungary welcomed the Community's decision regarding adoption of this report and shared the views expressed by other delegations as to the Community's reservations.

⁷ Subsequently issued as C/W/601.

The Council took note of the statements, adopted the Panel report in L/6513 and agreed that in accordance with the procedure adopted by the Council in May 1988, the report was thereby derestricted.

19. United States - Restrictions on imports of sugar
- Panel report (L/6514)

The Chairman recalled that in September 1988, the Council had established a panel to examine the complaint by Australia related to the United States' restrictions on imports of sugar. The Panel's report was before the Council in L/6514.

Mr. Broadbridge, Chairman of the Panel, introduced its report. The Panel had met twice with the parties to the dispute and once with third parties, and had submitted its conclusions to the United States and Australia on 16 May. The report had been circulated on 9 June 1989 and contained six sections: an introduction; the factual aspects; the main arguments presented by Australia and the United States; a summary of the arguments put by third parties; the Panel's findings; and the Panel's conclusion. Paragraphs 6.1 and 6.2 said that "the Panel concluded that the restrictions on the importation of certain sugars maintained by the United States under the authority of the Headnote in the Tariff Schedule of the United States are inconsistent with Article XI:1 and cannot be justified under the provisions of Article II:1(b). The Panel therefore recommends that the CONTRACTING PARTIES request the United States either to terminate these restrictions or to bring them into conformity with the General Agreement." The Panel had reached this conclusion unanimously and in compliance with the agreed timetable, which was a tribute to the goodwill and hard work of all involved in the Panel's work.

The representative of Australia thanked the members of the Panel for their careful consideration of the complex issues raised in this case and the preparation of a good report. He explained why Australia had considered it necessary to raise this matter. All countries exporting sugar to the United States had faced a significant decline in US sugar imports. For example, between 1977 and 1981, US average annual imports of sugar were 5.5 million short tons; by 1989 that figure had fallen to 1.3 million short tons as a result of the US quota system implemented in the early 1980s. The US import régime had also been disrupting the world sugar market and causing a lowering of prices, and with these trends, there was a further prospect of disruption and a danger that the United States might become a net sugar exporter.

There were also important points of GATT principle raised in the US defence of the Headnote which should not be allowed to pass. For example, Article II:1(b) did not, as the United States had contended, permit contracting parties to qualify their obligations under other provisions of GATT such as Article XI. The Panel had been clear on this. Australia commended the Panel on its clear and unequivocal findings and on the logic used in reaching them. While this was the first time the Panel report was

before the Council, his delegation nevertheless recommended that the United States follow the good example set by the Community on the two preceding items and agree to adopt the report at the present meeting.

The representative of the United States said that his country had understood that pursuant to Article II, a contracting party was permitted to apply measures reflected in the terms, conditions, or qualifications set forth in its schedule of concessions, without further justification under the General Agreement. It was in this light that the United States had imposed import restrictions on sugar. However, the Panel had found that Article II:1(b) did not permit the qualification of a contracting party's obligations under other provisions of the General Agreement. Therefore, any measures authorized by terms, conditions, or qualifications had to be consistent with all GATT requirements. This was the first time this issue had ever been clearly addressed in the dispute settlement process. The Panel's findings had broad implications for other contracting parties whose schedules might contain terms, conditions, or qualifications that modified their obligations. It was important to note that the Panel had not found that the United States had failed to implement its import quota according to the terms of the qualification, but that the qualification itself provided no justification for the quota. In normal circumstances, the United States would be justified in asking for more time to analyze the Panel report and to assess its implications. However, in light of the clear findings of the Panel and the clear ruling involved, the United States was prepared to accept the Panel's interpretation of the General Agreement and to agree to the adoption of the report. The Panel's conclusions had significant implications for his Government and the US sugar industry, as they affected many laws as well as administrative regulations. His Government had to review the implications of this report and to review with the US industry and the Congress its options for making the program GATT-consistent. He echoed the earlier remarks by Norway and Australia with respect to the difficulties of implementing such a report. The US Trade Representative and the Secretary of Agriculture would consult with all affected interests in the United States. The United States hoped to be able to make progress with respect to implementation of the report and to discuss this further with Australia.

The representative of Canada said that as a third party in this dispute, his country supported the Panel's findings and was pleased to note the United States' readiness to agree to adopt this report at the present meeting. This was a very positive and welcome signal by the United States of its commitment to the dispute settlement system.

The representative of Colombia expressed his delegation's satisfaction that this report could be adopted at the present meeting. The Panel's conclusions, which Colombia supported, were very positive.

The representative of Brazil recalled that his country had an interest in this case. Brazil's position on this matter was recorded in paragraphs 4.3 and 4.4 of the report. His delegation welcomed the United States' decision to accept the adoption of this report; this was an important gesture which helped reinforce GATT dispute settlement mechanisms.

The representative of Thailand said that as a sugar exporter, his country had followed this case closely and had made a third-party submission to the Panel. Thailand supported the Panel's findings and welcomed the United States' decision to accept adoption of the report, which would reinforce ongoing multilateral efforts to strengthen GATT's dispute settlement mechanism. Implementation of the Panel's recommendation would help rectify the situation in the world market for sugar.

The representative of the European Communities said that as a third party in this dispute, the Community supported the Panel's conclusions and the adoption of the report. The Community did not agree with Australia that this was a complex case; the legal issue involved was an extremely simple one. It seemed obvious to the Community that terms, qualifications or conditions attached to tariff concessions could not constitute legal exceptions to Article XI. The Community was concerned about the implications of this report in the sense that the issues which had been brought before the Panel were very narrow, and the US statement confirmed that there was reason for such concern. The Community had hoped that the Panel would deal with the wider issues involved regarding the US sugar quota and policy on sugar, but that had not been considered to be appropriate.

