

# GENERAL AGREEMENT ON

RESTRICTED

C/M/251

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## TARIFFS AND TRADE

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COUNCIL

11 July 1991

### MINUTES OF MEETING

Held in the Centre William Rappard  
on 11 July 1991

Chairman: Mr. Lars E.R. Anell (Sweden)

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Prior to adoption of the Agenda, the Chairman, on behalf of the Council, welcomed Malta as a member following its request for membership.

1. Accession of Guatemala  
- Time-limit for signature of Protocol of Accession (C/W/683)

The Chairman recalled that on 28 February 1991, the CONTRACTING PARTIES had adopted a Decision (L/6824) authorizing Guatemala to accede to the General Agreement on the terms set out in its Protocol of Accession (L/6826). On 16 April 1991, Guatemala had signed the Protocol subject to ratification. He drew attention to a communication from Guatemala (C/W/683), requesting that the time-limit in paragraph 5 of its Protocol of Accession be changed to 30 September 1991, and proposed that the draft decision annexed thereto be adopted.

The Council so agreed (L/6889).



2. Working Group on Export of Domestically Prohibited Goods and Other Hazardous Substances  
- Report by the Chairman of the Working Group (L/6872)

The Chairman recalled that by its Decision of 19 July 1989 (BISD 36S/402), the Council had established a Working Group on the Export of Domestically Prohibited Goods and Other Hazardous Substances and had called for the Group to complete its work by 30 September 1990. By successive decisions, the Council, and the CONTRACTING PARTIES at their Forty-Sixth Session, had extended the Group's mandate until 30 June 1991. He drew attention to the report by the Group's Chairman (L/6872) which explained why the Group had not been able to complete its work during the period of its mandate. Since the need to introduce a notification scheme for domestically prohibited goods remained urgent, the Group had recommended that the Council make arrangements for discussion to continue on the draft decision on products banned or severely restricted in the domestic market, whether by an extension of the Group's mandate or by some other appropriate means.

It was his understanding that the Secretariat had consulted informally with interested delegations on this matter. There appeared to be a general consensus for the Council to extend the Group's mandate for a period of three months to enable it to complete its work. Clearly, if the discussions were to lead to successful results, some time should be made available to delegations to reflect and consult. It appeared to be the wish of delegations that he hold informal consultations on the timing for the convening of the next meeting of the Group. The period of three months would begin from the date of that meeting.

The Council took note of the statement, agreed to extend the mandate of the Working Group for a period of three months which would begin from the date of the Group's next meeting, and authorized the Chairman to hold consultations on the timing for convening this meeting.

3. Trade and environment (Spec(91)21, L/6859)

The Chairman recalled that at the end of the structured debate on trade and environment at the May Council meeting, he had indicated that the Chairman of the CONTRACTING PARTIES would need to pursue, in informal consultations, the question of convening the 1971 Working Group on Environmental Measures and International Trade (see C/M/74, item 3). It was his understanding that the Chairman of the CONTRACTING PARTIES was also consulting on the matter of a GATT contribution to the 1992 UN Conference on Environment and Development (UNCED).

The Chairman of the CONTRACTING PARTIES said that in his consultations he had detected a widespread recognition of the importance of issues relating to environment and trade, and a feeling that the structured debate at the May Council meeting had contributed to clarifying the concerns and positions on these complex issues. There was a general acceptance that the GATT was affected by environmental issues having a bearing on trade, and the possibility of holding a further round of substantive debate at the

next Council meeting, perhaps on the basis of written contributions, had been noted. He was pleased to register the understanding already reached in the Council in May that the Secretariat should prepare a factual background paper along the lines of the ASEAN contracting parties' proposal (L/6859), as well as a note on the UNCED discussions as they related to GATT provisions and principles. On the other hand, additional efforts were required to reach a consensus on how these issues should be dealt with in the GATT itself. He believed that more time was required to allow delegations to develop ideas which could lead to an understanding on this matter, and that this was not the time to be pessimistic or to harden positions.

The best approach to develop the necessary mutual understanding and to allow a positive treatment of these issues in the GATT would be to identify specific issues which could properly be examined in the 1971 Group. He was confident that, with the necessary goodwill, a compromise could be reached to start work along such lines in the very near future. He invited delegations to reflect further on this matter over the summer break, so that by September they could return with new ideas and in a constructive spirit reach a consensus which would open the way for a balanced and objective treatment of these questions.

The representative of Austria, on behalf of the EFTA countries, said that although a consensus had not been reached in the informal consultations, there had been some movement in that direction. The EFTA countries had supported efforts by the Chairman of the CONTRACTING PARTIES to establish an agreed agenda for the 1971 Group and had made concrete proposals toward that end.

Briefly, the following were some of the issues that could be addressed. How could multilateral transparency be ensured concerning national regulations likely to have trade effects? Was the concept of "like product" applicable when comparing the environmental effects of domestic and foreign production processes? How did international environmental agreements which used trade instruments to achieve their aims fit into the GATT context and could there be conflicts between obligations under the GATT and those international instruments? Could the reference in Article XX to "human, animal or plant life and health" and to "the conservation of exhaustible natural resources" be understood to include environment? How should "arbitrary or unjustifiable discrimination" and "disguised restriction on trade" be interpreted in the environmental context? How did present GATT rules apply to the use of trade measures that were related to environmental concerns outside the territory of an individual contracting party both when effects of the national environment could be shown to exist and when they could not? To what extent could the concept of proportionality -- i.e., the idea of not using a more trade restrictive measure than was warranted by the environmental benefits achieved -- be considered already incorporated in the General Agreement? To what extent could labelling requirements be accepted as a generally less trade restrictive measure and consequently a desirable substitute for measures having more direct trade restrictive effects? This list of issues to be considered by the Group was not exhaustive and was intended to serve as a basis for the consultations on an agenda. He added that the factual

background papers requested of the Secretariat by the Council at its May meeting would serve as a useful contribution to the Group's work.

The EFTA countries continued to believe that according to well-established GATT practice, the Group should be open-ended. While they were convinced, as were many others, that the Group's mandate was sufficiently broad to begin the analytical process, they stood ready to discuss a new mandate. He noted, however, that there had been no real response to work constructively toward this end. The issues proposed by the EFTA countries were specific enough in the sense of the Group's current mandate. The degree of specificity to be met could not be so high as to change the Group into a quasi-panel; the EFTA countries' intention was to set in motion a rule-oriented analytical process and not a dispute settlement procedure. In this regard, those who feared that the GATT was reaching out for new competences should not be concerned that the Group's mandate was too narrow, but to the contrary.

The discussion at the May Council meeting had offered convincing proof that there was a relationship between trade and the environment, and that it would not go away simply because the GATT did not deal with it. He warned that trade and environmental policies would intersect more frequently thus increasing the potential for conflict, and that the GATT would not be able to perform one of its major functions, namely to prevent disputes through a clear understanding of the rules and regulations. It was primarily for this reason that the EFTA countries were pushing this issue. The GATT as an institution risked its credibility if it were unable to discuss in depth the inter-relationship between trade and the environment. Furthermore, turning a blind eye to this issue would only confirm the claims of some -- which the EFTA countries did not share -- that the GATT and international trade in general were hostile to the environment.

The exchange of views at the May Council meeting had also produced a lot of material which warranted further discussion and in-depth analysis. The EFTA countries were interested in such a dialogue although a further debate in the Council would not be useful at this stage. The EFTA countries would request that the Secretariat convene the 1971 Group in the second half of September. It was not their intention to overburden delegations with a series of meetings in parallel to the Uruguay Round. They anticipated that the Group would hold one or two meetings before the year's end, by which time all wanted to conclude the Uruguay Round. This being said, the EFTA countries would continue to support the consultations by the CONTRACTING PARTIES' Chairman in the coming weeks. While they looked forward to a September meeting of the Group under its current mandate, they would be willing to agree to an updated mandate or to a new working group with a new mandate.

The representative of Japan said that trade and the environment was an important issue for the GATT. Japan supported the continuation of informal consultations on this issue, and hoped that they would lead to the start of work in this area in GATT in the very near future.

