GENERAL AGREEMENT ON

TARIFFS AND TRADE

RESTRICTED

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MINUTES OF MEETING

Held in the Centre William Rappard
on 7 November 1990

Chairman: Mr. Rubens Ricupero (Brazil)

1. Training activities (L/6748)

The Director-General introduced his report on the trade policy courses organized by GATT (L/6748). He said that during 1990, efforts had focused on improving the content of the training programme so as to cover all the areas of regular GATT work as well as the activities of the Uruguay Round negotiating groups. The Secretariat continued to face an increased demand for the courses and was doing its best to satisfy requests for participation from different developing countries. The number of available places in the courses, however, remained limited. He thanked contracting parties for their support of the programme, and in particular the Governments of Spain and Canada for having invited the participants in the 1990 Spanish and English courses on study tours in their respective countries. He also thanked Switzerland for its financial contribution, which permitted the organization of a special workshop on trade negotiating techniques, and also for its financing of a special course for eastern and central European countries, which would be held in 1991. Lastly, he expressed gratitude to UNDP representatives for their assistance in the processing of applications, and to members of permanent delegations and representatives of other international organizations who participated as lecturers in the courses.

The Chairman, speaking on behalf of the numerous developing countries which had benefited from the courses, emphasized the value of these courses for their countries' officials and thanked both the Secretariat for organizing these courses and the governments that had hosted study tours or made a special contribution to the GATT training activities.

The Council took note of the Director-General's report in L/6748 and of the statements.

After the meeting, several representatives of developing countries expressed to the Chairman their gratitude and support for the training programme.

2. Committee on Budget, Finance and Administration
- Report of the Committee (L/6733, L/6720)

Mr. Broadbridge (Hong Kong), Chairman of the Committee, introduced the report in L/6733, which reported on the matters considered by the Committee at its meeting on 18 September 1990.

On the 1989 accounts, paragraph 11 and statement 3 of L/6720 noted an overall 1989 deficit of SwF 1,949,571, which was mainly due to an increase of some SwF 850,000 in the level of contributions in arrears and to the fact that receipts of SwF 540,000 in respect of contributions in arrears had been applied to increase the Working Capital Fund. The deficit had been met by a transfer from the Working Capital Fund.

As Venezuela and Bolivia had become contracting parties on 31 August 1990 and 8 September 1990 respectively, the Committee recommended that

contributions to the 1990 budget amounting to SwF 110,702 and SwF 6,896 respectively, and an advance to the Working Capital Fund amounting to SwF 20,912 each be assessed on these Governments.

The Committee had noted, as part of its monitoring of the 1990 budget, that no overspending was anticipated at present, although the year-end result would be affected by costs incurred during the final phase of the Uruguay Round, such as those for interpretation, general-service overtime and duplication of documents. As to the procedures to improve the cash situation approved by the Council in 1988, the contracting parties liable to administrative measures in respect of outstanding arrears had been notified and, where appropriate, the measures had been implemented.

On the current assessments, the proportion of the 1990 contributions received was running slightly below the corresponding 1989 and 1988 figures. The Committee expected to receive before 15 December a number of outstanding amounts from various contracting parties, including a second payment from a major contributor, which should allow the Secretariat to end the year without cash problems. The Committee was still considering some other issues such as printing policy, mailing procedures, criteria for the allocation of seats in the Council Room as well as Bangladesh's request for calculating its budget contribution.

The Council took note of the statement, approved the Budget Committee's report in L/6733 and the specific recommendations contained in paragraphs 5, 6 and 7 thereof, and recommended that the CONTRACTING PARTIES adopt it at their Forty-Sixth Session, including the recommendations contained therein.

3. German unification: Transitional measures adopted by the European Communities (L/6730)
   (a) European Communities - Request for a waiver under Article XXV:5 (C/W/661, L/6759)
   (b) Communication from the United States (L/6751)

The Chairman recalled that the European Community had informed the Council at its October meeting of the transitional measures adopted to facilitate the integration of the former German Democratic Republic (GDR) into a fully developed market economy and to avoid serious economic and social disruption among the former GDR's main trading partners. The Community had indicated then its intention to request formally a waiver to cover these measures, and its willingness to have them examined in GATT. He drew attention to a recent communication from the Community (L/6759) requesting a waiver under Article XXV:5 and to a draft decision (C/W/661) which had been circulated to facilitate the Council's consideration of this matter. He also drew attention to a communication from the United States (L/6751) requesting establishment of a working party to examine these measures.

The representative of the European Communities said that he could ask that the draft decision (C/W/661) be put to a vote at the present meeting to show that GATT was up to dealing with this historical political event.

He understood, however, the need to respect certain routine procedures and would discuss what lay behind this request, namely German unification and the integration of the former GDR into the Community. He stressed that the Community was taking a responsible attitude in assuming the former GDR's existing international obligations vis-à-vis certain partners. He noted that the Community sought a temporary derogation from Article I in respect of certain specific measures concerning duty-free treatment for, and a number of standards with regard to, imports into the territory of the former GDR from contracting parties like the Czech and Slovak Federal Republic, Hungary, Poland, Romania and Yugoslavia, as well as from Bulgaria and the Soviet Union. This waiver was necessary on the one hand to fulfil the former GDR's obligations under its international treaties, and also to protect the legitimate expectations of its former trading partners, which should not become victims of the acceleration of the historical process of integration of that part of Germany into the Community and therefore into the GATT multilateral system. The Community was not asking for extraordinary derogations, but rather for the traditional flow of trade between the former GDR and the aforementioned countries to be respected. He said that even before the formal integration had taken place, the trade flow between the former GDR and the countries mentioned had decreased markedly. He mentioned this because the Community was responsible to these trading partners in their own processes of restructuring towards market economies. Indeed, not only the Community but all trading partners shared this responsibility, which should not be hampered by procedural mechanisms which might create a climate of uncertainty.

The Community's other responsibility -- in respect of its GATT obligations and for the sake of transparency -- was very clearly met in the conditions and terms contained in the draft decision. Accordingly, the Community was submitting a choice to the Council: either accompany history in a credible manner, or continue working in a procedural fashion, hindering and obstructing the mechanism and creating uncertainty. If the Community's partners had problems in following what had taken place, it had already offered to accept a GATT mechanism -- even a working party -- that would provide for full transparency. This, however, had nothing to do with the Community's request for a waiver, on which he was asking contracting parties to vote at the present meeting.

The representative of the United States drew attention to the communication (L/6751) in which the United States had indicated its concerns about the waiver sought by the Community and about the need for a working party to examine the specifics of such a waiver and the implications thereof for the interest of third parties. The task of the working party would be to examine, in the light of GATT provisions, the intended scope, nature and time frame of the preferential access to be granted, and the likely impact of these measures on third-country trade, and to make recommendations to the CONTRACTING PARTIES concerning the relationship of these measures to GATT obligations and the rights of third countries. The United States fully recognized that the purpose of the Community measures was to ease the shock of the economic transition in the part of Germany that was formerly the GDR as well as to facilitate trade patterns during this transition period. The United States wanted to

ensure, however, that the interests of others were taken into account in the application of these transitional measures, and reserved its rights concerning their GATT implications.

In L/6751, the United States had raised certain questions regarding information which ought to be provided by the Community. Thus far, the United States had received no information from the Community on most of the points listed on page 2 of L/6751, which represented the minimum of information which should be available to other contracting parties before a waiver could be granted. It was essential to define the Community measures which would be included in the waiver and to provide contracting parties with basic information on the preferences. In addition, their inconsistency with GATT obligations should be examined with a view to establishing definite limits on their scope and duration. While these measures were in effect, contracting parties should be able to consult rapidly with the Community on the trade impact, and efforts should be made to monitor the effect and development of the measures while they remained in force. Reciprocal trade measures for German exports undertaken by eastern European countries should, as necessary, also be examined in the working party. The establishment of a working party would allow all of these issues to be aired and examined, and appropriate recommendations could be made. The United States asked other contracting parties to support the request for a working party as a pre-condition to any decision on a waiver.