The representative of Jamaica said that his authorities would have preferred to have more time to reflect on the issues raised in this report, parts of which had given rise to apprehension. The Panel had recommended that the United States either terminate the restrictions on certain sugars -- Australia's complaint had focused on raw and refined sugar -- or bring them "into conformity with the General Agreement". However, the normal wording of such a recommendation was "into conformity with its obligations under the General Agreement". Jamaica understood that the United States could implement the Panel's recommendation either by increasing the customs duties and the other duties or taxes, or by taking measures under the terms of the 1955 Waiver (BISD 3S/32). Jamaica understood that under the terms of that Waiver, tariffs and fees could be applied simultaneously, but not tariffs, fees and quotas. In this respect, the Panel had not examined, as the Community had requested, the restrictions under Section 22 of the Waiver. The Community's focus was on sugar and sugar-containing products. While the issues raised and dealt with by the Panel had been clearly set out, a number of related issues suggested the need for further reflection. These were: (1) that measures maintained by the United States going back a number of decades and modified by it without challenge had later been challenged by a contracting party. The United States' trading partners had adapted their own trading structures to take account of the US régime. (2) The United States had drawn attention (paragraph 3.15) to a number of examples of tariff schedules containing terms, conditions and qualifications other than tariffs, and had raised the question whether Article II:1(b) was not to a great extent meaningless if a contracting party could make qualifications under its tariff schedule only if these were covered by another provision of the General Agreement. (3) Australia had claimed that reports adopted by the CONTRACTING PARTIES were interpretations of the General Agreement and became the views of the

CONTRACTING PARTIES without qualification. This was Australia's view -- which Jamaica did not share -- and had had no bearing on the Panel's findings, conclusions and recommendations. (4) Australia had also observed that the CONTRACTING PARTIES' Decision (BISD 31S/20) granting the waiver for the Caribbean Basin Economic Recovery Act (CBERA) had made explicit reference to the requirement that the United States not contravene the principle of non-discriminatory allocation of sugar quotas. The Panel (paragraph 5.8) had recalled its finding that Article II:1(b) could not be used to justify inconsistencies with any Article of the General Agreement including Article XIII. His authorities were not of the view that any reference to the CBERA was relevant to the dispute at hand. The Panel had rightly decided that the reallocation of the US sugar quotas was not part of its mandate. In the light of the concern these issues raised, his authorities wanted to have more time for reflection on this Panel report.

The representative of Chile supported Australia's statement and congratulated the United States on its acceptance of the report.

The representative of Nicaragua expressed her delegation's satisfaction that the United States could agree to adopt the report. Her country was pleased to see the Panel's conclusions since in 1983, Nicaragua had participated in a panel (BISD 31S/67) which had examined the US sugar régime. In Nicaragua's view, this earlier case had involved restrictions under Article XI:1. The US position had prevented that Panel from reaching a conclusion on this matter; however, a satisfactory conclusion had now been reached. Had Nicaragua's rights under the General Agreement not been annulled as a result of the US embargo, her delegation would be requesting compensation for the seven years of application of illegal measures. The application of this illegal measure had caused prejudice and damage to a number of contracting parties. In Nicaragua's view, the Panel should have analyzed, with respect to Article XIII, the reallocation of the sugar quota, which had followed the reduction of Nicaragua's quota. The measures adopted by the United States had not been equitable to the other contracting parties which had trade interests in this commodity. That reallocation should have been part of the Panel's work.

The representative of the Philippines said that as a country with a sizeable interest in world sugar trade, the Philippines supported the Panel's findings and conclusions and welcomed the United States' swift and favourable decision on this matter.

The representative of India said that his authorities had found the Panel's findings and conclusions to be clear and logical, and recommended the report's adoption. India welcomed the United States' readiness to adopt the report at the present meeting.

The representative of Hungary welcomed the United States' decision regarding this report which was clear and excellent. In Hungary's view, all panels had to maintain their original terms of reference, which in the present case, had been to examine the restrictions maintained under the authority of the Headnote in the US tariff schedule. If any contracting party thought it appropriate to bring other issues before a panel, it was free to do so.

The representative of Argentina said that there were two important facts to bear in mind: (1) For the clarity of its conclusions, the report was one of the best and clearest that had been produced in the last few years. There should be no doubt regarding the coverage of the Panel's work. (2) The United States had agreed to the adoption of this report on its first consideration by the Council. Argentina welcomed this and stressed that the report should be adopted at the present meeting.

The representative of New Zealand supported the adoption of the report, which was clear and concise, and welcomed the United States' cooperation in this matter. He noted that adoption of the report had been supported by all the contracting parties which had made third-party submissions to the Panel. New Zealand hoped that Jamaica's concerns would be taken into account in the implementation of the report or that, if necessary, Jamaica would pursue its concerns through the normal GATT procedures.

The representative of Uruguay welcomed the United States' position on the adoption of the report, the conclusions of which Uruguay fully supported.

The representative of Jamaica said that his delegation had noted the United States' willingness to adopt this report and the several statements supporting that adoption. He wanted the record to be clear regarding the issues Jamaica felt were important in this case, but his delegation would not stand in the way of a consensus to adopt the report.

The Council took note of the statement, adopted the Panel report in L/6514 and agreed that in accordance with the procedure adopted by the Council in May 1988, the report was thereby derestricted.

The representative of Australia said that his delegation had noted the US statement that there would be a process of consultations in Washington, to be followed by consultations with the Australian authorities on amendments to the US program. His delegation hoped that this would take place in the near future.

The representative of the United States welcomed Australia's statement regarding its forbearance and understanding in the matter of implementation and the political difficulties faced by the United States.

The Council took note of the statements.

20. Korea - Restrictions on imports of beef - Panel reports

- (a) Complaint by Australia (L/6504)
- (b) Complaint by New Zealand (L/6505)
- (c) Complaint by the United States (L/6503)

The Chairman recalled that in May and September 1988, the Council had established panels to examine the complaints by Australia, New Zealand and the United States related to Korea's restrictions on imports of beef. The reports of the three Panels were now before the Council in L/6504, 6505 and 6503 respectively.

Miss Choi, a member of the Panel, introduced the reports on behalf of the Chairman of the three Panels, noting that the issues in dispute, as well as the main findings and conclusions of the three panels, were virtually identical. The Panels had met twice with the parties to each dispute, and had received written submissions from three other interested contracting parties in each case. Throughout the meetings of each Panel with the parties, the complainants of the two other Panels had participated as observers. The three Panels had presented their reports to the parties on 25 April 1989, and the reports had been circulated to contracting parties on 24 May. They contained a summary of the pertinent facts in each case, the main arguments of the parties and of interested third parties, and the Panels' findings and conclusions. The main conclusions of the Panels were as follows: (1) Korea's imports measures and restrictions introduced in 1984/1985 and amended in 1988 were not consistent with the provisions of Article XI and had not been taken for balance-of-payments reasons; (2) with respect to import restrictions on beef which since 1967 had been justified by Korea for balance-of-payments reasons, in the light of the continued improvement of Korea's balance-of-payments situation and having regard to the provisions of Article XVIII:11, there was a need for the prompt establishment of a timetable for the phasing-out of Korea's balance-of-payments restrictions on beef, as called for by the CONTRACTING PARTIES in adopting the 1987 Balance-of-Payments Committee report (BOP/R/171 and Add.1).