The representative of the United States expressed support for the EFTA countries' views, and for the continuing efforts by the CONTRACTING PARTIES' Chairman. The structured debate on trade and environment at the May Council meeting had been useful and informative, and had provided a much clearer understanding of the views and concerns of all. It had also shown that the differences in approach on this issue were not as great as they might have appeared, and a general appreciation that there was a need for the GATT to examine the trade and environment relationship. It was equally clear that given the Council's broad mandate, it would not be practical or desirable to attempt to conduct the necessary dialogue on this subject in this body. The United States therefore supported the EFTA countries' position that this issue should be dealt with in a working group, and was prepared to participate actively and constructively therein. The United States agreed that it would be worthwhile to update the terms of reference of the 1971 Group, provided this could be done without delay.

The representative of the European Communities said that while the debate at the May Council meeting had been useful, the question now was how to take the process forward. He noted with satisfaction that the CONTRACTING PARTIES' Chairman intended to continue with his consultations in order to determine more clearly the GATT's rôle in this context. He also noted that a number of external pressures for GATT to take some decision were building up. In August, the UNCED process would continue and the preparations for the 1992 UN Conference would become that much more concrete. The Community would be disappointed if the Council could not take any position at the present meeting with regard to the GATT's contribution to 1992 UN Conference.

Another important question was the GATT's place in the overall debate on the environment. Could the GATT function in the future if it did not take on board the environment issue, or would it simply be overwhelmed? This was a pertinent question and would need to be addressed soon. Turning a blind eye to the trade and environment issue would convey an impression that the GATT was hostile to the environment. While the Community did not wish to see the Council muzzled in any way, it wanted to have the 1971 Group convened as quickly as possible, with its current mandate if need be, though preferably with a broader one. Everything hinged on the agenda that could be established for the Group, under whatever mandate. The EFTA countries had indicated that discussions were continuing on a broad range of subjects which might be included if the present mandate were to serve. The Community would not object to proceeding on this basis because it was important at this stage to get the Group going.

The representative of Sweden, on behalf of the Nordic countries, said that the mandate of the 1971 Group had been referred to quite extensively in recent discussions and was of particular importance now that the EFTA countries intended to request the convening of the Group. He noted from the Council discussion which preceded the formation of the Group in 1971 that the intention had been "to set up a flexible mechanism which could be used at the request of contracting parties if the need arose" (C/M/73, item 10). This intention had been well reflected in the Group's mandate, which also directed that the particular problems of developing countries should be taken into account. As had been pointed out in 1971, "it was

better to equip oneself with the necessary machinery ahead of time rather than to wait until a particular problem had developed and then set up an appropriate organ, since its constitution would then be difficult and its nature strongly influenced by the particular case at hand" (C/M/74, item 3). It was important to note that the Group's mandate called on it to discuss specific "matters" relevant to trade policy aspects of environmental measures and did not refer to "cases". The Group therefore did not have a mandate to preempt dispute settlement and it would definitely be counter-productive to focus on real-world trade frictions therein.

Quite clearly the 1971 Group had been set up for contingency purposes, and the Nordic countries believed that a need had arisen to activate it. The period since the 1972 UN Conference on Human Environment had seen developments in the environmental field that were unparalleled in any other field of government policy-making. New environmental policy decisions were being taken without the benefit of clear rules that reflected trade policy interests as well. In addition, a number of new international environmental instruments were being developed. The Nordic countries had begun preparing themselves to tackle what they believed would be one of the significant trade issues of the nineties, and urged others to do the same. The 1971 Group was the right forum to continue discussions in the GATT on this subject. The Group, being already in place, did not require a Council decision to convene it.

The Nordic countries believed that the following clusters of issues would provide the specific questions to be discussed in the Group. The first concerned the examination of the extent to which present GATT rules covered developments in the environmental field. This would be an exercise in identifying common ground in respect of measures where the General Agreement simply did not seem to provide sufficient guidance. The second concerned the question of transparency and the extent to which present GATT rules were efficient in generating timely information. Although Article X was certainly broad in scope, the actual coverage of environmental measures was fairly limited; indeed, one category of measures was not really covered at all, namely those agreed within the framework of other international instruments and only subsequently translated into national law. The third set of issues concerned the relationship between the General Agreement and international environmental agreements. What guidance did the General Agreement provide in a situation where another agreement contained trade provisions at odds with GATT rules? Which agreement would then take precedence and was there some way of avoiding this dilemma?

Existing GATT rules did not cover everything in the environmental field and there was need for a serious multilateral discussion in order to identify clearly aspects that were not covered. Only then could one reasonably consider whether it would be desirable to embark on an effort to formulate balanced multilateral rules to cover such aspects. This issue was urgent. Environmental policy-making had not gone into a state of suspended animation while the GATT tried to make up its mind as to how to tackle these questions. If substantive work was not started soon, there would be a serious loss of credibility for the GATT. It would have failed to provide an adequate framework for policy formulation in an area with a



growing trade impact, and the field would be left open for plurilateral codes, bilateral deals and unilateral decision-making.

The representative Mexico considered that Council discussion on the delicate, complex and increasingly important trade and environment relationship should lead, in time, to a working group which would examine the issues in a more organized fashion. However, it would be premature to deal now with the necessary details in order to take such a step. It was essential to have a more profound debate first, and to continue and then to amplify the informal consultations process. All opinions had to be heard. Mexico hoped that at the next Council meeting, when all the elements necessary to do this would be at hand, one could examine in detail the steps to be taken in the future. It would then be possible, for example, to decide on the mandate and objective of a working group on this subject.

The representative of Malaysia, on behalf of the ASEAN contracting parties, expressed satisfaction that the Council at its May meeting had accepted their proposal (L/6859) for a factual paper by the Secretariat. It was their understanding that the Secretariat was now undertaking this task and they hoped that members would benefit from the results of that effort. They were concerned at the haste with which the Council was being asked to decide on the proposal to convene the 1971 Group. They reiterated that the Council should not be rushed into decisions regarding the relationship between environment and trade. The process of clarification and consultation had been initiated and was continuing under the guidance of the CONTRACTING PARTIES' Chairman. There had been a positive response to these consultations, which should not be jeopardised by any other Council decision on the same subject before their conclusion. While the ASEAN contracting parties respected fully others' right to put their views before the Council in good faith, they would urge the Council in this case to let the CONTRACTING PARTIES' Chairman continue his consultations without giving him new direction or tasks. The substantive issues proposed by Austria on behalf of the EFTA countries for discussion in the Group would, of course, be an important input in these consultations.

The Chairman said he wished to make clear that no one had asked the Council to take a decision on convening the 1971 Group.

The representatives of Switzerland noted that a structured debate had been held on this subject at the May Council meeting which had shed further light on the issues and concerns involved. It would be inappropriate to reopen that debate in the Council. The foundation for work in this area had been set down and this work should now be undertaken in a working group, as was stressed by Austria on behalf of the EFTA countries. His delegation encouraged the CONTRACTING PARTIES' Chairman to continue his informal consultations in order to reach a satisfactory solution. However, since it was important to get down to work in this area quickly and efficiently, his delegation would suggest that the Secretariat, in parallel, take the necessary steps to convene the 1971 Group, which Switzerland considered should be convened in light of the request that had been made on the part of a number of contracting parties. A careful -- or even rapid -- reading of the Group's mandate would lead one to realize that the same mandate would have been adopted today, had the situation in the debate been slightly different.

The representative of Australia said that it would become increasingly difficult for the GATT to avoid an examination of the trade and environment issue and its implication for the multilateral trading system. Australia had an interest in and commitment to exchanges in multilateral fora on environmental issues, and had taken an active rôle in such issues both domestically and internationally. Australia had no fixed ideas on how the GATT should address present and future trade and environment conflicts; such considerations could only come from extensive examination and reflection. Australia also believed that a detailed examination of the trade and environment issue could only be addressed adequately in a mechanism specifically devoted thereto. There was merit in continuing the informal consultations in this regard, which would further help to clarify matters of continuing concern to some contracting parties, and help to maintain the constructive focus that had marked recent discussions on the issue. However, Australia considered it imperative to formalize these discussions, and wished to see this happen sooner rather than later. Australia was open as to the mechanism under which formal discussions on trade and the environment should take place. It would support the establishment of a new working group or the reactivation of the 1971 Group, as long as either mechanism provided a forum for a comprehensive discussion of the full range of environmental issues, and was open to all interested contracting parties. The proposal to reactivate the 1971 Group with an agreed agenda and terms of reference appeared to be a useful way of proceeding. The points suggested by the EFTA countries for inclusion in the "agreed agenda" covered issues that were central to the trade and environment debate. Whether or not these issues were specifically identified for discussion in a working group, they would nonetheless arise in any discussion on trade and the environment.