The representative of Hong Kong supported the US request for the establishment of a working party. He noted that the stated objective of the transitional programme was to minimize trade disruption for the former GDR. However, it was also important to have regard to the effect this transition might have on trade from third parties to the unified Germany. More precisely, arrangements adopted as a result of unification, e.g., in the textiles area, should not adversely affect Germany's trading partners. No doubt the working party would consider this.

The representative of Australia welcomed the Community's decision to request a waiver under Article XXV, and supported the US proposal for a working party. He regretted that there had not been sufficient time for Australia to prepare a detailed response to the waiver request or to consider appropriate terms of reference for the proposed working party. Australia would, however, be concerned if the working party were restricted to an evaluation of the waiver request alone and could not consider fully the broader trade implications of unification. The transitional measures relating to trade between the former GDR and CMEA countries, for which the Community was seeking a waiver, did not encompass the full range of trade effects that unification might have. These would affect the Community, eastern Europe and other contracting parties; they would necessitate substantial economic and social adjustments and would involve significant costs. Australia was concerned that some adjustment costs, especially those related to agriculture might be externalized. This possibility should be a primary focus for the working party. He also noted that the expansion of the Community resulting from unification had the potential

to change the balance of rights and obligations between it and other contracting parties. Given these broader trade concerns, Australia suggested that the working party's terms of reference be framed in a way that would allow it to undertake a full analysis of the trade implications of unification.

The representative of Hungary recalled that at the October Council meeting, his delegation had emphasized the need to reduce and possibly to avoid the potential short-term negative consequences of German unification on Hungary's economy and foreign trade. The Community's transitional measures could contribute to the achievement of this objective, although as Hungary had noted earlier, the Community had not exempted the great majority of agricultural products from certain import charges during the transitory period.

The Community had pointed out in L/6759 that a substantial decline in trade between the former GDR and its eastern neighbours had already taken place in the first half of 1990, and that following the German economic and monetary union, great problems had arisen in maintaining traditional trade flows between the former GDR and the CMEA countries. Unfortunately, both these statements applied to Hungary's case. The Community had rightly pointed out that these effects would have been aggravated by immediate and full application of the common commercial policy of the Community vis-à-vis the central and eastern European countries. He believed that the statement was valid with respect not only to industrial products but equally to the commercial régime to be applied under the Common Agricultural Policy to the imports into the territory of the former GDR. While the Community had emphasized (L/6759) that all agricultural products subject to customs duties were included in the transitional tariff measures except for beef meat and live animals, he noted that Community provisions on levies and on minimum and reference prices were maintained. His delegation did not see the reason for the exclusion of certain agricultural items from the transitory régime and pointed out that the imposition of variable levies would not facilitate the maintenance of traditional trade flows during the transitional period; on the contrary, it would seriously restrict market access possibilities for these products. His delegation, therefore, invited the Community to reconsider its present position with regard to the régime to be applied to these items.

Hungary endorsed the Community's statement according to which it had to take into account the legitimate expectations and trade in products of the former GDR's traditional trade partners in central and eastern Europe, and supported the Community's request for a waiver until the end of 1992. At the same time, there was a need not only for transitional measures but also for long-lasting solutions as well. In this regard, Hungary believed that these solutions should be provided in the framework of an agreement to be negotiated between Hungary and the Community under Article XXIV:5. With respect to the US request for the establishment of a working party, his delegation noted the Community's willingness to enter promptly into consultations upon request with contracting parties under relevant GATT provisions related to the application of the proposed decision for granting

the requested waiver. As to the question in L/6751 -- whether any reciprocal tariff or non-tariff preferences were contemplated by the CMEA countries that would benefit from the Community's transitional preferences -- Hungary's very clear reply was that the purpose of the transitional measures was not to create new or additional trade flows on a reciprocal preferential basis, but rather to try to contribute to a kind of damage limitation in a transitory period. Consequently, Hungary was not offering and would not offer any preferential trading measure as a counterpart to the Community's transitional measures.

The representative of Japan said that his authorities shared many of the concerns previously expressed and supported the establishment of a working party to examine the matter in the light of the General Agreement.

The representative of New Zealand referred to his country's position on this matter as expressed at the October Council meeting. New Zealand had noted in particular its concern with avoiding disruption, not only domestically but also with respect to the interests of third countries, in relation to the transitional measures; it had also welcomed the Community's assurances concerning transparency and consultations on this matter. His delegation supported the establishment of a working party as proposed by the United States. The working party should examine not only the Community's request for a waiver but also the wider GATT implications of the transitional measures, as suggested by Australia.

The representative of Canada expressed satisfaction that the Community had brought this matter before the GATT. It was an important political matter for the Community and Germany, and Canada was pleased that a matter of this magnitude was before the Council. As the waiver request had not been available for very long, his authorities had not yet had time to consider it fully. Accordingly, Canada would not be able to determine whether to grant the waiver in the course of the present meeting. His delegation considered, however, that this request had merit in so far as the proposed transitional measures sought to avoid economic disruption in the manner described in the Community's communication. The Community representative had asked the Council earlier not to be too procedural in reacting to his request. He noted, however, that a request for a waiver under Article I was a fairly substantial issue, concerning a relatively important GATT provision. While Canada recognized the political significance of this matter, it had also to recognize that GATT was a legal contract and that the specific provisions thereof were of considerable importance, as were the procedures that had been developed in order to safeguard those provisions. Furthermore, his delegation believed that the waiver power in GATT was very important; indeed, past GATT experience with waivers had not always been happy. Therefore, an important waiver could be granted only after consideration of its various implications.

He noted that the Community had provided the reasons for requesting this waiver and that the request was for a limited time; this was in keeping with the draft decision on Article XXV:5 that had emerged from the Uruguay Round Negotiating Group on GATT Articles. Canada also recognized

that a way should be found to address this question with some degree of urgency because it related to a waiver for measures already in force and due to be terminated at the end of 1992. Canada would, therefore, be prepared to deal with the request expeditiously. Nevertheless, Canada supported the US proposal to establish a working party to examine not only the points which had been suggested in the US communication (L/6751) but also the question of the granting of the waiver requested by the Community.

The representative of Poland recalled that at the October Council meeting, Poland had expressed the hope that German unification would not have negative effects on its own trade relations with the united Germany and the Community as a whole, which was Poland's biggest trading partner. The former GDR had been one of Poland's major trading partners, accounting for 9% of its global trade. In this context, his country welcomed once again the transitional measures adopted by the Community relating to the external trade of the former GDR. Such temporary preferential treatment was necessary to take account of the legitimate expectations with respect to traditional trade flows between the former GDR and Poland. His delegation sincerely hoped that the question of procedure would not stand in the way of a Council decision to grant the necessary waiver.

The representative of Switzerland said that his delegation was in a position to support the waiver request at the present meeting. The proposed terms appeared reasonable and sufficiently clear. In particular, there was a strict time limit attached to the requested waiver; its scope was carefully circumscribed and it was limited to normal trade flows, which had shown a tendency to decrease. The reasons surrounding this request were generally sound, valid and very important. The Community was also ready to enter into consultations on any problem which might arise. In this respect, if a working party were established which could serve such consultative purposes and could also have a function of surveillance and ensuring transparency, Switzerland would be willing to go along with such a request.