In view of these findings, the Panels had suggested that the CONTRACTING PARTIES recommend that Korea (a) eliminate or otherwise bring into conformity with the provisions of the General Agreement the import measures on beef introduced in 1984/85 and amended in 1988; and, (b) hold consultations with the United States, Australia and New Zealand respectively and other interested contracting parties, to work out a timetable for the removal of import restrictions on beef justified since 1967 by Korea for balance-of-payments reasons, and report on the result of such consultations within a period of three months following the adoption of the Panel report by the Council.

The representative of Australia said that the Panel report in L/6504 -- indeed all three reports submitted under this item -- addressed an issue of major trade importance to Australia. Prior to the suspension of imports in 1984, Australia had been the largest supplier of beef to Korea. Korea was Australia's third largest beef export market, taking roughly 60,000 tons, with a value of more than 100 million Australian dollars per year. This trade had been severely curtailed in 1984 and finally stopped in 1985. Access was again being provided and Australia had regained its established rôle in that market. However, restrictions were still in place. The foundations of access to Korea's market remained uncertain and, as found by the Panel, were inconsistent with Korea's GATT obligations. Australia saw no reason why this report could not be adopted at the present meeting. The dispute was a long-standing one, brought to the GATT only after exhaustive efforts to reach a solution bilaterally. The Panel had accepted Australia's view that the restrictions had not been and were not justified.

The report in L/6504 had been available to the parties to the dispute for two months and to all contracting parties for one month, providing ample time for consideration. More importantly, Korea had not yet engaged in any bilateral negotiations to address the Panel findings and had advised Australia that this process could only start after adoption of the report. Therefore, early action was both appropriate and necessary. Australia appreciated that acceptance within a country that its policies were GATT-inconsistent could, and frequently did, take time. His authorities were not looking for rectification of Korea's beef policies overnight, but wanted the consultations called for in the Panel's recommendations to begin promptly.

This case was perhaps one of the rare instances in which a panel finding reflected not only the views of the claimant but was also based in part on the honest admissions of the party applying the restrictions. Australia had maintained from the outset of the panel procedures that it was clear from both the statements and actions of the Korean Government that the beef restrictions were, and continued to be, imposed for reasons of industry protection and were contrary to Article XI:1. This had been conceded by Korea before the Panel (paras. 72 and 74). The Panel findings were clearly stated. It recommended that Korea eliminate or bring into conformity with the General Agreement its current import measures on beef and that it consult with Australia and the other interested parties to work out an appropriate timetable. Australia did not wish to re-argue the case before the Council. Its objective was to negotiate with Korea on the establishment of GATT-consistent arrangements for beef, which would resolve the issue and take into account the interests of both countries. The adoption of the Panel report at the present meeting would constitute the first step in that process, and Australia sought contracting parties' support for that action.

The representative of New Zealand said that the report in L/6505 was regarded as a very important one by his authorities. While for reasons of administrative convenience the three reports were being considered together by the Council, he recalled the importance which his Government attached to having an independent report on its complaint, establishing New Zealand's specific legal rights on this matter and Korea's specific legal obligations to New Zealand. This reflected New Zealand's past status as the second largest supplier of beef to the Korean market and the future potential New Zealand saw in its trading relationship with Korea. New Zealand was therefore pleased to have reached a successful conclusion on its specific complaint through the GATT dispute settlement process. Although the implementation of the Panel's findings was not the direct issue before the Council, his authorities were awaiting advice from Korea as to when, where and how it intended to hold the consultations with New Zealand foreshadowed in the Panel's recommendation (para. 125(b)). The purpose of those consultations would be to work out a timetable for the removal of import restrictions on beef. Korea had indicated that it was unable to begin those consultations until the report was adopted; the immediate issue, therefore, was the Council's adoption of the Panel's findings. His delegation saw no reason why the report could not be adopted at the present meeting and urged Korea to agree to do so. Korea had had the report for

two months, and the bilateral dispute underlying all three panel reports had been going on for years. The finding was lucid and unambiguous. The Council should not have its agenda loaded up with panel reports the findings of which were not only clear, but in this case, were predictable and long predicted.

He said that it was somewhat difficult to divorce this specific issue from the broader debate in the special Council meeting on unilateral retaliation. The answer to undesirable unilateral attempts to deal with disputes should be self-evident -- to ensure through deeds, not words, that the alternative multilateral approach worked expeditiously. Both parties to this particular dispute presumably had a strong interest in reinforcing that conclusion.

The representative of the United States said that by now, all of the parties to these three disputes should have been able to review thoroughly the Panel reports. Korea's restrictions on beef had been introduced, and continued in force, solely for the purpose of protecting the Korean industry. This reality was clear from the facts, and it had been admitted by Korea orally and in writing in the dispute settlement procedure. The reports made a strong and clear case that Korea's import restrictions on beef were contrary to Article XI:1 and that there was no justification for them. The time had come for Korea to phase out these long-standing measures. The United States joined Australia and New Zealand in asking the Council to adopt the three Panel reports. The United States was prepared to begin working with all the interested parties to achieve the Panels' recommendations.

The representative of Korea said that in his delegation's view, the implications of the Panels' findings and conclusions were so profound and far-reaching -- not only for Korea but also for other contracting parties -- that the reports needed to be dealt with cautiously and carefully. His delegation wanted to address several elements of particular concern in the reports, and would use the report on the US complaint (L/6503) for reference to particular points.

(1) Regarding the Panel's conclusion (para. 119) that "excluding the possibility of bringing a complaint under Article XXIII against measures for which there was claimed balance-of-payments (BOP) cover would unnecessarily restrict the application of the General Agreement". This conclusion effectively negated the procedure of Article XVIII:12(d), which specifically provided for consultation on BOP restrictions, by implying that the multilateral surveillance exercised by the Committee on Balance-of-Payments Restrictions under Article XVIII:12(b) and dispute settlement procedures under Article XXIII:2 were complementary. Korea doubted the legal basis and the wisdom of this conclusion. When contracting parties applied restrictions under Article XVIII:B and held regular consultations with the BOP Committee, they had a legitimate expectation that these measures could not be challenged under the relatively loose requirements of Article XXIII:2. Otherwise, the exercise of multilateral surveillance under Article XVIII:12(b) became meaningless.

However, in reaching the above-mentioned conclusion, the Panel had rendered Article XVIII:12(d) obsolete because its requirements were more difficult to satisfy than those of Article XXIII; therefore, no country would ever consider resorting to Article XVIII:12(d). His delegation could readily envisage a possible situation where contracting parties challenged under Article XXIII:2 an individual measure of export interest to them, which had gone through multilateral surveillance in the BOP Committee, thereby nullifying the work of that Committee.