While Australia had made clear its views about the desirability of setting up a working group, and wished to participate therein, the trade and environment issue in the GATT should be handled by consensus. He noted that the purpose of the consultations to date had been to obtain an agreed procedure. If contracting parties considered that another Council debate on trade and environment would be constructive and would help to find a way forward, Australia would be willing to join such a consensus. If another debate were agreed to, it was important that the informal consultations on procedural issues continue.

The representative of New Zealand shared the other speakers' views on the importance of this subject. The structured debate at the May Council meeting had allowed a number of contracting parties to state their positions quite clearly. But it was obvious that much more work needed to be done, and there appeared to be no disagreement on this point. It was important for GATT to ensure that trade and environmental policies were, as far as possible, mutually supportive. The GATT's involvement in and consideration of international environmental agreements with potential trade effects should do much to reduce the likelihood of any undesirable inconsistencies. In order to carry the work forward and to explore further the trade and environment linkage in detail, New Zealand continued to believe that a working group was both desirable and necessary. New Zealand supported the specific issues for discussion that had been raised primarily by the EFTA countries, and wished to highlight the issues of

extra-territoriality, processing considerations, and of how to avoid the use of environmental measures as disguised trade restrictions. New Zealand was ready to participate constructively in informal consultations to be held by the CONTRACTING PARTIES' Chairman in order to reach agreement on procedures and on the mechanism that would allow a more detailed discussion to take place. This was not a question of attempting to rush decisions, but simply of seeking agreement on an appropriate forum for continuing discussions and moving towards agreement on issues considered to be important by a number of contracting parties.

The representative of Nigeria said that his delegation had already made its views known on the question of the 1971 Group. He noted that work on the question of export of domestically prohibited goods was stalled, and that the Council had just extended the mandate of the working group on that subject (see item 2). As Nigeria had previously stated, adoption in that Group of the draft decision on products banned or severely restricted in the domestic market would represent a positive contribution to the ongoing exchange of views on trade and environment. He urged the CONTRACTING PARTIES' Chairman to take this point into consideration in his informal consultations. Until those consultations were concluded, Nigeria would not be favourably disposed towards the establishment of a working group on trade and the environment.

The representative of India said that the informal consultations by the CONTRACTING PARTIES' Chairman had resulted in concrete steps towards the possibility of reaching an understanding on this issue. Already, a structured debate had been held at the May Council meeting, which had revealed that differences among contracting parties were not that wide, and that some earlier concerns might have been unfounded. A request had also been made to the Secretariat for a factual background paper on certain specific issues. India shared the optimism of the CONTRACTING PARTIES' Chairman that, given time and a measure of goodwill, some conclusions could be reached in regard to procedural aspects and the GATT's contribution to the UNCED process. Some contracting parties were understandably impatient to have the procedural issue resolved soon. He noted that no one had asked the Council for a decision to convene the 1971 Working Group, and also that the EFTA countries intended to request that the Group be convened in the second half of September. The EFTA countries contended that the Group's mandate was flexible enough to accommodate a discussion on the issues cited by them. India was not persuaded that this was so. Nevertheless, if some contracting parties so requested, and the Group was convened, the implications thereof would need to be examined. India believed that the forum for procedural discussions would probably shift as a result, and that the present constructive atmosphere that was being built would also be affected. One would also have to ponder the serious implications for the continuing consultations by the CONTRACTING PARTIES' Chairman were the Group to be convened before they had reached a certain stage.

The representative of Chile noted that his country had always given its support to studies on the environment in the appropriate fora, and rightfully so because Chile possessed incalculable natural wealth. This subject, therefore, was clearly of interest to Chile. The problem, however, was the question of the GATT's competence in this area. In other



words, what aspects of the environment should the GATT discuss? Should it be nuclear explosions, export of domestically prohibited goods, intellectual property rights as they related to techniques which might prevent pollution in developing countries, indiscriminate whaling operations in the southern seas, or indeed Article XX? As this was unclear, Chile believed that informal consultations should continue, and should involve all contracting parties. With regard to the 1971 Group, Chile had previously expressed doubts as to its legal validity as a result of the fundamental changes in circumstances in the past twenty years. Contracting parties would have to consider some other mechanism in which to continue further deliberations.

The Chairman noted with appreciation the readiness of the CONTRACTING PARTIES' Chairman to remain at the disposal of members for further consultations. He also noted that the latter had invited members to reflect on these issues over the summer break in order to facilitate the consultations that he would be ready to hold.

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

4. Harmonized system - Requests for extensions of waivers under Article XXV:5

- (a) Bangladesh (C/W/682, L/6865)
- (b) Israel (C/W/680, L/6856)

The Chairman drew attention to the communications from Bangladesh (L/6865) and Israel (L/6856) in which each had requested an extension of a waiver already granted in connection with its implementation of the Harmonized Commodity Description and Coding System, and to the draft decisions in the following documents: C/W/682 - Bangladesh and C/W/680 - Israel. He then stated 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 Council on 12 July 1983 and contained in BISD 30S/17.

The Council took note of the statement, approved the texts of the draft decisions in C/W/680 and C/W/682, and recommended their adoption by the CONTRACTING PARTIES by postal ballots.

5. United States - Countervailing duties on fresh, chilled and frozen pork from Canada  
- Panel report (DS7/R, DS7/3)

The Chairman recalled that at their Forty-Sixth Session in December 1990, the CONTRACTING PARTIES had referred this matter back to the Council for further consideration. At its meetings in February, March, April and May 1991 the Council had considered the Panel report, and in May had agreed to revert to it at the present meeting.

The representative of Canada said that for more than ten months the United States had offered no substantive or procedural justification in the GATT for not agreeing to adoption of this report. He urged the United States to agree to adoption at the present meeting.

The representative of the United States said that recent proceedings under the US - Canada Free-Trade Agreement had led to a finding of no injury to the domestic US industry from imports of Canadian pork. Under the requirements of US law, the countervailing duty proceeding had been terminated; all cash deposits of estimated duties would be refunded automatically with interest to the importers. The Panel had limited its recommendations in this case to a single countervailing duty proceeding which had now been terminated. Therefore, there were no recommendations to be implemented by the United States, and the case was moot.

He recalled that the Panel had recommended that the CONTRACTING PARTIES request the United States to do one of two things: either (1) reimburse now the duties on pork levied to offset subsidies to the production of live swine; or (2) make a new subsidy determination consistent with the requirements of Article VI:3, and reimburse duties found to have been improperly levied. The United States did not support the adoption of a panel report in a matter where the case was moot, and did not necessarily support the reasoning in this particular Panel report. The Panel had indicated, for example, that the United States could refund the duties collected. As his delegation had indicated previously, the United States believed that GATT panels did not have the authority to issue specific remedy recommendations apart from recommending that contracting parties bring their measures into conformity with their GATT obligations.

The Panel had also indicated that, in its view, Article VI should be construed narrowly. Notably, the Panel had not provided any authority for this novel proposition. The United States considered the provisions of Article VI to be an integral element of the overall GATT rights and obligations and that the Panel's conclusion in this regard was without merit. Nevertheless, the United States would not stand in the way of a consensus to adopt the report because the entire investigation was moot from the point of view of US law. He wished the record to show that no further action was required of the United States as a result of this report. Finally, the United States' agreement to adoption of this report was without prejudice to its position on various aspects of the Panel's reasoning.

The representative of Canada said that the United States' agreement to adoption of this report supported the successful functioning of the GATT dispute settlement system. Canada believed that this report benefited all contracting parties and provided a clear interpretation of the rights and obligations of all under the relevant provisions of the General Agreement.

The Council took note of the statements and adopted the Panel report in DS7/R.