The representative of the Czech and Slovak Federal Republic recalled his delegation's statement at the October Council meeting. His Government welcomed the measures announced by the European Communities and supported the proposal contained in C/W/661. These measures would help overcome the problems occurring in trade between his country and the former GDR. It was not necessary to establish a working party, but if one were established, the Czech and Slovak Federal Republic was ready to take part in its activities, which it hoped would be carried out expeditiously.

The representative of Romania recalled that his delegation had stated at the October Council meeting that it was in favour of the unification of Germany. From the trade point of view, however, his country had already been affected. Trade with the former GDR had recently decreased, and it was urgent and necessary to find a way to prevent an even greater disruption of trade flows and to support the Community's transitional measures, which would help the move towards a market economy in the eastern European countries, including Romania. This process was sometimes very

painful. Romania fully supported the Community's waiver request and hoped that other contracting parties would consider it sympathetically and support it. He noted the Community's willingness to consult on any problem which might arise.

The representative of Austria noted that the waiver request was limited in time. Therefore, his delegation did not see any special need for establishing a working party. Austria could support the Community's request, but if there were a common feeling that a working party should be established, then Austria could go along with such action.

The representative of Yugoslavia welcomed and supported the Community's request for a waiver which sought to avoid disruption of trade between the former GDR and its traditional trading partners. The request was time-limited and well justified. In Yugoslavia's view, the request should not be linked with the establishment of working party, which was unnecessary.

The representative of Finland, on behalf of the Nordic countries, said that they had no difficulty in principle with the Community's request and agreed largely with the remarks made by Switzerland. They noted, however, the hesitations voiced by some delegations and considered that a matter of such importance and such urgency should be settled in the traditional GATT manner, i.e., without discord. They considered that an appropriate solution could and should be found promptly through consultations.

The representative of the European Communities said that if he were to adhere merely to procedure, he could very well ask to have the request submitted to a vote at the present meeting. This would be embarrassing, but at least it would pin down the different categories of opinions. He would not do so now, however, but at the forthcoming Forty-Sixth Session of the CONTRACTING PARTIES. He had been somewhat encouraged by Canada's statement, but regretted that in the end, it was in support of the US position. The Community considered the draft waiver decision to be simple and straightforward. It was based on past practice, namely the waiver granted in 1957 to France and the Federal Republic of Germany concerning trade relations with the Saar (BISD 6S/30), and the CARIBCAN waiver in 1986 (BISD 33S/97). Clear and strict conditions were attached to the present request: the waiver would not give rise to any new trade barriers; it was not even a derogation of pre-existing obligations, but only a limited and temporary one from the extension of certain GATT obligations to a new, additional portion of the Community's customs territory. The Community accepted a working mechanism, even a working party, to examine the integration of the former GDR into the Community, but did not accept a working party to examine the waiver request.

The representative of the Union of Soviet Socialist Republics, speaking as an observer, expressed his Government's satisfaction with the Community's transitional measures. Moreover, the USSR considered that these measures were in accordance with the spirit of GATT rules and practices and, therefore, hoped that the CONTRACTING PARTIES would meet these measures with proper understanding.

The Council took note of the statements, agreed to refer this matter to the CONTRACTING PARTIES for consideration at their Forty-Sixth Session, and agreed that in the interval, the Council Chairman would conduct informal consultations with interested parties.

4. Committee on Tariff Concessions
- Report of the Committee (TAR/187)

Mr. de la Peña (Mexico), Chairman of the Committee, introduced the report on the Committee's activities in 1990 (TAR/187). Because of the heavy work programme related to the Uruguay Round negotiations, the Committee had met only once, on 9 October 1990. It had pursued its activities concerning the implementation of the Harmonized Commodity Description and Coding System (HS), including the examination of the appropriate documentation to be submitted by the countries concerned and the conduct of the related Article XXVIII negotiations. To date, sixty-four contracting parties had adopted the system, representing more than 95 per cent of GATT contracting parties' trade; some other countries were expected to introduce the system in 1991. The Committee had noted with concern that ten contracting parties, listed in the Annex to TAR/187, had implemented the system without having followed GATT procedures. The Committee had also pursued its efforts towards obtaining the approval of new HS schedules as well as of pre-HS loose-leaf schedules for certification. While the Committee's activities had been rather limited in 1990, it was clear that it would have an important rôle to play in the aftermath of the Uruguay Round, in particular in relation to the implementation of the results of the tariff negotiations thereof.

The representative of Chile said that it reserved all its rights under Article XXVIII in relation to its HS negotiations with, inter alia, Japan, the European Economic Community and the United States.

The Council took note of the statements and adopted the report in TAR/187.

5. Harmonized System - Requests for waivers under Article XXV:5
(a) Brazil (C/W/657, L/6755)
(b) Hungary (C/W/658, L/6756)
(c) Israel (C/W/656, L/6754)
(d) Mexico (C/W/660, L/6758)
(e) Pakistan (C/W/655, L/6753)
(f) Sri Lanka (C/W/652, L/6749)
(g) Turkey (C/W/659, L/6757)

The Chairman drew attention to the communications from Brazil, Hungary, Israel, Mexico, Pakistan, Sri Lanka and Turkey, in which each had requested either a waiver or an extension of a waiver already granted in connection with its implementation of the Harmonized Commodity Description Coding System (HS).

He also drew attention to the draft decisions contained in the documents: C/W/657 - Brazil; C/W/658 - Hungary; C/W/656 - Israel; C/W/660 - Mexico; C/W/655 - Pakistan; C/W/652 - Sri Lanka and C/W/659 - Turkey. 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 HS adopted by the Council on 12 July 1983 (L/5470/Rev.1).

The representative of the United States supported the extensions of waivers previously requested by the countries concerned. However, a number of other contracting parties had neglected to request the necessary extensions of waivers previously granted, and in some cases had failed to supply the necessary documentation that would permit completion of the negotiations contemplated in their respective waivers. More disturbingly, the ten contracting parties listed in the Annex to TAR/187, had failed completely to observe normal GATT obligations concerning notification and negotiation in the context of the conversion of their schedules to the HS nomenclature.[1] The United States urged all contracting parties which had converted or were in the process of converting their schedules to notify other contracting parties, to supply the necessary documentation, and to complete within a reasonable period the negotiations required under the General Agreement.

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

6. Uruguay - Renegotiation of Schedule XXXI
- Request for a waiver under Article XXV:5 (C/W/654, L/6752)

The Chairman drew attention to Uruguay's request for a waiver from the provisions of Article II in order to renegotiate concessions in its Schedule XXXI (L/6752), and to a draft decision which had been circulated to facilitate Council's consideration of this matter (C/W/654).

The representative of Uruguay said that as his delegation had indicated at the October Council meeting (C/M/245, Item 6), Uruguay was requesting a waiver to allow it to undertake the necessary Article XXVIII renegotiations with regard to its schedule of tariff concessions. He noted that this matter had been discussed at previous meetings and was already well-known to contracting parties, and that all the necessary documentation had been circulated to contracting parties.

The representative of the European Communities recalled that the Community had expressed some concern with Uruguay's earlier request, but after further examination, could now accept the present request.

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[1] See Item 4.

The Council took note of the statements, approved the text of the draft decision in C/W/654, and recommended that it be adopted by the CONTRACTING PARTIES by postal ballot.

7. Senegal - Establishment of a new Schedule XLIX
- Request for a waiver under Article XXV:5 (C/W/649, L/6732)

The Chairman drew attention to Senegal's request for a waiver from the provisions of Article II (L/6732) and to the draft decision which had been circulated to facilitate consideration of this item (C/W/649).