(2) It was regrettable that the Panel had based its conclusions and recommendations on the 1987 BOP Committee report (BOP/R/171 and Add.1) in a selective manner. The Panel had made an exclusive reference to the prevailing view and had relied heavily on the first sentence of paragraph 23 of that report, concerning the need for Korea to establish a timetable. However, that Committee in 1987 had not made a finding that the present or past application of Korea's BOP restrictions was inconsistent with Article XVIII:B. In fact, the Committee at that time had not expected Korea to disinvoke Article XVIII:B and had accepted that Korea could still benefit from the cover of that Article. This was clearly evidenced by the very fact that a new BOP consultation with Korea was scheduled to take place the following week. The Panel claimed (para. 123) that the CONTRACTING PARTIES had called for the prompt establishment of a timetable for the phasing-out of Korea's BOP restrictions when they adopted the 1987 BOP Committee report. His delegation could not agree to this interpretation. The first sentence of paragraph 23 of that report read: "The Committee therefore stressed the need to establish a clear timetable for the early, progressive removal of Korea's restrictive trade measures maintained for balance-of-payments purposes." While the Committee had, in 1987, stressed the need, and encouraged Korea, to establish a clear timetable, it had never legally bound Korea to do so. His delegation seriously questioned how the Panel could have derived legally binding conclusions and recommendations with far-reaching implications, from a mere statement of encouragement.

(3) His delegation found that the Panel had gone beyond what was permissible and had encroached upon the BOP Committee's jurisdiction by concluding that "there was a need for the prompt establishment of a timetable for the phasing-out of Korea's balance-of-payments restrictions on beef" and going on to recommend that Korea work out a timetable for the removal of import restrictions on beef justified since 1967 for BOP reasons. By doing this, the Panel had indisputably prejudged the result of Korea's next BOP consultation scheduled to be held the following week. Moreover, by passing judgement on Korea's BOP situation since the November 1987 BOP consultation, and recommending to work out a timetable for the removal of import restrictions on beef justified since 1967 by Korea for BOP reasons, the Panel had seriously affected the status of Korea's other restrictions under Article XVIII:B, despite the fact that the complaint was confined to Korea's restrictions on beef imports only. In Korea's view, only the BOP Committee was authorized to pass judgement on the BOP situation of contracting parties.

(4) The Panel had recommended three months for Korea to work out a timetable with complainants for the removal of import restrictions on beef. A three-month period not only had no legal basis but was also unfeasible in the light of the complexity of the issue and the number of complainants involved.

The beef issue was highly sensitive in Korea, whose agricultural structure was underdeveloped and fragile. The livestock industry was a leading source of improving agricultural income and its importance was growing. In particular, the beef-cattle industry was directly related to the livelihood of Korea's farmers, since as much as 54 per cent of total farm households were engaged in raising cattle. Thus, the process of reviewing beef policy by his authorities would be complex and time-consuming. His Government needed more time to examine the implications of the Panel reports further, and invited other contracting parties to do the same. Therefore, his delegation could not agree to the adoption of the Panel reports at the present meeting.

The representative of Canada recalled that his country had made third-party submissions to all three Panels. His authorities had studied the reports, had found them clear, unambiguous and well-reasoned, and strongly supported their adoption at the present meeting. Canada noted that the reports included in their recommendations that Korea should hold consultations with the three complainants and other interested parties to work out a timetable for the removal of import restrictions. Canada wanted to participate in that consultation process as an interested party.

The representative of the European Communities said that his authorities had carefully studied the reports and had found them sound and particularly well-reasoned. Korea's statement had not convinced the Community that its import restrictions on beef could still be justified for BOP reasons. The Community agreed fully with the Panels' conclusions. While the Community could understand that Korea had difficulties with a speedy implementation of the Panels' conclusions and recommendations, those recommendations had been made with particular circumspection. For example, paragraph 131(b) said that the import restrictions applied by Korea for BOP reasons did not have to be removed immediately, but that consultations should be held with interested parties to establish a timetable. The Community was an interested party. There was little to be gained in delaying the adoption of these reports; it would be better to concentrate on consultations aimed at the removal of the restrictions within a timetable acceptable to all.

The representative of India said that his authorities were reviewing these reports and had found that some of the conclusions were far-reaching, as Korea had said, for a large number of contracting parties. Korea had raised certain valid and sound reasons for not adopting the reports at the present meeting. India strongly supported that position, and suggested that the Council defer consideration of this matter.

The representative of Brazil said that his delegation was not prepared to adopt the reports at the present meeting. His authorities were still reviewing the very serious and far-reaching consequences that the conclusions of these reports might have for contracting parties maintaining restrictions under Article XVIII:B. The Panels seemed to have gone into an area which was dealt with by the BOP Committee and in so doing might set serious precedents in GATT. Therefore, Brazil strongly supported Korea's statement and preferred not to adopt the reports at the present meeting.

The representative of Mexico said that his authorities needed time to study the reports, particularly with regard to their implications with respect to Article XVIII. Reference had been made in the reports to previous consultations and commitments by Korea in the BOP Committee. In view of the imminent consultations the following week, it would be better to wait and see what the outcome of these consultations was, and thus to defer consideration of this matter.

The representative of Pakistan said that the reports raised fundamental questions in two categories: the jurisdiction of panels established under Article XXIII and the standing Committee on BOP restrictions under Article XVIII, and priorities among different provisions of the General Agreement. The Panels had concluded that the wording of Article XXIII was all-embracing, whereas they gave the impression that Article XVIII:B was not. The Panels had reached conclusions which were in some ways contrary to what had been earlier established by the BOP Committee. For these reasons, his authorities needed more time for reflection before Pakistan could offer definite views on the adoption of these reports.

The representative of Yugoslavia said that his authorities had not had enough time to study the reports thoroughly, especially because of sensitive questions such as the relation between Articles XVIII:B and XXIII. His authorities therefore needed more time to study the reports and would not be able to agree to their adoption at the present meeting.

The representative of Hungary said that his delegation supported the early adoption of these reports. Hungary had great sympathy and understanding for the problems expressed by Korea, but was convinced that these could be addressed during the consultations on a reasonable timetable. Hungary was convinced that in the implementation of the Panel reports, Korea would strictly apply the m.f.n. principle and within that framework, would take into account Hungary's interests as a new entrant.

The representative of Israel said that in light of the short time there had been to examine the reports and of the important questions involved, his authorities wanted to have more time to study them. Israel suggested that the Council defer consideration of this matter.