6. Japan - Restrictions on imports of certain agricultural products  
- Follow-up on the Panel report (BISD 35S/163, L/6810)

The Chairman recalled that the Council had considered this matter at its meetings in February, March, April and May, and in May had agreed to revert to it at the present meeting.

The representative of the United States recalled that at the May Council meeting his delegation had reported that the second round of plurilateral consultations with Japan had offered little reason to believe that Japan was prepared to eliminate its GATT-inconsistent quotas on starch and dairy products. On 3 July, the United States had held bilateral talks with Japan in order to encourage it to reconsider that position. Japan had given no indication as to its intention to liberalize those quotas -- this more than three years after adoption of the Panel report. Japan had firmly rejected every suggestion put forward for meeting its responsibilities. Although Japan insisted that it could only take action in light of the outcome of the Uruguay Round, it was clear that the starch and dairy quotas were inconsistent with the current GATT rules. Any expectation by Japan that GATT rules would be weakened to accommodate its policies as a result of the Uruguay Round was completely unfounded and unproductive. Delay in implementing the Panel recommendations only further impaired the legitimate interests of the United States and other interested contracting parties. Japan enjoyed the benefits of an open world trading system in many products, especially in the United States. Under these circumstances, the United States could not imagine that Japan would take its international trade obligations so lightly. He emphasized that continued inaction on this issue was unacceptable.

The representative of Australia, too, reported that no progress had been made in informal bilateral discussions with Japan after the May Council meeting. Australia was ready to engage in further consultations, under Article XXII or bilaterally. However, no progress could be made until Japan declared itself ready to come forward with an irreversible plan which would ultimately lead to GATT-consistent dairy and starch import régimes. Such a plan was overdue, and Japan's refusal to begin the process did no credit to the credibility of the GATT. Deferral of implementation pending the outcome of the Uruguay Round would invite a suspension of all contracting parties' GATT obligations and render futile the dispute settlement process, including current panel deliberations. It would also send wrong signals on an outcome of the Round. It was wishful thinking to anticipate that disciplines arising from the Round in agriculture or any other area would be any less liberal than existing disciplines. Any such outcome would run counter to the Punta del Este Declaration (BISD 33S/19). Domestic constituencies should not be deluded that contracting parties could be selective in adherence to GATT obligations. In any event, Japan would still need to introduce reforms to its dairy import régime, to correct the breach of Article II tariff obligations on a range of products, including skimmed-milk powder. In addition, Japan's refusal to begin the implementation process on dairy and starch implied that its position in the Uruguay Round negotiations on Article XI excluded any consideration of guaranteeing improvements in market access in these areas. Linkages to the Round were unacceptable and could not be used as justification for

deferring the beginning of the process of moving towards irreversible GATT-consistent liberalization. He called on Japan to reconsider seriously its position at an early stage.

The representative of Thailand shared the previous speakers' disappointment on the lack of any sign from Japan to fulfil its obligations in compliance with the Panel's recommendations. Three and a half years after adoption of the report, Japan's actions were still not adequate to implement fully the recommendations, particularly with regard to dairy and starch products in respect of which there was no clear indication as to when and how it would bring remaining import restrictions into GATT conformity. The second round of plurilateral consultations, in which Thailand had also participated, had failed to achieve any mutually satisfactory solutions. He therefore strongly urged Japan to reconsider its position and commit itself to the full implementation of the Panel's recommendations. Plurilateral consultations should be resumed as soon as possible and Thailand reserved its right to participate therein.

The representative of New Zealand said that her Government had also participated in two plurilateral meetings with Japan to discuss the latter's outstanding obligations to bring its starch and dairy import régime into GATT conformity. New Zealand had expressed the expectation that Japan would acknowledge its obligation to implement in full the Panel's recommendations, make immediate and substantial improvements in market access, and present proposals for a timetable to achieve full and GATT-consistent implementation. At the May Council meeting, her delegation had expressed disappointment that Japan had found itself unable to respond to any of these points. At that meeting Japan had said further consultations were desirable. Subsequently, New Zealand had held bilateral consultations on 19 June but no progress had been made. Japan had still not developed proposals for immediate, substantial access improvements. It had not been prepared to consider a commitment to implement in full the Panel findings, and could suggest no proposals -- much less a timetable -- for how implementation was to be achieved. Japan's position amounted to nothing more than holding fast to the status quo and persisting with the argument that implementation could only be considered in light of the outcome of the Uruguay Round.

As stated by previous speakers, Japan would be mistaken if it believed the outcome of the Uruguay Round would be such as to weaken GATT rules and that this would somehow allow the dairy and starch quotas to be retained. Japan could not expect to be able to spin out a consultative process as a substitute for compliance with its obligations under existing GATT rules. This apparent unwillingness to consider any meaningful steps towards a satisfactory conclusion in respect of the outstanding items put Japan seriously out of step with its existing GATT obligations, and even with its own position in other GATT fora. In the Uruguay Round, for example, Japan had been in the forefront of the major trading nations urging stronger and more effective GATT dispute settlement disciplines. Furthermore, during the review of the Community's trade policies under the Trade Policy Review Mechanism (C/RM/M/10), Japan had been quick to call for Europe to be given an initial introduction to the culture of competition. She noted that New Zealand and many other small trading nations had taken difficult -- and

domestically unpopular -- economic measures over the past few years. They expected other nations to apply the same economic logic to their own politically sensitive sectors. New Zealand looked forward to concrete indications from Japan that it was prepared to consider seriously developing a satisfactory solution to the concerns that had been raised. In the meantime, New Zealand reserved its GATT rights.

The representative of Uruguay shared the previous speakers' disappointment at Japan's attitude, which did not seem to be consistent with its tradition of respect for international obligations. This attitude, and the arguments put forward in its support, were not valid. She urged Japan to observe its GATT obligations and hoped that it would take action to this end as soon as possible.

The representative of Japan said he would report fully to his authorities on the comments made at the present meeting. However, he considered that the issue should be placed in a better perspective. Japan had implemented promptly and in good faith a large majority of the Panel's recommendations. The circumstances surrounding dairy and starch products were difficult. However, Japan had already taken certain steps to improve market access for these products, and had stated that further measures would be adopted in light of the outcome of the Uruguay Round. This clearly indicated Japan's intention in regard to these products. It also indicated that Japan had accomplished a lot in fulfilling its obligations and that it was not ignoring them. Japan stood ready to continue consultations on this matter.

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

7. European Economic Community - Payments and subsidies paid to processors and producers of oilseeds and related animal-feed proteins - Follow-up on the Panel report (L/6627)

The Chairman recalled that the Council had considered this matter at its meetings in April and May, and in May had agreed to revert to it at a future meeting. It was on the agenda of the present meeting at the United States' request.

The representative of the United States recalled that the Panel report had been adopted by the Council in January 1990. The Panel had found that the Community regulations providing for payments to oilseed processors conditional on the purchase of oilseeds originating in the Community were inconsistent with Article III:4, and had recommended that the Community bring these regulations into GATT conformity. The Panel had further found that benefits accruing to the United States under Article II in respect of the zero-tariff bindings for oilseeds in the Community's schedule of concessions had been impaired as a result of the introduction of production subsidy schemes which operated to protect Community producers of oilseeds completely from the import price movements. It had therefore recommended that the Community consider ways and means to eliminate the impairment of its tariff concessions for oilseeds. In the 1991 price package, the



Community had made some minor reductions in oilseeds support. These changes had not addressed the Article III problem at all, and had moved only slightly in the direction of correcting the impairment problem. However, the Community's Council of Ministers had agreed to adopt, by 31 October 1991, a new oilseeds régime which would bring Community legislation into conformity with the Panel's recommendations. It was his understanding that the Commission had now put forward its proposals for agricultural reform in the Community, and the United States would be examining these proposals with interest to see if they met its needs in the oilseeds sector.

The representative of the European Communities said that his delegation had already indicated at the May Council meeting that in order to comply with the Community's commitments in respect of this Panel report, the Commission would propose a transitional scheme for these products before 31 July and that the Council of Ministers would take a decision thereon by 31 October.

The representative of Canada welcomed the Community's intention to take steps towards implementing the Panel's recommendations by the end of October. He reiterated Canada's interest in the Panel recommendations particularly with regard to canola. His authorities would be following developments on this matter closely.