The representative of Senegal said that since 1985, his country had been engaged in a process of structural adjustment in accordance with undertakings entered into with the IMF and the World Bank. Budgetary constraints imposed by these undertakings had precluded the fiscal flexibility that would have allowed substantial tariff concessions. This had resulted in a thorough reorganization of Senegal's customs duties and taxes. The fiscal reform begun in 1986 under the structural adjustment programme included, in particular, sectoral measures designed to promote a New Agricultural Policy and a New Industrial Policy aimed at consolidating the country's industrial fabric, in accordance with its national development plan. The implementation of this reform had led to major internal fiscal distortions, which had to be corrected by means of a relatively evolutive tax system. Furthermore, Senegal was preparing to adopt, on 1 January 1991, the Harmonized Commodity Description and Coding System (HS), which involved significant changes in its schedule of import duties and taxes and transposition from the Customs Co-operation Council Nomenclature (CCCN). Senegal had found it impossible to maintain the level of tariff concessions initially granted, and therefore requested a temporary waiver, until 31 December 1991, from its obligations under Article II. Senegal undertook to provide the necessary documentation for the consultations and negotiations provided for by the procedures under Article XXVIII.

The representative of the European Communities welcomed Senegal's efforts towards the restructuring of its economy. The Community supported Senegal's request.

The representative of Côte d'Ivoire said that her delegation supported Senegal's request, which was well substantiated.

The Council took note of the statements, approved the text of the draft decision in C/W/649, and recommended that it be adopted by the CONTRACTING PARTIES by postal ballot.

8. Canada - Import restrictions on ice cream and yoghurt
- Follow-up on the Panel report (L/6568, L/6694, L/6698)

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

The representative of the United States said that Canada had continued to refuse to eliminate the import quotas on ice cream and yoghurt found to be in violation of the General Agreement, and had not provided adequate assurances that it intended to eliminate them within a reasonable time. Meanwhile, US exporters continued to be denied sales to which they were legitimately entitled under the Panel's findings (L/6568). As the United States had informed contracting parties (L/6694), it was considering submitting a detailed request to the CONTRACTING PARTIES asking for authorization to suspend appropriate concessions or other obligations granted to Canada under the General Agreement. His authorities had been reviewing, on a preliminary basis, products on which the United States would request authorization to suspend concessions. They intended to proceed with this review and submit a definitive list at the next appropriate opportunity.

The representative of Canada reiterated his Government's position on this matter, as recorded in the Minutes of previous Council meetings, that Canada intended to implement the Panel report in the light of the outcome of the Uruguay Round negotiations. He recalled that under the GATT dispute settlement procedures, contracting parties were given a reasonable time in which to comply with panel reports or recommendations contained therein. Canada considered that given the imminent conclusion of the Round, it was perfectly legitimate to wait for its outcome before implementing the Panel recommendations, particularly since some of the subject matters of the negotiations were directly relevant to the matter at hand. Canada considered it premature to act on any request that the CONTRACTING PARTIES consider suspension of concessions.

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

9. Canada - Import, distribution and sale of alcoholic drinks by provincial marketing agencies - Follow-up on the Panel report (L/6304) - Communication from the United States (C/W/646)

The Council had agreed at its October meeting to revert to this matter at the present meeting.

The representative of the United States said that his Government renewed its request for a Council decision at the present meeting affirming its Article XXIII:2 rights on the basis of the Panel report (L/6304). His delegation had first raised this issue at the July Council meeting, and had made a formal request (C/W/646) at the October meeting. The United States sought Council authorization to withdraw concessions in the event that Canada did not comply with the Panel's recommendations within a reasonable time. At the October Council meeting, action on this request had been deferred. Canada had suggested that, in light of negotiations between it and the European Community with regard to Canada's liquor control practices, it was not appropriate at that time for the Council to consider

the US request. The United States had not been privy to those negotiations, but understood that discussions had continued since the October Council meeting with no apparent progress. Moreover, the United States had reason to believe that the negotiations covered only a portion of Canada's practices found by the Panel to be inconsistent with its GATT obligations. For example, the United States understood that Canada took the position that the practice of discriminatory points of sale was not subject to negotiation. The United States had seen no indication that Canada would take meaningful steps in the foreseeable future to modify its practices in order to bring them into GATT compliance. Instead, the United States was alarmed to find that some provincial governments had initiated new restrictive practices of the type in existence at the time the Panel had issued its report. The Panel itself had recommended that Canada report back to the Council on action taken before the end of 1988, to permit the CONTRACTING PARTIES to decide on any necessary further action. Nearly two years later, Canada was still not in a position to report that all the practices identified in the Panel's report were in conformity with its GATT obligations, or even that agreement had been reached within Canada as to how to address these practices.

The United States was concerned that, in view of the differences between Canada and the Community, negotiations which had begun more than two years earlier might continue for several more years without resolution. Meanwhile, Canada's practices that restricted the importation of US beer would remain unaddressed and indeed would likely worsen. Accordingly, it was particularly appropriate at this time that the Council recognize the rights of the United States under the Panel report, and that the Council authorize the United States to suspend the application to Canada of appropriate concessions or other obligations if Canada and the United States could not agree to a reasonable plan and timetable for Canada to come into compliance.

The representative of Canada said that in putting forward its request to the Council, the United States had made a number of assertions which Canada considered to be at variance with the facts. He recalled that the Panel had recommended that Canada take such reasonable measures as might be available to it to ensure observance of the provisions of Articles II and XI by Canada's provincial liquor boards. Canada had also been asked to report to the CONTRACTING PARTIES on action taken before the end of 1988. Canada did not accept the United States' assertion that Canada had not taken reasonable measures to ensure observance of the GATT provisions by its provincial liquor boards. Canada had agreed to adoption of the Panel report in March 1988. It had subsequently entered into negotiations with the Community, the party which had brought the complaint, to implement the Panel's recommendations. In December 1988, Canada had been able to advise the GATT Council that an agreement had been reached with the Community which would bring most of Canada's practices into GATT conformity. The agreement, which had resolved the issues related to spirits and wine and had covered certain practices with respect to beer, had been implemented faithfully and applied on an MFN basis. At the same time, Canada had been working extensively with the provinces both at the ministerial and official

level, to remove interprovincial barriers to the sale of all alcoholic beverages in Canada. These negotiations had made substantive progress and were continuing.

As for beer, Canada considered it was in full compliance with respect to listing practices, and rejected the US claim. Canada had indicated this to the United States and had invited it to provide details of any specific concerns, indicating that Canada would be ready to take them up with the provincial authorities concerned. The United States had yet to provide any details. In addition, most of Canada's provinces were in compliance on pricing. Furthermore, as the Council was aware, Canada was negotiating with the Community. While it had been Canada's hope to conclude these negotiations before the present Council meeting, this had not proved possible. The negotiations were continuing with a view to reaching a mutually satisfactory resolution, and any agreement would be implemented on an MFN basis. Canada was committed to returning to consultations with the United States upon completion of its negotiations with the Community. In these circumstances, Canada considered that this was not the appropriate moment for the Council to address the issues raised by the United States.

The representative of the European Communities confirmed that the Community had been consulting with Canada with regard to implementation of the Panel report, but the Community was far from satisfied with the progress made so far. His delegation hoped that Canada would be more forthcoming in the very near future.