The representative of Australia said that his delegation was not surprised by Korea's position. In fact, it was not unusual for a report to be held over to a second presentation to the Council. Thus, the request for more time to consider this matter was within the bounds of the

proceedings. Much of Korea's statement was the same as it had made to the Panel. Australia had been very conscious of the problem that would be raised by the BOP element and had not thought it necessary to address the problem in this way; the Panel had responded to Korea's BOP arguments. Korea had said that the BOP Committee, in 1987, had not legally bound it to take any action; however, the Committee's intent had been clear, in the sense that the concentration of the remaining restrictions in the agricultural sector had been noted against the background of the 1979 Declaration. The real difficulties for Korea were those of reform in this area. Australia was willing to negotiate. His delegation hoped that, in their consideration of this matter, contracting parties would separate the substantive elements from sensitivities -- which Australia fully understood -- regarding the issue of competence and jurisdiction. The Panel had found itself in a position where it could not but address that issue, and had made great efforts to ensure that it acted consistently with the BOP Committee's findings. There had been a number of panel reports before the Council at the present meeting for which contracting parties had indicated that they would accept adoption and the result, but not the line of argumentation in the panels' conclusions. His delegation asked that the Council revert to this matter with this practical approach in mind aimed at adopting the report.

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

21. Unites States - Restrictions on the importation of agricultural products applied under the 1955 Waiver and under the Headnote to the Schedule of tariff concessions (Schedule XX - United States) concerning Chapter 10
- Recourse to Article XXIII:2 by the European Economic Community (L/6393)

The Chairman recalled that at its meeting on 10 May, the Council had considered this item and had agreed to revert to it at a future meeting. It was on the Agenda of the present meeting at the request of the European Communities.

The representative of the European Communities said that after repeated requests by the Community for the establishment of a panel to examine its complaint against the United States, his delegation was pleased to report that agreement had been reached on the terms for doing so. The Community and the United States had agreed that the panel should focus on the Community's complaints regarding US sugar quotas and with the implementation of its GATT Waiver for import restrictions on sugar and sugar products. Thus, the necessary understanding was in place for the panel to begin its work.

The representative of the United States confirmed that his country had resolved the outstanding differences with the Community concerning the establishment of this panel. He quoted from identical letters which had been sent to the Director-General by the United States and the European Economic Community on 26 May 1989 as follows: "I wish to report that my authorities and those of the European Economic Community have agreed that the panel should deal with EC complaints regarding US sugar quotas and with the implementation of its GATT "waiver" for import restrictions on sugar and sugar products. With this understanding as to the panel's mandate, I further wish to confirm that my Government can accept what are called standard terms of reference". He said that on this basis, the United States agreed to the prompt commencement of the work of this panel.

The representatives of Canada, Australia, Japan, Jamaica, Argentina, New Zealand, Nicaragua, Korea, Brazil, Uruguay, India, Chile, Pakistan and Yugoslavia supported the establishment of a panel and reserved their delegations' rights to make a submission to it.

The Chairman noted that there was a certain overlap between the terms of reference in this case and the report of the Panel on Australia's complaint against US Restrictions on Imports of Sugar (L/6514) which had just been adopted.⁸ In particular, L/6514 dealt with the US justification of import quotas on raw and refined sugar under the Headnote to its Schedule of tariff concessions. He had consulted with the principal parties concerned in the two cases, and noted that both the Community and the United States had stated their agreement regarding the scope of the Panel's examination. It had been agreed that the Panel set up under this item would not re-address the findings set out in L/6514.

He proposed that the Council take note of the statements and agree to establish a panel as follows:

Terms of reference:

"To examine, in the light of the relevant GATT provisions, the matter referred to the CONTRACTING PARTIES by the European Economic Community in document L/6393 and to make such findings as will assist the CONTRACTING PARTIES in making the recommendations or in giving the rulings provided for in Article XXIII:2."

The Council so agreed.

On the basis of informal consultations with the parties concerned, he proposed that the Council designate Mr. Jaramillo to serve as the Panel Chairman and Mr. Huhtaniemi and Mr. Salim to serve as members of the Panel. He understood that all these individuals were prepared to serve in their respective capacities.

The Council so agreed.

⁸ See item no. 19.

22. United States - Increase in the rates of duty on certain products of the European Economic Community (Presidential Proclamation No. 5759 of 24 December 1987)
- Communication from the European Communities (L/6438)
 - Recourse to Article XXIII:2 by the European Economic Community

The Chairman recalled that at its meeting on 10 May, the Council had considered this item and had agreed to revert to it at a future meeting. It was on the Agenda of the present meeting at the request of the European Communities.

The representative of the European Communities said that this matter was inextricably and intimately linked with the discussion which the Council had held earlier at the present meeting on unilateral and unauthorized action in the trade area. The Community -- unlike countries named in the "Super" or "Special 301" cases -- was actually suffering from the direct consequences of unauthorized action. There had been a degree of lassitude in the bilateral attempts to resolve this dispute, and sufficient progress had not been made so as to remove this item from the Council's Agenda. The Community had asked for a ruling by the Council, and failing this, had asked for the establishment of a panel. In view of the difficulties and the grave issues involved, the Community was obliged to ask the United States once again if it could agree to the establishment of a panel.

The representative of the United States said that the United States and the Community were continuing their discussions to address the issues involved in the hormone-fed beef dispute. The United States remained committed to seeking to resolve this matter amicably. During this period of actively seeking a bilateral resolution to the problem giving rise to the US countermeasures, the United States did not consider it useful to engage in a Council discussion of only the US countermeasures. In the United States' view, it was inappropriate for the Community to call for panel examination of this issue when talks were taking place on the larger problem of the trade distortions caused by the Community's import ban. He said that it was important for contracting parties to recall that the United States had been forced to its current course as a result of the Community's refusal to have the issue addressed in the Code Committee negotiated specifically to deal with these problems. It was strange that the Community was so interested in dispute settlement only on the issue of the response to, but not on the cause of, the problem. The United States' request for examination of this problem in the proper forum remained on the table. He reiterated that the United States continued to discuss this matter bilaterally and looked forward to its amicable resolution.

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

23. European Economic Community - Restraints on exports of copper scrap
- Recourse to Article XXIII:2 by the United States (L/6518)

The Chairman drew attention to a communication from the United States concerning the European Economic Community's restraints on exports of copper scrap (L/6518).

The representative of the United States said that his country was requesting the establishment of a panel to examine the Community's export restrictions on copper scrap, which the United States believed were maintained in violation of Article XI:1. These restrictions had been administered by the Commission since the early 1970s and by individual member States prior thereto. The United States believed that these restrictions nullified and impaired benefits accruing to the United States under the General Agreement. As consultations under Article XXIII:1 had not resulted in a mutually satisfactory resolution, the United States asked the Council to establish a panel to review this matter.