The representative of Australia also welcomed the Community's moves towards implementation of the Panel's recommendations in advance of the outcome of the Uruguay Round.

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

8. EEC - Restrictions on imports of pork and beef under Third-Country Meat Directive  
- Recourse to Article XXIII:2 by the United States (DS20/2 and Corr.1)

The representative of the United States said that his Government requested the establishment of a panel under Article XXIII:2 to determine whether GATT benefits accruing to it were nullified or impaired as a result of Community practices in respect of meat imports from the United States pursuant to the Third-Country Meat Directive. Efforts to reach a bilateral solution had been unsuccessful thus far, although the United States was prepared to continue to work constructively with the Community to reach a mutually satisfactory solution.

He recalled that at the CONTRACTING PARTIES' Forty-Third Session in December 1987 a Panel had been established to examine the United States' concerns about the implementation of the Third-Country Meat Directive<sup>1</sup>.

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<sup>1</sup> European Economic Community - Third-Country Meat Directive (SR.43/5).

That Panel had never been activated because a bilateral agreement had permitted continued shipments of US meats to the Community and had temporarily defused the issue. From 1 January 1991, however, the Community had halted imports of US beef, pork and lamb. Since the United States' current complaint was more comprehensive than that filed in 1987, it requested disestablishment of the former Panel, effective from the date of establishment of the new panel.

The representative of the European Communities noted that the Panel established in 1987 to examine the Third-Country Meat Directive had not been withdrawn, and expressed his doubts as to whether the issue now raised by the United States should be considered as a new request or as a continuation of the earlier panel process. The Community reserved its rights on that question. With regard to the United States' complaint in documents DS20/2 and Corr.1, bilateral consultations were being pursued actively with every prospect that they would result in a mutually satisfactory solution. The Community therefore wished to revert to this matter at the next Council meeting.

The representative of Canada said that his Government wished to reserve its rights as a third party with an interest in this dispute.

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

9. Committee on Budget, Finance and Administration

(a) Report of the Committee (L/6870)

Mr. Broadbridge (Hong Kong), Chairman of the Committee, introduced the report on the matters considered by the Committee at its meetings on 14 and 24 June (L/6870). With regard to the 1991 budget estimates, he recalled that the Council had agreed at its meetings in July 1990 and March 1991 to defer their presentation until 28 June 1991. The Secretariat had now proposed an expenditure of SwF 78,724,802, which represented an increase of 5.5 per cent over the 1990 budget. Given that inflation, changes in the dollar exchange rate and other statutory and unavoidable increases would indicate an increase of the order of 6.5 per cent, the proposed budget in fact represented a less-than-zero growth. The Committee had examined the proposals at length. In approving the printing budget, differing views had been expressed on the extent to which contracting parties should be involved in the type and scope of the research work which the Secretariat could undertake (paragraph 22). A reservation had also been expressed by Germany with regard to the method of calculating its contribution (paragraphs 28-30). Having noted this reservation, the Committee recommended that the Council approve the draft resolution on the 1991 expenditure and the ways and means to meet such expenditure. In essence, this expenditure would be met by contributions of SwF 77,400,000 from contracting parties and by miscellaneous income estimated at SwF 1,324,802. He urged that contracting parties make a special effort during the month to pay their contributions in full because, as of that day, the Secretariat did not have adequate finances to meet its expenditures.

With regard to the International Trade Centre (ITC), the Committee had examined the Financial Report and Audited Financial Statements for the biennium 1988-89, the First Performance Report on the Regular Programme Budget for the biennium 1990-1991 and the Proposed Programme Budget for the biennium 1992-1993. The Committee had had a useful debate with the ITC's Executive Director and his financial colleagues over aspects of GATT's involvement in the ITC budgetary process, which would be the subject of further study. The Committee recommended that the revised ITC expenditure estimates for the 1990-1991 biennium be approved in the amount of US\$ 34,891,600. With regard to 1991, the Committee recommended that the amount of SwF 11,725,000, as provided in the 1991 GATT budget for a contribution to the ITC, be paid thereto in twelve monthly instalments in Swiss francs.

Among other matters, and pursuant to a decision by the Council in October 1988, the Committee had given consideration to measures which might be taken to reinforce the obligation to pay contributions for those contracting parties with three full years' assessed contributions in arrears. The Committee recommended that a decision on the introduction of further administrative measures be deferred until the conclusion of the Uruguay Round and that, in the meantime, the Council's Chairman write to the contracting parties concerned reminding them of their financial obligations to the GATT.

Following El Salvador's accession to GATT on 22 May 1991, the Committee recommended that a contribution to the 1991 interim budget amounting to SwF 13,550, and an advance to the Working Capital Fund amounting to SwF 23,064 be assessed on that Government. Finally, the Committee had noted that due to his transfer from Geneva, Mr. Nils-Erik Schyberg, the CONTRACTING PARTIES' representative on the ICITO/GATT Staff Pension Committee would be unable to complete his term of office. Accordingly, following consultations, the Committee recommended that the Council approve the nomination of Mr. John Clarke to that post until the end of the current term, i.e., until 31 December 1992.

The representative of Germany reaffirmed his Government's position that trade figures of the former German Democratic Republic (GDR) could only serve as a basis for calculating Germany's contribution to the GATT budget from the date of the former GDR's accession to the Federal Republic of Germany, i.e., from 3 October 1990. Germany was nevertheless prepared to pay its budget contributions as calculated by the Secretariat. Such contribution, however, was not to be construed as the basis for a legal obligation, nor did it constitute a precedent in a similar case.

The Director-General echoed the concern expressed by the Committee's Chairman in respect of the Secretariat's current cash situation. With regard to the differing views in the Committee on the manner in which the Secretariat could undertake and publish studies (paragraph 22 of L/6870) he would be prepared to hold consultations with interested Committee members to settle this matter which deserved to be looked at objectively.



The Chairman said that in view of the Secretariat's serious cash situation, he would repeat the Budget Committee Chairman's urging that contracting parties pay their contributions as early as possible.

The Council took note of the statements, approved the Budget Committee's specific recommendations in paragraphs 41, 42, 51, 52 and 54 of its report in L/6870, and approved the draft resolution referred to in paragraph 32. The Council then adopted the Budget Committee's report in L/6870, including the recommendations contained therein and the Resolution on the expenditure of the CONTRACTING PARTIES in 1991 and the ways and means to meet that expenditure.

- (b) Requests for membership by Colombia and Venezuela (L/6827, L/6871)

The Chairman drew attention to the requests for membership of 17 May by Colombia (L/6827) and of 20 June by Venezuela (L/6871).

The representative of the United States said that while his Government was not opposed to membership in the Committee by Colombia and Venezuela, it was concerned that the Committee should not be expanded to the point where it might become a Council bis and be unable to function effectively. The United States would therefore support deferral of a decision on these requests pending consideration in the Committee on the question of setting a limit on the number of contracting parties that could serve thereon.

The representative of the European Communities echoed the United States' views. While the Community did not see the Budget Committee as an exclusive body, some thought should be given as to the number of contracting parties participating therein. He noted that the Community, for its part, exerted some self-restraint on participation as far as its member States were concerned. With some further thought and consultation, a solution acceptable to all could be reached on maintaining the efficiency of this Committee.

The representatives of Peru, Chile, Mexico, India, Australia, Uruguay, Thailand on behalf of the ASEAN contracting parties, Costa Rica, Jamaica, Pakistan, Hong Kong and El Salvador expressed support for Colombia's and Venezuela's requests for membership.

The representative of Peru said that the presence of Colombia and Venezuela on the Committee would be positive. Peru would not be opposed to a deferral of a decision on these requests to the next Council meeting. In Peru's understanding, there were at present twenty-four members of the Committee of which only two were from Latin America, which was one more reason for supporting the two requests.

The representative of Mexico said that his delegation would have no difficulty with taking a decision on this matter at a future meeting. He endorsed Peru's statement.

The representative of India said that any discussion on the issue of setting a limit on membership in the Committee should take place after a decision on the two requests at hand, and that such a discussion should be held in the Council and not the Budget Committee. It was not for that Committee to decide what its membership should be.