The representative of the United States said that in view of Canada's objections, the United States would request that the CONTRACTING PARTIES at their Forty-Sixth Session, pursuant to Article XXIII:2, establish a panel for the purpose of determining whether (1) practices concerning pricing, cost of service, distribution and listing implemented by Canada since 1988 were inconsistent with Canada's GATT obligations, and (2) GATT benefits accruing to the United States were nullified or impaired as a result of these practices. Since the 1988 Panel had reviewed these types of practices and the CONTRACTING PARTIES had found them to be inconsistent with Canada's GATT obligations, the United States would request that the 1988 Panel be reconvened, if possible, and that the Panel complete its work on an expedited basis -- within 60 days of the date of the request. If the Council had not made a determination recognizing the United States' rights under the 1988 panel report, the United States might also request that the same Panel review and issue findings regarding (1) whether Canada had brought its practices into compliance with the report of the 1988 Panel, and (2) whether GATT benefits accruing to the United States were nullified or impaired as a result of the failure of the Government of Canada to eliminate these practices.

The representative of Canada noted that there was a considerable amount of substance in the US statement, and that his delegation would want to study the matter carefully before the Session. Given that some of issues raised were of a path-breaking nature in the area of dispute settlement, his delegation considered that this would be a matter of interest to other contracting parties as well.

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

10. United States - Restrictions on importation of sugar and sugar-containing products applied under the 1955 Waiver and under the headnote to the Schedule of tariff concessions
- Panel report (L/6631)

The Chairman recalled that in June 1989, the Council had established a panel to examine the complaint by the European Economic Community. At its meetings in February, April, May, June, July and October 1990, the Council had considered the Panel's report (L/6631), and in October had agreed to revert to this item at the present meeting.

The representative of the European Communities said that as had been indicated by his delegation at the October Council meeting, the Community would not stand in the way of adoption of this Panel report at the present meeting. However, the Community still had a considerable number of problems and reservations about certain conclusions of the Panel.

Firstly, with regard to the scope of the findings relating to the conditions on the binding of the sugar duties, the Panel had noted first of all that the United States had made its concession for sugars subject to the existence of Title II of the US Sugar Act of 1948 or substantially equivalent legislation. The Panel had then noted the absence of legislation substantially equivalent to Title II of the 1948 Act, which furthermore had expired; it had therefore concluded that the maximum rates for sugars in the Schedule would not be applicable. To reach this conclusion, the Panel had stated that a concession might validly be subjected to a condition, in so far as such condition was not GATT-inconsistent. On this specific point, however, it would appear from the report that the Panel had not studied the evidence to this effect, and in a sense had presumed that the condition in question was indeed GATT-consistent. Above all, however, the Panel's findings on the binding of the sugar duties had the result of recognizing the possibility that a government granting a concession might render it ineffective at will by, as in this case, deliberately modifying its domestic legislation. The Panel thereby sanctioned a situation in which, as it had itself stated, "the granting of concessions conditional upon the discretion of the concession-granting government may not be meaningful" (paragaph 5.8 of L/6631).

Secondly, with regard to the Panel's interpretation of the sense of the Waiver, which had strengthened the scope of exceptions and distortions to the General Agreement rather than strengthening the applicability of GATT rules, the Community noted that this was the first time that a panel had examined a waiver under Article XXV:5 and that its findings ran very much counter to two tendencies hitherto observed: (a) the tendency in panel reports to interpret restrictively the exceptions enabling certain countries not to apply GATT provisions; and (b) the tendency to encourage, in dispute settlement, the full application of the GATT provisions.

The Panel had endorsed the fact that a contracting party, while not respecting the assurances given to other contracting parties at the time when a multilateral decision was taken, might avail itself of both the possibility of rendering a concession ineffective simply by deliberately modifying its domestic legislation, as stated earlier, as well as by exercising considerable independence and broad discretionary power in administering measures contrary to the General Agreement and covered by a Waiver. For the Panel, the United States had been authorized by the Waiver to implement a domestic law allowing that Government great leeway to apply duties in addition to the bound duty, or quantitative limitations, inter alia in situations or conditions which the CONTRACTING PARTIES had not "expected" when granting the Waiver (Paragraphs 5.10 and 5.11 of L/6631). This situation was likely to call into question the principle of the balance of advantages, which was central to the proper operation of the General Agreement.

When the CONTRACTING PARTIES had previously examined panel reports concerning GATT waivers, they had set themselves the objective "to further the full application of the provisions of the Agreement".[2] This was also the objective pursued by contracting parties in the present multilateral negotiations, as evidenced by the Punta del Este Declaration on the Uruguay Round, which stated that the negotiations should aim to "strengthen the rôle of GATT, improve the multilateral trading system based on the principles and rules of GATT and bring about a wider coverage of world trade under agreed, effective and enforceable multilateral disciplines" (BISD 33S/19). The present Panel's findings, however, went in the opposite direction. The Community therefore considered that the scope of this Panel report was not consistent with the objectives which the CONTRACTING PARTIES were currently pursuing. The Community reserved its rights at this stage with regard to the Panel's interpretations.

The representative of the United States recalled that his Government's position on this matter had been stated at earlier Council meetings and urged the Council to adopt the report at its present meeting.

The Council took note of the statements, adopted the Panel report in L/6631, and agreed that in accordance with the procedure adopted by the Council in May 1988 (BISD 35S/331), the report was thereby derestricted.

11. United States - Countervailing duties on fresh, chilled and frozen pork from Canada
- Panel report (DS7/R)

The Chairman recalled that at its October meeting, the Council had agreed to derestrict the report (DS7/R), which was now before the Council.

The representative of Canada said that his Government was pleased with the report and its important conclusion that before imposition of

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[2]Norway - Restrictions on imports of apples and pears (BISD 36S/306).

countervailing duties, an investigation should prove that a subsidy was provided to an exported product. It was also useful that the Panel had confirmed that mere allegations that subsidization was taking place were inadequate. Canada urged the United States to agree to the adoption of the report at the present meeting.

The representative of the United States said that his authorities had initially expected to be able to discuss the report in detail at the present meeting. However, in evaluating the report, it had become clear that the complexity and the implications of the Panel's findings and conclusions were quite significant. His authorities continued to evaluate the report, and his delegation expected to be able to participate in a full discussion of it at the forthcoming Forty-Sixth Session of the CONTRACTING PARTIES.

The representative of the European Communities said that having studied the report, the Community could, in principle, agree to the adoption thereof, but regretted that the United States, the contracting party that put the most pressure on others for speedy dispute settlement procedures, was now delaying the process. The Community noted also that the legal findings of the report were very similar, if not identical, to those of another panel report, the adoption of which had been blocked for a very long time by Canada. The Community invited Canada to adopt a more coherent approach with respect to dispute settlement throughout the GATT system, including the Tokyo Round Codes.

The representative of Canada was disappointed that the United States could not agree to adoption of the report at the present meeting. In the meantime, Canadian exports continued to be subject to countervailing duties in this case, and the longer this went on, the more difficult it was for Canadian industry. He hoped that the United States could adopt the report at the Session. He thanked the Community for its support in this matter. As to the other panel report under consideration in the Committee established under one of the Tokyo Round Codes, Canada considered that the experience with the Codes had not been as good as it should have been. Perhaps one result of the Uruguay Round would be that the GATT system would not be as divided as it was at present. Without going into the details of the relative merits of whether and when panel reports should be adopted, it should be sufficient to say that each report should be considered on its own merits.

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

12. Thailand - Restrictions on importation of and internal taxes on cigarettes
- Panel report (DS10/R)

The Chairman recalled that at its meeting in April, the Council had established a panel to examine the complaint by the United States. The Panel report was now before the Council in document DS10/R.