The representative of the European Communities regretted that the United States seemed to be more in a hurry to bring dispute settlement cases against other contracting parties than to implement the reports of panels which had ruled against its own measures. On 21 April 1989, the United States had requested Article XXIII:1 consultations. The Community had responded to that request expeditiously, and consultations had been held on 10 May. The Community had explained to the United States that its restrictions were fully justified under Article XI:2(a), which stated that restrictions could be applied temporarily in order to prevent critical shortages of products essential to the exporting country. The Community had no copper resources of its own, and its copper processing industry depended much more than other trading partners on the availability of copper scrap. Given the present situation on the world market, there was a clear risk that termination of export controls would lead to an immediate and significant outflow of copper scrap from the Community which could not be replaced. This was due partly to the export prohibitions maintained by other trading partners, but also to the tariff and other non-tariff measures presently maintained by important third countries, as had been confirmed in a recently circulated report (L/6456). During the consultations, there had been a number of divergences with respect to some factual elements, and there had been an understanding that further information regarding prices of copper-scrap transactions within the Community and export restrictions maintained by third parties would be forthcoming. The Community considered it more appropriate first to examine this information, which the Community hoped to provide as soon as possible. Should no solution be possible in the meantime, the Council could come back to this matter, which involved a policy that had been in force for a considerable time.

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

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

The Chairman noted that at the Council meeting on 10 May, he had recalled that on 20 December 1988, the Director-General had informed the Council that he was seeking possible approaches to deal with this matter. The Director-General had also said that he and the Director General of the International Labour Organization (ILO) were in contact on it. At that time, the Director-General was still pursuing his endeavours, and he, as Council Chairman, had suggested that the Council revert to this item when he had concluded them. He understood that the Director-General had not yet done so.

The representative of the United States recalled that it was his Government's view that GATT should examine the possible relationship between internationally-recognized labour standards and trade. Since October 1987, the Council had before it a proposal from his Government for the establishment of a working party to study this matter. The United States regretted that after a year and a half, the Council had been unable to come to grips with this request. His country understood the sensitivities surrounding the issue and had been responsive to these concerns by making clear that in seeking a working party, it did not seek to prejudge the position of any delegation. The United States had no preconceived notions of what a working party might find in examining this issue. Concerns had been expressed that the underlying motive in raising this issue was protectionism and an attempt to undermine the principle of comparative advantage. He assured delegations that this was not the case, and that the United States had no such intentions. In response to concerns that the issue was beyond GATT's competence, he pointed out that the competence of the Council was whatever the Council judged it to be. Delegations should not make unilateral decisions as to that competence. All that the United States asked was for a dispassionate working party review of this admittedly controversial issue, and it stood by that request. It had been the tradition of the Council to view its deliberative competence broadly and to grant the request of any contracting party for a working party. If delegations felt this was no longer or should no longer be the case, the Council would have to come to terms with the need for a fair and equitable understanding on what it took to establish a working party.

The representative of Nicaragua said that his delegation had already spoken at length on this issue both in the Council and in informal consultations explaining why this issue was not within GATT's competence. However, Nicaragua could accept an initiative to have this matter taken up in the competent institution.

The representative of Nigeria recalled his delegation's view on this matter that there was an international organization which specifically dealt with workers' rights and labour standards. This issue did not fall within GATT's competence and should be discussed in the ILO.

The representative of Sweden, on behalf of the Nordic countries, said that their position on this matter was well-known. These countries greatly regretted that it had not been possible to establish a working party on the possible relationship of internationally-recognized labour standards to international trade. This important issue was definitely within GATT's competence. However, given the present situation, the Nordic countries shared the US view that the Council should give thought to the conditions and circumstances under which a working party should be established if a contracting party so requested. The basic approach in such cases should be characterized by generosity.

The representative of Chile said that his country understood that the ILO had exclusive competence on this matter. Considering that the US proposal had not been supported by a majority of Council members, and in order to avoid a division within GATT on this matter, Chile invited the United States to withdraw its proposal.

The representative of Cuba repeated her country's view that this matter was within the exclusive competence of the ILO. There was no collective agreement on this issue, which was not within the purview of GATT.

The representative of Tanzania reiterated his country's view that GATT had no competence to deal with this question. Tanzania, like other developing countries which had spoken, could not accept the inclusion of this issue within GATT's competence either exclusively or jointly with any institution.

The representative of India said that his Government was quite clear that this issue was not within GATT's competence. Regarding the argument that the Council could decide whatever was to be within its competence, he said that even sovereign parliaments did not claim this right, particularly where there were written constitutions. GATT was a contractual arrangement, and the Council could not, therefore, make decisions as to its competence. GATT was not the forum for discussing matters related to labour standards. There was an organization responsible for this, and there should be no question of establishing any link between labour standards and international trade, because many other issues could then be linked to international trade, such as factors of production. Given this, there was no need to establish a working party.

The representative of Egypt said that this subject raised concerns among all developing countries. Regardless of the question of competence, the fact was that the Council was not in agreement on the inclusion of this issue in GATT's work or on the establishment of a working party. Egypt's position on this issue remained the same.

The representative of Mexico said that his country's position remained unchanged. If there was a will to discuss this matter, it should be done in the ILO.

The representative of the European Communities said that while the Community could understand some of the concern expressed over this issue, it was disappointed that some contracting parties preferred to make unilateral decisions on what was, or was not, trade-related, rather than trying to reach a multilateral agreement on this question, and that they refused even a factual study of the history of this issue in GATT and in another organization. This might have provided a factual basis for this discussion rather than the prevailing politicized one. This situation would not be a good sign for the establishment of working parties in certain other areas.

The representative of Romania said that his delegation agreed with others in opposing the establishment of a working party on this issue. There was no basis for a consensus in the Council on this matter, and the United States should not press any further to have this matter included on the Council's agenda.

The representatives of Bangladesh, Brazil, Canada, Israel, Korea, Hong Kong, Colombia, Thailand on behalf of the ASEAN contracting parties, Sri Lanka, Peru, Pakistan, Yugoslavia, the United States and Turkey reiterated their delegations' respective positions on this matter as previously recorded in the Council's Minutes.

The representative of Colombia said that his country had always respected the mandates of the different international organizations. A confusion of terms of reference or mandate should be avoided.

The Council took note of the statements.

25. United States - Import restrictions on certain products from Brazil
- Recourse to Article XXIII:2 by Brazil - Panel terms of reference and composition

The Chairman recalled that in February 1989, the Council had established a panel to examine the complaint by Brazil related to the United States' restrictions on imports of certain products. The present item was on the Agenda at the request of Brazil.