The representative of Uruguay shared fully the views expressed by India.

The representative of Japan said that there was considerable merit in the suggestions by the United States and the Community, and believed that further consultations would be appropriate.

The representative of Colombia expressed surprise that some members wished to reflect on the two requests, and asked if they could do this before the end of the present meeting. It was strange that despite Colombia's request having been circulated on 23 May, none of those now expressing doubts thereon had indicated any such ideas -- even informally -- prior to the present Council meeting, which might have permitted the matter to be resolved in informal consultations. Any debate on the Committee's membership should take place in the Council and not in the Committee itself. Colombia believed that increasing the number of members from twenty-four to twenty-six would not in any way hinder the work of the Committee, particularly since Colombia and Venezuela had never manifested less than a constructive attitude in the CONTRACTING PARTIES' activities. If the Council were unable to take a positive decision at the present time and had to revert to this question at its next meeting, he would suggest that one of the elements to bear in mind as regards eligibility for membership should be that a contracting party with contributions in arrears since 1986 or 1987 should not be a member.

The representative of Costa Rica said that the two requests should be considered at the present Council meeting. He shared fully Colombia's views.

The representative of Jamaica endorsed the views of the previous speakers who had supported the two requests. Her delegation shared Colombia's views about criteria which might be used in determining the Committee's membership in the future.

The representative of Pakistan supported Peru's and India's statements. He added that there should be a time-limit for membership in the Budget Committee.

The representative of the United States said that further consultations could presumably help in arriving at some appropriate settlement of this matter. While he did not disagree with India that the question of the Committee's membership should be decided ultimately in the Council, he believed the Committee should consider this matter and make appropriate recommendations to the Council. He reiterated that the United States was not opposed to any individual contracting party's membership on the Committee. As to the assertion that Colombia and Venezuela were very constructive participants in the GATT process, he noted that the same could

also be said of a number of others. The United States was not trying to put anyone in the position of choosing between those that did and did not represent contracting parties in good standing. He added that when a contracting party was seeking Council action, it was incumbent on it to consult with others beforehand. For its part, the United States was available for such consultation.

The representative of Venezuela said that in the short time it had been a contracting party, Venezuela had seen the CONTRACTING PARTIES take decisions regarding requests for membership of GATT bodies with some automaticity and was therefore surprised by the reaction to the requests at hand. He asserted Venezuela's intention to play a constructive part in the activities of the Budget Committee.

The representative of Hong Kong said that while there were no formal arrangements for membership on the Committee, the tradition had been to keep it small and efficient. There had also been a tradition of rotation, such as between Belgium and the Netherlands; he was also aware that two other contracting parties were consulting with a view to rotation. One should also perhaps recall that observers were welcome in the Committee, had access to its documents and were allowed full participation in its meetings. However, in the present circumstances, Hong Kong supported the two requests. He suggested that before any further nominations were considered, there should be an early debate on this matter, and he agreed with the United States that the right place for this was, in the first instance, the Budget Committee, which could then report to the Council.

The representative of El Salvador shared fully the views expressed by Peru and India.

The representative of Colombia recalled that his Government's request had been circulated to all contracting parties on 23 May and that at the May Council meeting, his delegation had drawn attention to this request and had expressed the hope that the Council would act on it at its next meeting. No doubts had been expressed at that meeting. His delegation believed that a contracting party that did not agree with a requested course of action in the Council had the responsibility to indicate as much to the contracting parties concerned.

The representative of Venezuela said that the two requests should be dealt with according to rules presently being used and not under new rules which had never been discussed in either the Council or the Budget Committee.

The Chairman said he saw a clear need for consultations on two separate issues, namely the more immediate requests by Colombia and Venezuela, and the more general question of membership criteria, composition and size of the Budget Committee. On the latter, there were indeed no formal rules, but rather a longstanding practice. It seemed clear that this question was of general interest and that the consultations could not be limited to Committee members alone. He proposed that the Committee's Chairman be asked to hold these consultations, which should be open to all interested contracting parties.

The representative of Brazil said that Colombia's and Venezuela's requests had been made under the present rules and it would be fair to accord them the same treatment accorded others in the past when requests had been granted almost automatically. One could then hold consultations on the more permanent questions regarding composition, rules for future requests, rotation and so on. Therefore, in a spirit of goodwill, he appealed to those that had raised objections more on the matter of principle than on the specific requests not to object to a decision being taken on the two requests at the present meeting.

The representative of the United States said that the United States wanted a fair treatment for all in this matter. His delegation would therefore suggest that the Council revert to this item toward the end of its present meeting to allow for further reflection on the issues under discussion.

The Chairman expressed the hope that when the Council reverted to this item he would be able to propose consultations only on the issues of membership criteria, size and composition of the Committee.

The Council reverted to this item toward the end of its meeting.

The representative of the United States indicated that his Government would be prepared to go along with a decision at the present meeting to approve the two requests for membership. However, the United States continued to believe that appropriate consideration should be given to the question of efficiency in that Committee. He noted that the operation of the Committee did not preclude any contracting party's right to raise budget matters in the Council. It was necessary, therefore, to ensure that consultations were held on this question. The United States would be unable to agree to further membership requests until some results could be seen from those consultations in establishing clear guidelines for further membership.

The representative of the European Communities said that the Community too was prepared to go along with Brazil's suggestion, and that its earlier hesitation had been one of principle. The Community attached importance to the proposed consultations and believed that further membership applications should be considered in light of the results thereof.

The Council took note of the statements, approved Colombia's and Venezuela's requests for membership on the Budget Committee and agreed that the Chairman of the Budget Committee should hold consultations not limited to members of the Committee, regarding the efficiency of the Committee's work, its size, composition and criteria for membership therein, and report to the Council.

10. De facto application of the General Agreement  
- Report by the Director-General (L/6866)

The Chairman recalled that in November 1967 the CONTRACTING PARTIES had adopted a Recommendation (BISD 15S/64) inviting contracting parties to continue to apply the General Agreement de facto in respect of

newly-independent territories on a reciprocal basis, and requesting the Director-General to make a report after three years. The report circulated in document L/6866 was the eighth report made by the Director-General on the application of the Recommendation.

The Council took note of the report (L/6866) and invited the Director-General to remain in contact with the governments of the States concerned and to report again on the application of the Recommendation within three years.

11. Status of work in panels and implementation of panel reports  
- Report by the Director-General (C/178 and Corr.1, Spec(91)67)

The Director-General said<sup>2</sup> that since his previous report in November 1990 (C/175) there had been a marked increase in dispute settlement activity. In the past six months five new panels had been established -- including one under a Tokyo Round agreement -- compared to only one in the whole of 1990. In addition, there were two outstanding requests for panels. In the same period, two panel reports had been adopted by the Council. While the dispute settlement system continued to work reasonably well on the whole, some of the recent cases had exposed certain weaknesses of the current procedures.

One of these weaknesses resulted from the fact that there were altogether eight different dispute settlement procedures under the General Agreement and the Tokyo Round agreements, and that a panel could, in principle, examine the matter before it only in the light of the provisions of the agreement under which it had been established. In recent years, there had been more and more dispute settlement cases in which one of the parties had claimed that the matter of the dispute was covered not only by the agreement under which the panel had been established but also by another agreement. This had led to time-consuming debates about the proper forum for the resolution of the dispute and to claims that GATT panels were sometimes working on an incomplete legal basis. The situation had caused problems both for the contracting parties bringing the complaints and for those complained against. In one case,<sup>3</sup> a contracting party had had to request the establishment of two panels<sup>3</sup> to examine a matter: one under the Subsidies Code<sup>4</sup> to examine its rights under that legal instrument and another under the General Agreement to examine its rights under the most-favoured-nation clause. One contracting party was presently holding

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<sup>2</sup>The text of the Director-General's statement was subsequently circulated as Spec(91)67.

<sup>3</sup>SCM/94; SCM/M/40, 44, 46, 48 and 51; DS18/2, 3; and C/M/249, item 10.