Mr. Ramsauer, Chairman of the Panel, recalled that the Panel's terms of reference and composition had been notified to the Council in May 1990. The Panel had held meetings with the parties to the dispute on 2 and 27 July and had consulted with officials of the World Health Organization. The delegation of the European Communities had made an oral submission to the Panel. The Panel had submitted its report to the parties on 21 September and had circulated it to contracting parties on 5 October, at the request of both parties, well within the time limit set by the Decision on Improvements to the GATT Dispute Settlement Rules and Procedures (BISD 36S/61).

Having found that the import restrictions maintained by Thailand were inconsistent with the provisions of Article XI, the Panel had considered another central issue before it, namely whether these restrictions were necessary, within the meaning of Article XX(b), in order to achieve health policy objectives. The Panel had had to examine this issue in some detail, and had considered that various GATT-consistent measures, such as non-discriminatory labelling and ingredient disclosure requirements or advertising bans, were reasonably available to Thailand to achieve its health policy goals. The Panel had further considered that Thailand's legislation relating to internal taxes, as recently modified, was consistent with Article III. The Panel, therefore, had reached the conclusions contained in Section 7 of its report, and had recommended that the CONTRACTING PARTIES request Thailand to bring the application of Section 27 of its Tobacco Act of 1966 into conformity with its GATT obligations.

The representative of the United States expressed satisfaction that Thailand had already taken action to remove its import ban. The United States and Thailand were presently discussing other issues not addressed by the Panel but which were nevertheless related to obtaining access to the Thai market; the United States believed that these issues, while not covered by the General Agreement, were important for achieving equivalent market opportunities in Thailand. The United States considered the Panel's finding to be well-reasoned, accurately and forcefully representing the best features of the dispute settlement process. While these matters were difficult for all participants, the United States would ask Thailand to allow adoption of the report at the present meeting.

The representative of Thailand said that his authorities had studied the Panel report very carefully and had found it to be legally correct, sound and very well balanced. Therefore, despite one of the conclusions, namely that Thailand's quantitative restrictions on the importation of cigarettes were contrary to Article XI:1 and were not justified by any GATT provisions, his delegation supported adoption of the report in its entirety at the present meeting. Thailand was naturally pleased that the Panel had also come to the correct conclusion that its current regulations relating to excise, business and municipal taxes on cigarettes were consistent with its obligations under Article III.

In agreeing to the adoption of the Panel report, Thailand wished to clarify its position regarding the dispute. He recalled that the United States had originally taken up the issue of Thailand's restrictions on

importation of cigarettes in the context of Section 301 of the US Omnibus Trade and Competitiveness Act of 1988. Thailand's position had been very clear from the beginning: it firmly believed that trade disputes should be settled only under multilateral rules, and not under unilateral pressures at the threat of retaliation, and that the legal aspects of the dispute should be determined only in the light of multilateral standards. Thailand was willing to accept judgement from its peers in the GATT but would not accept any unilateral interpretation of the legality of its practices. That was why Thailand had agreed without delay to the US request for the establishment of the Panel. Thailand was keen to show the world that the GATT dispute settlement procedures could provide an effective alternative to unilateral procedures, and had fully cooperated with the Panel and the US delegation at every step of the proceedings. The result was that the Panel had been able to present its report to the Council only 7 months after its establishment in April. And if the Council adopted the report at the present meeting, it would be one of the most efficient dispute-settlement cases in GATT history.

He noted that Thailand had not waited for the Council to adopt the Panel report formally before beginning to bring its practice on cigarette importation into conformity with its GATT obligations. Indeed, on 9 October, four days after the report had been circulated to contracting parties, Thailand's Cabinet had taken a decision to lift the ban on importation of cigarettes and to ensure that all laws and regulations on cigarettes conformed to national-treatment obligations. His Government was therefore extremely concerned that despite all this progress, the United States still deemed it fit to persist in seeking additional concessions from Thailand under Section 301 of the US Trade Act. By 25 November, the United States would make a determination regarding Thailand's practices on cigarettes and as to whether to take retaliatory action against Thailand. If the United States decided to retaliate, Thailand would have no option but to seek the establishment of another dispute settlement panel to determine the GATT-legality of such action.

It was clear from the present Panel report that Thailand's cigarette régime was based on public health policy considerations. His Government intended to take all measures necessary to prevent an increase in tobacco consumption, and to reduce it if possible. Thailand took heart from the report that a set of GATT-consistent measures could be taken to control both the supply of and demand for cigarettes, as long as they were applied to both domestic and imported cigarettes on a national-treatment basis. He concluded by saying that as a contracting party, Thailand intended to abide by its GATT obligations. It had lifted its import ban, and its present laws and regulations were in accordance with the national-treatment principle. On the other hand, Thailand needed to ensure that it would not be forced to accept conditions imposed above and beyond its GATT obligations. Thailand believed in the multilateral dispute settlement system and could not allow the credibility thereof to be undermined by unilateral action.

The representative of the European Communities recalled that the Community had intervened in the Panel proceedings as a third party. It was satisfied with the results in this specific case and therefore could agree to adoption of the report. Nevertheless, the Community had some concerns

and reservations about certain legal interpretations which should be highlighted in view of the possible precedential value of this report. The first concern related to the Panel's interpretation of Article XI:2(c)(i), which was largely based on the findings of an earlier panel concerning Japan's restrictions on imports of certain agricultural products (BISD 35S/163) and in respect of which the Community and many others had expressed reservations. The Community continued to have these reservations, and would not repeat them in detail. The second concern related to the transposition of the necessity test applied by a panel report with respect to Article XX(d), to the interpretation of Article XX(b). The Community believed that the situation in the two instances was different: in the one instance it related to enforcement procedures for GATT-consistent government measures, while in the second instance, Article XX(b), it related to a balance which needed to be struck between potentially conflicting policies, namely trade policy and health protection policy. The approach that exceptions to GATT had to be interpreted narrowly seemed to the Community to be all too simple if it came to finding an appropriate solution with respect to fundamentally equally important different policies. This was true with respect to some areas covered by Article XX. It appeared to the Community also to be all too easy to privilege internal measures generally over external measures when it came to the need to protect the health of citizens and of the consumer. Moreover, one was in the middle of negotiations -- the Uruguay Round -- which were intended to clarify the standards for assessing sanitary and phytosanitary measures in relation to GATT disciplines. Therefore, in the Community's view, adoption of this report could not prejudge in any way the outcome of those negotiations.

The representative of the United States said that he would recommend to his authorities that the statement by Thailand and the thoughts behind it be fully reviewed and considered. He hoped that all representatives would do the same. In regard to the Community's statement, he understood that it was not intended to be a formal reservation to adoption of the report, but rather a statement of national position. The United States did not share the view expressed by the Community with regard to the interpretation of the necessity requirements in Article XX(b). He noted that the Community had participated fully in the Panel proceedings as a third party, had associated itself fully with the US arguments including the latter's view in respect of the necessity requirement in Article XX(b), and that it was this view which had been adopted by the Panel.

The Council took note of the statements, adopted the Panel report in DS10/R, and agreed that in accordance with the procedure adopted by the Council in May 1988 (BISD 35S/331), the report was thereby derestricted.

13. Dispute Settlement

(a) Roster of non-governmental panelists
  (i) Extension of Roster (C/W/653)
  (ii) Proposed nomination by Hong Kong (C/W/651)

The Chairman recalled that in November 1984, the CONTRACTING PARTIES had established a roster of non-governmental panelists on a trial basis and

for a period of one year, in order to facilitate the composition of panels in cases where parties to disputes were unable to agree on panelists. In November 1985, the Council had approved a list of non-governmental panelists, which had since been extended with amendments for one year at a time, most recently in November 1989.

He proposed that the Council extend the roster as set out in C/W/653, with the addition proposed by Hong Kong in C/W/651, provisionally for a further period until the conclusion of the Uruguay Round negotiations on dispute settlement rules and procedures.