The representative of Brazil said that for the purpose of transparency, his delegation had decided to bring to contracting parties' attention the present state of play in the discussions between Brazil and the United States on the drawing up of the terms of reference of the Panel created in February 1989 to examine the imposition of unilateral trade restrictions by the United States against certain Brazilian exports. It had been agreed in February that, in accordance with normal GATT procedures, consultations would be held between the two parties to arrive at an understanding concerning the Panel's terms of reference. Brazil had recognized that this matter was extremely delicate and with far-reaching consequences, and thus had not pressed for a hasty decision. In so doing, Brazil had shown restraint and a willingness to come to a mutually

acceptable settlement, taking into account the sensitiveness of the issues both in the United States and in Brazil. The United States had insisted on two points: first, that its internal legislation should not be subject to rulings by the Panel. Brazil had accepted that request and had agreed to have the Panel examine only the US actions, not the US laws. Second, the United States had wanted reassurances that it would not be denied the right to present the reasons for its unilateral actions. Brazil did not oppose the other party's presenting its reasons, but the Panel should not rule on Brazil's law either. Despite repeated efforts by Brazil and the Secretariat, no solution had as yet been reached. In view of this impasse and of the fact that no solution seemed to be imminent, it was his delegation's understanding that another path had to be sought. In Brazil's view, the parties should adhere to the traditional proceedings of the GATT. There was a long-established practice that when there was no agreement on a panel's terms of reference, the standard terms of reference would apply. This practice had recently been enshrined in the new dispute settlement rules (L/6489) and would allow for the Panel to start its work, which -- given the number of contracting parties which had expressed themselves on this matter -- was in the interest of all. Brazil's legitimate export earnings had been harmed, and the Council should now consider the substance of this matter on the basis of a panel finding.

The representative of the United States said that although he did not share Brazil's characterization of the reasons for the delays in this panel process, Brazil's statement contained two points of key concern to the United States. First, Brazil accepted that the scope of this dispute was the specific measure taken by the United States referred to in L/6386/Add.1, and not the general underlying US statute. Second, Brazil accepted the United States' ability, under normal GATT practice, to present the reasons for its actions in the Panel's proceedings. With these understandings in mind, the United States was prepared to accept standard terms of reference. When the most recently scheduled consultation in this case for 9 June had been cancelled, his delegation had written a letter to the Secretariat reaffirming its willingness to continue consulting in good faith. He reaffirmed that ongoing willingness and looked forward to agreement on the Panel's composition.

The Chairman said that having heard the statements of the two parties, it appeared that they were in agreement on three points: (1) that the scope of this dispute was the specific measure taken by the United States referred to in L/6386/Add.1, and not the US Section 301 law in general; (2) that in accordance with normal GATT practice, the United States could present to the Panel the reasons for its actions but that the Panel should not propose rulings on the Brazilian legislation; (3) that standard terms of reference were appropriate.

The Council took note of the agreed points and of the statements, and agreed to return this matter to the Chairman so that he, in consultation with the parties, could determine the Panel's composition.

26. United States - Taxes on petroleum and certain imported substances
- Follow-up on the Panel report (L/6175)

The Chairman recalled that at its meetings on 8-9 February, 12 April and 10 May 1989, the Council had considered this matter. It was on the Agenda of the present meeting at the request of Canada.

The representative of Canada said that her delegation wanted to inform contracting parties of the steps being taken in Canada to respond to the continued failure of the United States to eliminate its GATT-inconsistent discriminatory tax on oil imports from Canada. Her country was disappointed that it had to raise this issue again in the Council. Its preference remained for the United States to implement the Panel's recommendations (L/6175). Canada considered that the United States had been granted more than a reasonable period of time to bring its legislation into conformity with its GATT obligations. However, given the United States' continued failure to implement these recommendations, her Government had published in the Canada Gazette, on 14 June 1989, a notice listing some 70 products from which it was considering selecting items for tariff increases. The notice requested comments from interested parties by 7 July 1989. Tariff increases of one to three percentage points would be considered on products of US origin for as long as the discriminatory US measure remained in place, or until suitable compensation was provided. At the end of the consultative period, it was her Government's intention to select from the list, products for which it would seek authorization from the CONTRACTING PARTIES to withdraw tariff benefits from the United States.

The representative of the United States reported to the Council that the US Administration had forwarded a bill to the Congress to amend the Superfund tax legislation in a manner which would equalise the current tax between domestic and imported products. The previous day, the Committee on Ways and Means had approved this proposed legislation without dissent and had forwarded it to the Congress for consideration. Given the fact that implementation of changes in the US tax structure was a matter of extreme sensitivity and difficulty, his delegation asked contracting parties to show some understanding as the United States tried to make such changes.

The representative of Mexico said that it had been two years since this matter was supposed to have been settled. His delegation would follow closely the progress on implementation of the Panel's recommendation. Mexico's preference was that the United States take measures compatible with its GATT obligations, as recommended by the Panel. Failing that, rapid compensation should be made, as the Community and Canada were pressing their claims regarding the withdrawal of equivalent concessions from the United States.

The representative of the European Communities recalled that the United States had asked contracting parties to give it due understanding; the Community had been doing this for a long time. Now it was told that it would be subject to the mercies of various committees of the US Congress. It was salutary that there was now a formal proposal before the Congress on this issue. While the proposal looked reasonably GATT-worthy, the Community awaited with interest further information on the subject.

The representative of Canada said that while her delegation welcomed the information provided by the United States, Canada continued to believe that the United States had had more than a reasonable period of time in which to implement the Panel's recommendation on the Superfund tax. For that reason, Canada would continue with the preparation of a list of products on which it might request authority to withdraw concessions from the United States pending implementation by the United States.

The representative of Nigeria welcomed the information from the United States on this matter and hoped that the internal process in that country would be speeded up so that the Panel's recommendation could be implemented.

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

27. Roster of non-governmental panelists

(a) Proposed nominations by Japan (C/W/597)

(b) Proposed nomination by Sweden (C/W/594)

The Chairman drew attention to documents C/W/597 and 594 containing proposed nominations by Japan and Sweden respectively to the roster of non-governmental panelists (L/5906 and Add.1).

The representatives of Japan and Sweden gave additional information on the nominees proposed by their Governments.

The representative of the European Communities said that the professional qualification and integrity of proposed panelists was highly important. The Community had therefore looked very closely at the curricula vitae of the four panelists proposed, and congratulated both Japan and Sweden in this regard.

The Council took note of the statements and approved the proposed nominations.