<sup>4</sup>Agreement on Interpretation and Application of Articles VI, XVI and XXIII (BISD 26S/56).



consultations<sup>5</sup> on a set of measures concerning a single product under three different agreements: the General Agreement, the Subsidies Code and the Anti-Dumping Code<sup>6</sup>. There had been a number of cases where the party complained against had been of the opinion that it had been unable to assert all its legal defences under the GATT legal system because the panel's mandate had been limited to the agreement under which it had been established. Whether these claims were justified or not was not a matter on which he would take a stand, but he considered it disturbing that the current procedures did not permit panels to examine such claims. The problem was frequently referred to as that of "forum-shopping". However, "norm-shopping" would probably be a more appropriate term because the problem was not so much that the procedures allowed to a certain extent contracting parties to select the forum that would decide the dispute but rather the legal provisions on the basis of which the dispute would be decided. He believed that the stage had been reached where the credibility and proper functioning of the GATT dispute settlement process was in danger and he therefore suggested that contracting parties address this problem in a constructive way.

Another danger to the integrity of the dispute settlement system resulted from the increasing number of cases of incomplete or conditional implementation of recommendations of panel reports. In his previous report he had alerted the Council to the problem of parties conditioning the implementation of panel reports on the outcome of the Uruguay Round. There were now five panel reports the recommendations of which had been treated in this way. While he did not wish in his remarks to preempt the Chairman of the Council, who had undertaken consultations on this issue, it bore repeating that the purpose of the dispute settlement procedures was clearly to uphold existing legal obligations. The results of past negotiations were thereby secured, and parties gained the confidence to negotiate future concessions in good faith. Contracting parties should be aware that making the implementation of panel reports conditional on some future state of affairs could set an unfortunate precedent for dispute settlement in the GATT. He hoped therefore that contracting parties would re-examine their positions in this regard with a view to maintaining and restoring the integrity of the dispute settlement system.

Another issue where improvements could be made concerned the continued inaction in certain panel cases. Two panel reports<sup>8</sup>, approximately five years after their submission to the CONTRACTING PARTIES, remained unadopted. Clearly, these should be acted upon by the Council or withdrawn by the complainants. He considered the inaction in these cases particularly regrettable because in both cases the measure complained

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<sup>5</sup> DS24/1.

<sup>6</sup> Agreement on Implementation of Article VI (BISD 26S/171).

<sup>7</sup> BISD 36S/68; BISD 36S/345; BISD 35S/163; L/6627 and L/6657.

<sup>8</sup> L/5863 and L/6053.

against had been withdrawn. Two other panels, one established in 1985<sup>9</sup>, the other in 1987<sup>10</sup>, had not proceeded. He had decided to drop them from his report, but they were formally still in existence. The panel process, once initiated, should proceed in a timely manner from establishment through to adoption of the report. Contracting parties might therefore wish to consider whether a decision should be taken that a complaint on which no action had been taken for a year would be deemed withdrawn.

He had noted that in some recent disputes the complaining contracting party, in its request for consultations or the establishment of a panel, had only vaguely or incompletely identified the matter of the dispute. In one case, the party which had brought the complaint had indicated in its request for a panel that it was, with respect to one of the matters on which it was seeking panel findings, still examining the practices of the contracting party complained against<sup>11</sup>. In another case, a party had requested a panel to make findings on a measure that had been mentioned neither in the request for consultations nor in that for the establishment of a panel. Such incomplete requests for consultations or for panels ran counter to the spirit of the GATT dispute settlement procedures. The purpose of the requirement of prior bilateral consultations was to ensure that the party complained against was given an opportunity to modify its practices before being subjected to a panel proceeding. Bilateral consultations could not fulfil this function if the party bringing the complaint did not clearly identify the measures of concern to it and the legal basis of its claims. The request for the establishment of a panel had also to be sufficiently clear to enable third parties to decide whether they wished to exercise their right to become a co-complainant or to submit their views to the panel. Vague requests for the establishment of panels impaired these rights of third parties in the dispute settlement process. He therefore urged contracting parties to identify clearly in the future the specific measures complained against and the legal basis of their complaints.

The Chairman recalled that at the April Council meeting, he had stated his intention to continue to consult privately with the parties concerned on the question of non-implementation of certain panel recommendations. As had been stated repeatedly in the Council and in other fora, the legal situation in respect of these recommendations was clear: the panel reports in question had been adopted and, therefore, the recommendations had to be implemented lest the parties concerned be in breach of existing GATT rules. Consultations with these parties had shown, however, that while they accepted this, they found it politically impractical -- even impossible -- to implement measures which might be subject to modification again a few months later following the conclusion of the Uruguay Round negotiations. He underlined that he was reporting on a de facto situation, one which posed a practical problem. It was clear that, while recognizing this

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<sup>9</sup> C/M/186, item 6.

<sup>10</sup> SR.43/5, sub-point 20(b)(ii) of Report of the Council.

<sup>11</sup> DS23/3, page 3.

difficulty, the Council could not be asked to approve a delay in implementation since this would create a dangerous precedent for the GATT system as a whole and for the dispute settlement system in particular. At the same time, it was also clear that much would depend on the results of the Uruguay Round and on whether, as all hoped, it could be concluded within the following six to eight months. Delegations were free to draw their own conclusions from what he had said and to revert to this matter at any future Council meeting.

The representative of Argentina reiterated his Government's oft-expressed concern at the non-adoption or non-implementation of panel reports by major trading partners. While contracting parties might in certain circumstances have difficulty in implementing immediately a panel's recommendation, he noted that a number of reports had either not been adopted for several months, or their implementation had been linked to the results of the Uruguay Round. The General Agreement established obligations and rights for all contracting parties and these parties had undertaken to resolve their differences in good faith through the established dispute settlement procedures. The need to improve these rules was clear and this was being pursued independently in the Uruguay Round. The General Agreement was no more than a good faith contract between distinct trading partners, and its violation, in addition to affecting another contracting party's rights, sowed the seeds for undermining the credibility of the system as a whole.

Argentina's concern about non-compliance with panel recommendations was based on its general position as regards the dispute settlement mechanism. It was concerned about the future of GATT and its international credibility. He asked what one could hope for when the parties involved in the panels under discussion accounted for 61.2 per cent of world exports and 62.1 per cent of imports of goods in 1989, and for about 70 per cent and 67 per cent respectively of total exports and imports of services. An effective liberalization of international trade in goods and services could not be stimulated through the Uruguay Round if the latter was itself invoked, at a critical stage, as the pretext for non-compliance with existing obligations. Was the future of world trade rules being negotiated under the aegis of the Round or was it a question of legitimizing the same vices which were contributing to its failure? How was it possible to guarantee compliance with the eventual results of such ambitious negotiations, when one could not even ensure contracting parties' compliance with existing obligations which were less demanding in terms of their domestic decision-making authority? These questions deserved urgent consideration. Argentina was convinced that an in-depth discussion on this matter was needed and that this should be inscribed as an item on the regular agenda of the Council.

The representative of Australia recalled that at the November 1990 Council meeting, his delegation had commented on several panels listed in the implementation section of the Director-General's previous report on status of work in panels (C/175). On the panel reports concerning Korea's restrictions on imports of beef (BISD 36S/202, BISD 36S/234, BISD 36S/268) his delegation had pointed out that the bilateral agreements subsequently concluded represented only a 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. On the panel report concerning US import restrictions on sugar (BISD 36S/331) it had noted that it was still examining the GATT consistency of the new US sugar régime. This examination would be undertaken in the light of any legislation arising from the US Farm Bill which might have implications particularly for the tariff-quota régime. Pending further developments, he requested that these reports, as well as that on Japan's restrictions on certain agricultural products which had been discussed at the present meeting (see item 6), be included in future status reports by the Director-General.

Concerning the non-implementation of outstanding panel reports, Australia had looked forward with interest to the Chairman's report on his consultations on this matter. It was regrettable that the parties concerned had not been willing to accept the need to meet fully their existing GATT obligations, and to implement the recommendations immediately. It was important that the parties concerned accept their responsibilities and not seek excuses to further delay implementation, particularly by creating invalid and unacceptable linkages to the outcome of the Uruguay Round. Apart from the fundamental issue of GATT obligations, any status given to such linkages would send negative and erroneous signals on the expected outcome of the Uruguay Round, including, unjustifiably so, that scope existed for the negotiation of more protectionist GATT rules. It would also set a dangerous precedent for current and future panels. The parties concerned should be encouraged to assess frankly the implications of their approach to implementation, and the damage being done to all through the undermining of the credibility of the GATT dispute settlement mechanism.