The Council so agreed (L/6763).

(b) Status of work in panels and implementation of panel reports - Report by the Director-General (C/175)

The Director-General, introducing his periodic report on the status of work in panels and implementation of panel reports (C/175), noted that this was the last such report before the Ministerial meeting of the Uruguay Round Trade Negotiations Committee in Brussels in December. The report showed that the GATT dispute settlement procedures as such were working reasonably well but that the implementation of the results of these procedures by the contracting parties concerned was unsatisfactory in a number of cases. The substantial lags in the implementation of panel recommendations were in part due to the fact that the contracting parties concerned had linked the implementation to the results of the Uruguay Round. He regretted such linkages and hoped that a successful conclusion of the Uruguay Round would promptly resolve this problem.

The report showed that an unusually large number of complaints were not being pursued actively: the composition of two panels established in 1985[3] and 1987[4] was still not decided; these complaints should either be pursued or withdrawn. In the light of such instances, he wondered whether a complaint should not be deemed to have been withdrawn if it was not actively pursued for, say, more than one year.

He also pointed out that there were two panel reports which had been submitted to the Council in 1985[5] and 1986[6] and which still awaited adoption, although in both cases the measures complained against had been withdrawn.

The representative of the European Communities strongly supported the Director-General's statement with respect to the possibility of a procedural rule that a complaint should be deemed withdrawn if it was not

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[3]United States - Restrictions on imports of certain sugar-containing products.

[4]European Economic Community - Third-Country Meat Directive.

[5]Canada - Measures affecting the sale of gold coins (L/5863).

[6]United States - Trade measures affecting Nicaragua (L/6053).

pursued within a given period. Indeed one year was already a very long time.

The representative of Nicaragua requested that the Director-General's report include a reference to the Panel report on US imports of sugar from Nicaragua (BISD 31S/67) which had been adopted in March 1984. The United States had now begun to implement that Panel's recommendations and had restored Nicaragua's sugar quota. Furthermore, if the United States were not opposed, her delegation would request that the item in the report concerning the Panel on US trade measures affecting Nicaragua (A.3 of C/175) be deleted, since the measures in question had been removed.

The representative of Australia, referring to the implementation of the Panel reports on Korea's restrictions on imports of beef (BISD 36S/202, BISD 36S/234, BISD 36S/268), said that the bilateral agreements referred to in the Director-General's report represented only the first stage in bringing Korea's beef régime into GATT conformity, and that the régime for 1993 and beyond would be subject to further consultations before 1 July 1992. In regard to the implementation of the Panel report on US restrictions on imports of sugar (BISD 36S/331), Australia was currently examining the GATT consistency of the new US sugar régime. In the event that the sugar provisions of the new US Farm Bill gave rise to legislation substantially equivalent to Title II of the US Sugar Act of 1948, the binding of the sugar tariff in the US Schedule would be reactivated. Australia was considering the GATT consistency of the US tariff-quota régime in this light. In regard to the implementation of the Panel report on Japan's restrictions on imports of certain agricultural products (BISD 35S/163), he noted that in September 1990, the United States and Japan had held bilateral talks on matters outstanding from this report. Australia had consistently stated its interest in the full implementation of that Panel's recommendations on dairy products and starch, and was therefore interested in knowing whether Japan would inform the Council of the outcome of these talks and also when it intended to implement fully the Panel's recommendations. Pending further developments, Australia expected that these panel reports would continue to be listed in future versions of the Director-General's status report.

The Council took note of the statements and of the Director-General's report in C/175.

(c) Canada/EEC Article XXVIII rights
- Award by the Arbitrator (DS12/R)

The Chairman recalled that at its April meeting, the Council had considered a request by Canada for the establishment of a panel to examine the issue of negotiating rights accruing to Canada following the Community's introduction of the Common Agricultural Policy and the expansion of the Community to include the United Kingdom, Ireland and Denmark (DS12/2). In a joint communication dated 16 July and circulated in document DS12/3, Canada and the Community had indicated their agreement to have recourse to the arbitration procedure as provided for in the improved GATT dispute settlement rules and procedures approved by the CONTRACTING PARTIES on 12 April 1989 (BISD 36S/61). The award by the Arbitrator was before the Council in document DS12/R.

The representative of Canada expressed satisfaction with the process of the first arbitration carried out under the provisions of the improved dispute settlement rules and procedures, and with the results of the arbitrator's review. He noted that the arbitrator had confirmed that Canada maintained its full negotiating rights, including those provided for in Article XXVIII:3, under the terms of the bilateral agreements of 29 March 1962 on quality wheat. Canada intended to pursue an early resolution of this long-standing issue with the Community. He added that the experience in this case had demonstrated that GATT arbitration could provide an expeditious dispute-settlement mechanism.

The representative of the European Communities said that the arbitration proceedings had been a positive experience. The rules of the game of arbitration required that parties to the proceedings agree to abide by the arbitration award; whether the Community liked the results or not, it would play by these rules.

The Council took note of the statements and of the information in DS12/R.

14. EEC - Restrictions on imports of pork and beef under Third-Country Meat Directive
- Recourse to Article XXIII:1 by the United States (DS20/1)

The representative of the United States, speaking under "Other Business", expressed his Government's serious concern at recent actions by the European Community to halt the importation of US pork products effective 1 November 1990, and to halt all remaining imports of US beef by the end of the year. This dispute with the Community was a long-standing one, in which the US continued to question the scientific justification of the Community's Third-Country Meat Directive and the requirements imposed thereby. The US particularly regretted the Community's rejection of its request that action to delist US meat plants, at a minimum, be postponed until after the conclusion of the Uruguay Round negotiations. Indeed, the application of the requirements set by the Community appeared to contradict the objectives in the Round's sanitary and phytosanitary negotiations which would support the recognition of "equivalency" of inspection systems. The effect of this action was essentially to prohibit the last remaining US exports of meat products to the Community.

He said that coincidentally, this action was taken at a time when the Community's position on agriculture in the Uruguay Round reflected a high degree of resistance to positions being put forth by other participants. It was interesting to note, too, that this action came a few years after another action to restrict US meat exports which had occurred, again coincidentally, around the time of the deadlock on agriculture in the Uruguay Round Mid-Term Review. It was ironic that the Community's present action was taken against US plants which had been consistently found to be among the most sanitary, and which had the very best records for producing high quality meat products.

He said that there was clearly an underlying political and tactical intent in the Community's action. It was not based on sound principles of sanitary and phytosanitary policy and did not, if allowed to stand, bode well for the future of the trading system. The US had requested Article XXIII:1 consultations with the Community regarding this issue (DS20/1), and also that they be held expeditiously. In concluding, he said that the difficulties that Community administrators faced because of the Common Agricultural Policy were well understood. That Policy created great surpluses which depressed prices. The appropriate solution was not to find new and unusual ways to frustrate trade, but rather to begin to deal with the underlying fundamentals of that Policy.

The representative of the European Communities said that the application of Community directives and laws and the operation of veterinary inspection were totally unrelated to the Uruguay Round calendar. As for the withdrawal of approval of US slaughterhouses, in July 1990, the EC Commission had decided to withdraw veterinary approval of swine slaughterhouses as from 31 October 1990. This decision had been published and notified to US authorities, with whom many bilateral meetings had since been held. In October 1990, the Commission had announced that veterinary approval of a number of bovine meat slaughterhouses would be withdrawn as from 1 January 1991. Imports had therefore not yet been suspended. These delisting decisions had been taken because of shortcomings found in the veterinary inspection and operation of the slaughterhouses concerned. In all cases, and before the decision was taken, a veterinary inspection of the slaughterhouses concerned had been carried out according to criteria applied for many years in more than forty countries. The Community had expressed its availability for finding a solution as rapidly as possible so as to remedy these sanitary problems and to enable the slaughterhouses concerned to be relisted for export to the Community. So far, however, it had not been possible to reach an agreement enabling the US slaughterhouses to be relisted.