28. Committee on Budget, Finance and Administration
- Report (L/6522)

Mr. Broadbridge (Hong Kong), Chairman of the Committee on Budget, Finance and Administration, introduced its report (L/6522). He said that the Committee had met on 30 and 31 May and on 8 June. Its report sought decisions from the Council on accommodation and on the 1989 budget estimate for the Trade Policy Review Mechanism.

On accommodation, the Committee had examined a proposal from the Swiss authorities to build a new 600-seat conference room on the grounds of the GATT building. However, there had been no consensus in the Committee for proceeding with this project at the present time. The arguments for and against were recorded on page 2 of L/6522. Regarding the possibility of

renting 100 additional offices in the Centre William Rappard when the UNHCR moved to a new office block in 1994, the Committee had considered this attractive, as it would allow all GATT staff to be accommodated under one roof and at rental costs significantly lower than in the Geneva commercial market. The Committee therefore recommended (para. 11) that with regard to the rental of 100 additional offices in the Centre William Rappard after the departure of the UNHCR in 1993/94, the Director-General be authorized to make a firm commitment to FIPOI.

Regarding the Trade Policy Review Mechanism (TPRM), he recalled that the 1989 budget provided for SWF 500,000 which was to remain frozen until such time as the Council approved the use of these funds. The Committee had carefully examined the Secretariat's detailed proposals, which estimated a total expenditure of SWF 474,000 for 1989, and accordingly recommended (para. 20) that the Council approve the budget estimate of SWF 474,000 to cover expenditure relating to the TPRM in 1989. The balance of SWF 26,000 of the total funds set aside in the 1989 GATT budget and any subsequent savings would be frozen pending further consideration by the Committee.

Other items considered by the Committee were regular reviews of current expenditure against budget -- which would be a feature of every Committee meeting in future -- and the monitoring of measures which the Council had approved in 1988 to improve GATT's cash situation. Those contracting parties which were required to pay their arrears by installments had been contacted and to date, just under SWF 400,000 had been received in respect of contributions for 1987 and earlier. Also, observers had been asked to contribute a minimum of SWF 1,000 towards the cost of the documentation services provided by the Secretariat. As at 16 June, seven observers each had contributed this amount. The Committee would keep these measures under review. The Committee had examined requests by Bangladesh and Czechoslovakia to review the basis for calculating their contributions and would revert to this in the context of its examination of the 1990 budget proposals. In conclusion, he recommended that the Council approve the Committee's report in L/6522, in particular the two points for decision at paragraphs 11 and 20.

The representative of Japan said that it was unfortunate that the Committee had not yet reached a consensus on the proposal to build a new conference room. A new conference room would contribute to the effective operation of GATT, and Japan therefore supported this proposal.

The representative of Jamaica said that his delegation recognized that there was a close relationship between GATT's capacity for efficiency and the resources which had to be devoted to infrastructure, including building, equipment and human resources. However, equally important was its capacity to undertake and to honour increased financial obligations in a period of acute fiscal austerity and competing national priorities. It was against this background that his authorities had examined the proposal to build a new conference room. Jamaica shared the view that this matter should be examined at the end of the Uruguay Round when GATT's future needs would be clearer. In Jamaica's view, cost effectiveness and the need to

ensure that contracting parties' costs were kept to a minimum should be primary considerations in this examination. Jamaica supported the recommendation for the rental of 100 additional offices in the Centre William Rappard; however, it would be useful to be more clear on the authorization being given to the Director-General in this regard. Jamaica's understanding was that the firm commitment referred to was one to enter into negotiations for that rental.

The Council took note of the statements, approved the specific recommendations in paragraphs 11 and 20 of L/6522, and adopted the report in L/6522.

The Director-General expressed his gratitude to the Chairman and members of the Committee in respect of the decision which made it possible for a very small team to carry out a very heavy responsibility regarding the TPRM, to the Swiss authorities for their very constructive and generous approach regarding the expected infrastructure needs of the GATT Secretariat, and to those governments who had authorized him to enter into negotiations with regard to offices for the staff.

The Council took note of the statement.

29. Japan - Trade in semi-conductors
- Follow-up on the Panel report (L/6309)

The representative of the European Communities, speaking under "Other Business", recalled that in May 1988 the Council had adopted the Panel report on the Community's complaint against Japan regarding trade in semi-conductors (L/6309). The Community had on subsequent occasions asked for the Panel's recommendations to be implemented, and Japan had responded to that request at the March 1989 meeting. The Community had carefully examined Japan's suggestions and there had been further discussions between the two parties. The Community now understood that Japan was ready to implement the Panel's recommendations in the following manner: (1) Data collection on export prices would be conducted only after export and its only purpose would be to examine, after the event, whether dumping was occurring in general. The Community understood that Japan was committed to refraining from taking any action relating to the determination of export prices or quantities of any specific export cases and from restricting exports of any company as a result of its monitoring activities. (2) The Supply and Demand Forecast Committee would be abolished. Although forecasts might still be prepared, they would not be compiled for the purpose of restricting production, and Japan would refrain from interfering with the level of production. The Community could accept that Japan, by enacting these measures, would have brought its system into conformity with the General Agreement. His delegation asked Japan to confirm that these were its intentions.

The representative of Japan said that the Community's statement was exactly in line with what his delegation had explained at the March Council meeting, which had been put into force on 1 June 1989.

The Council took note of the statements.

30. United States - Customs user fee
- Follow-up on the Panel report (L/6264)

The representative of the United States, speaking under "Other Business", reported that the US Administration had proposed a legislative amendment to the US Congress which had been approved by its Committee on Ways and Means. This was an interim proposal which would cap the current ad valorem user fee at US\$575, thereby eliminating the extreme excess collections that resulted from an open-ended ad valorem fee. The customs activities identified by the Panel as inappropriate for the fee had been removed from its coverage and would be funded from other sources. Customs costs attributed to entries exempted from the fee would be backed out of the current fee structure and would be funded from general revenues rather than from the fee. Given these changes in current collections and in the interim structure, the United States expected that the Congress would be able to consider further changes in the law once the Government Accounting Office had completed a study on the costs of customs collection and the charges reflected by specific countries. His Government would then construct a permanent replacement for the current legislation. His delegation would make further reports to the Council as appropriate on progress on this matter.

The representative of the European Communities said that it was salutary that there was now a formal proposal on this matter before the US Congress. It would have to be studied carefully, and the Community awaited with interest further information on the subject.

The representative of Canada said that while her delegation welcomed the information provided by the United States, Canada continued to believe that the United States had had more than a reasonable period of time in which to implement the Panel's recommendations in L/6264.

The Council took note of the statements.