The Council took note of the statements.

15. Morocco - Special import tax (BISD 33S/87, L/6326)

The representative of Morocco, speaking under "Other Business", recalled that in February 1987, the Council had agreed, in connection with paragraph 13 of the report of the Working Party on the Accession of Morocco (BISD 33S/87), which concerned Morocco's special import tax, that the CONTRACTING PARTIES would carry out a review in 1990 of the progress achieved in the planned gradual inclusion of this tax in the duty rates applied by Morocco. This special tax, as well as the stamp tax, had been replaced on 1 January 1988 by a fiscal levy on imports of 12.5 per cent, pursuant to undertakings entered into with the IMF and the World Bank. The purpose was to simplify customs taxes and to correct imbalances created by the lowering of tariffs following the implementation of a structural adjustment programme. As Morocco had stated in a communication dated 22 April 1988 (L/6326), the introduction of this fiscal levy on imports had unfortunately affected the total amount of the bound duties on four tariff headings. Morocco had accordingly requested authorization to renegotiate these headings under the provisions of Article XXVIII:4.

With some of the contracting parties concerned, it had been found that the fiscal levy on imports had no effect on import flows and that there was no reason to pursue the renegotiations; with others, the situation was in suspense and these countries might wish to take advantage of the Uruguay Round to resolve this issue. Morocco was pursuing the renegotiations with these countries and would inform the Council of the results once the Uruguay Round was concluded.

The Council took note of the statement.

16. United States - Restrictions on imports of tuna
- Recourse to Article XXIII:1 by Mexico

The representative of Mexico, speaking under "Other Business", said that on 5 November 1990, Mexico had formally requested Article XXIII:1 consultations with the United States concerning the latter's action to prohibit tuna imports from Mexico as from 10 October 1990. The US action resulted from a judgement handed down by a California court under the US Marine Mammal Protection Act. This Act permitted the United States to prohibit imports from a tuna-fishing country and, in certain cases, from third countries that purchased tuna from countries not complying with the conditions laid down therein. He said that protection of the US tuna-fishing industry was neither new nor something that solely affected Mexico's exports, but the novelty of the present action was its use of an ecological argument and the direct intervention of United States tuna-canning companies, which had decided in April 1990 to suspend tuna purchases from Mexico on grounds of incidental catches of dolphins in the eastern Pacific. Mexico considered this action to be clearly inconsistent with the United States' obligations under the General Agreement, in particular Article XI:1. He noted, however, that the embargo had been applied following a state court judgement and had not been initiated by the US Administration; indeed, Mexico had received firm support from the latter against the court decision. Mexico hoped that the situation would be clarified in consultations and that the measure in question would rapidly be removed without requiring recourse to other GATT channels.

He added that Mexico understood that US tuna-canners as well as some government authorities had approached Mexico's major trading partners in an attempt to pursuade them to take similar action against its tuna exports. Mexico reserved the right to have further recourse to the GATT dispute settlement mechanism if the US action continued, or if similar measures were applied by other contracting parties.

The representative of the United States confirmed that Mexico had requested consultations on this matter. The United States did not intend to impose unnecessary restrictions to trade; the measures taken in this matter would be examined carefully to determine whether they were necessary and appropriate for the protection of marine mammals. His authorities would seek to resolve this issue as quickly as possible and in a manner which would provide Mexico suitable access to the US market.

The Council took note of the statements.

17. Appointment of presiding officers of standing bodies
- Announcement by the Council Chairman

The Chairman, speaking under "Other Business", recalled that at the CONTRACTING PARTIES' Forty-Fourth Session in 1988, the Council Chairman had suggested that "in future, at the first Council meeting each year, on the basis of a consensus which would have emerged from consultations, the Council Chairman should propose the names of the presiding officers of the Committee on Balance-of-Payments Restrictions, the Committee on Budget, Finance and Administration and the Committee on Tariff Concessions for the current year. This would not preclude the re-appointment of an incumbent" (SR.44/2). The CONTRACTING PARTIES had taken note of that suggestion. The proposal would be preceded by consultations, open to all delegations and conducted so as to ensure transparency of the process.

In the light of the foregoing, he announced that such consultations would be carried out in due course by his successor, and asked the Secretariat, in consultation with the next Council Chairman, to make the necessary arrangements and to contact delegations. These consultations would be open to all delegations.

The Council took note of this information.

18. Consultative Group of Eighteen

The Chairman, speaking under "Other Business", recalled that at their Forty-Fifth Session in December 1989, the CONTRACTING PARTIES had agreed to the Director-General's suggestion that the Consultative Group of Eighteen remain in suspense during 1990, with the understanding that if for any reason a meeting appeared desirable, the Director-General would convene it, after having first requested the Council to take the necessary decision as to its composition. He recalled that the Group had not met during the year, and said that the Director-General had informed him that the situation remained unchanged from the previous year's.

The Council took note of this information.

19. Technical Group on Quantitative Restrictions and Other Non-Tariff Measures
- Consultations on date of next meeting

The Chairman, speaking under "Other Business", recalled that in May 1989, the Council had agreed that the Council Chairman would undertake informal consultations in the last quarter of 1990 concerning the date of the Technical Group's next meeting. Given delegations' present priorities in connection with the Uruguay Round, he suggested that the consultations be held in the spring of 1991 by his successor.

The Council so agreed.

20. Arrangements for the Forty-Sixth Session

The Chairman, speaking under "Other Business", informed the Council of certain aspects of the arrangements for the forthcoming Forty-Sixth Session. He recalled that it would be a regular session and not the special session at Ministerial level foreseen in the 1986 Punta del Este Declaration launching the Uruguay Round. He confirmed that since no other conference facilities were available in Geneva, the Session would take place in the Centre William Rappard. Finally, he noted the Session would take place only a few days after the Brussels meeting of the Uruguay Round Trade Negotiations Committee.

The Council took note of the information.

21. Overview of developments in the international trading environment

The Chairman, speaking under "Other Business", recalled that at its special meeting on 11 December 1989, the Council had conducted its first annual overview of developments in the international trading environment as required under Part I.F of the CONTRACTING PARTIES' Decision of 12 April 1989 on the Functioning of the GATT System (BISD 36S/403). The second annual overview was due in 1990. In light of the pressure of work on participants in the final phase of the Uruguay Round, however, it would not be practically possible to hold this overview before the end of the year. Consequently, he proposed that the Council conduct the 1990 overview at a later date to be decided upon by his successor in consultation with delegations and the Secretariat. It would be understood that the 1991 overview, which should take place in the latter part of that year, would remain unaffected by this change in the 1990 schedule.

The Council so agreed.

22. Accession of Bulgaria
- Designation of Chairman of the Working Party

The Chairman, speaking under "Other Business", recalled that at its April meeting the Council had designated Mr. Lillis (Ireland) to serve as the Chairman of the Working Party on the Accession of Bulgaria. Mr. Lillis would soon be leaving Geneva. On the basis of informal consultations, he proposed that Mr. Selmer (Norway) be designated to chair the Working Party.

The Council so agreed.

23. Report of the Council (C/W/650)

The Secretariat had distributed in C/W/650 a draft of the Council's report to the CONTRACTING PARTIES on matters considered and action taken by the Council since the Forty-Fifth Session.

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

The Council so agreed.