The representative of Canada said that the Chairman's efforts had been welcome. Also, the Director-General's statement, in particular his call for contracting parties to re-examine their positions, was important and should be heeded. That statement was timely both in terms of improving and preserving the management of the GATT system as it currently stood -- which should be an important objective for all -- and of putting some important considerations before negotiators in the final phase of the Uruguay Round regarding the operation of the dispute settlement system in certain cases. He hoped that the Director-General's statement would be given particular attention in capitals.

The representative of the European Communities said that some of the problems identified by the Director-General regarding the imperfect nature of the current dispute settlement procedures were of particular concern to the Community. The April 1989 improvements to the dispute settlement rules and procedures (BISD 36S/61) had not addressed the more difficult political and substantial issues and this was perhaps an explanation for the present difficulties as outlined by the Director-General.

As to the Chairman's consultations, the Community recognized the efforts that had been made. The linkage made in respect of each of the five panels concerned to the outcome of the Uruguay Round was the only common denominator among them; each panel had its own dynamic over and above that, which did not make it easy to fit them into a single box for

the purpose of finding an easy solution. Without discounting the validity of the Director-General's point that the dispute settlement procedures were meant to uphold GATT provisions presently in force, there were specific difficulties in respect of these panel reports which could not be resolved until the Round had reached a more advanced stage.

The representative of New Zealand said that her Government shared the concerns expressed by the Director-General and the Chairman regarding the non-implementation of panel reports. It was particularly disturbing that all the cases outlined involved major trading partners. One would have expected these contracting parties to set a good example for others. The delays involved in implementation were becoming more and more difficult to accept. While New Zealand recognized that this was partly due to the delay in concluding the Uruguay Round, it would stress that all these cases had been examined under existing GATT rules and that in all cases the parties had been found in breach of their obligations.

The delays called into question the possibility for smaller trading nations to have recourse against actions by larger nations that were in contravention of their GATT obligations. The possibility of seeking redress in GATT for other contracting parties' actions was a fundamental reason for New Zealand to adhere to the GATT and accord it priority in trade policy. New Zealand urged the parties concerned to find a solution which would confirm the ability of the existing rules and obligations to be accepted by all contracting parties. She hoped that the common denominator mentioned by the Community would not serve to create some sort of mutual reinforcement of the positions being taken in respect of individual cases.

The representative of Chile agreed with Argentina's views. He said that the possibility of adopting decisions by a majority vote, as provided for in Article XXV, appeared to have been overlooked in the present state of affairs. While he could not recall if a vote had ever been taken on a panel report, he was certain that many recent panel reports would have been adopted immediately had they been put to a vote. He added that while some contracting parties were fulfilling all their obligations, many others -- the biggest traders included -- were not playing by the rules or setting the right example.

The Chairman said his own conclusion was that there would not be any results from further informal consultations and that this was now a matter for contracting parties and the Council to discuss because it was obviously very important. Argentina's suggestion that an in-depth discussion be held in the Council on the question of non-implementation was useful, and this matter might be placed as an item on the agenda of the next Council meeting thus allowing members time to prepare for a substantive discussion. By that time also, one would have a clearer idea about when the Uruguay Round could be expected to be concluded, whether or not a link was made to the Round.

The representative of Thailand said that his Government attached great importance to the GATT system and viewed the effectiveness of the dispute settlement mechanism as fundamental to the GATT and to a fair and open trading system. Thailand had made, and continued to make, serious efforts

towards the latter objective by way of liberalizing its trade policies. The Director-General's report reflected an alarming trend toward non-compliance with GATT rules and disciplines due mainly to the lack of political will on the part of some key contracting parties. The long list of panel reports yet to be implemented cast doubt over the genuine commitments of these contracting parties to a fair and open trading system. Thailand had noted encouraging moves, albeit only after long delays, by the United States and the Community in two separate cases at the present Council meeting, but believed that much more goodwill and effort was needed to bring GATT-inconsistent measures to a halt.

Linkages to the outcome of the Uruguay Round also concerned Thailand, because of the negative signal this sent to negotiators. The Round offered a unique opportunity to bring improvements to the GATT system; it should not be used by any contracting party as an excuse for breaching its existing commitments and obligations and to maintain measures which panels had ruled to be GATT inconsistent. One could not expect the Uruguay Round to bring about a strengthened, more effective GATT régime, and the further liberalization and expansion of trade to the benefit of all -- especially developing countries -- if current GATT rules and disciplines were not respected fully. GATT's credibility would increasingly be at stake unless this negative trend was reversed.

The representative of Switzerland said that the Director-General's report deserved careful examination. The problem of non-implementation or delay in implementation of panel recommendations was increasing in dimension. Switzerland shared the Director-General's concern that this situation, which had first appeared at the end of 1990, continued to persist because of the delay in concluding the Uruguay Round. It had repeatedly been said that one of the effects of the Round had been to reactivate the GATT dispute settlement mechanism. This was in itself a sign of the vitality of the system, but because of the link which had been made in some cases with an eventual outcome of the Round, the reactivation of the dispute settlement system was no longer proof of good health but rather one of paralysis. This was of serious concern. All contracting parties should have the same interest in maintaining the credibility of the system. For some contracting parties, however, it was becoming increasingly difficult domestically to impose some discipline or to correct certain attitudes by invoking GATT rules and pointing to the GATT's efficient dispute settlement system. The GATT no longer appeared to fare as well in countering certain influential domestic lobbies as it did two or three years earlier. Greater priority and attention should therefore be given to this problem. A Council debate on this matter was fully justified and Switzerland supported the proposal to inscribe this issue on the agenda of the next Council meeting.

The representative of Hong Kong said that his delegation fully shared the Director-General's remarks, in particular on the issues of forum-shopping and linkages to the Uruguay Round. Hong Kong believed that forum-shopping and other procedural points might be looked at by the appropriate Uruguay Round negotiating group, in particular now that more time was available. In Hong Kong's view, the dispute settlement system was too important to the GATT as a whole to be devalued by linking

implementation of panel recommendations to the Uruguay Round. Hong Kong considered the dispute settlement system to be the ultimate forum to which any contracting party irrespective of its economic or political weight could turn to for a fair hearing, when it considered its benefits to have been nullified or impaired by measures of another contracting party. However, certain political realities in recent cases indicated that full implementation might not be possible in the near future. The parties whose measures had been found to be inconsistent should at least go further in demonstrating their commitment to the system than merely letting the present impasse continue. As a first step, they might give a more precise time-table for implementation.

The representative of Sweden said that the Director-General's statement and report indicated that the problem of non-adoption and non-implementation of panel reports was not confined to panels established under the General Agreement alone. The problem had occurred under the Tokyo Round Codes as well, although the panel reports under these Codes did not receive the same amount of attention as those that came before the Council. This situation nevertheless contributed to a serious credibility problem for the GATT with regard to dispute settlement. The reluctance of major contracting parties to abide by the dispute settlement mechanism was, for instance, evident in the Subsidies Code<sup>12</sup> Committee in which adoption of five panel reports -- some of which dated back to 1983 -- had been blocked by the party that had lost the case.

One risked ending up in a similar situation in the Anti-Dumping Code<sup>13</sup> Committee. The first panel established under this Code -- concerning the United States' imposition of anti-dumping duties on certain stainless-steel products from Sweden -- had submitted its report (ADP/47) to the Committee in August 1990, and the report had been on the agenda four times without yet being adopted. The Panel had found the anti-dumping duty imposed by the United States to be inconsistent with the Anti-Dumping Code and hence had recommended that the United States revoke and reimburse the duty. However, the United States had refused to agree to adoption of the report despite its unambiguous conclusion and despite the urgency involved. This was extremely disappointing and Sweden felt that the rapid adoption and implementation of panel reports was the least one could expect from any contracting party that favoured a strong and swift dispute settlement system. The United States' position cast a rather dark shadow over the ongoing Uruguay Round negotiations on the strengthening of the dispute settlement system.

In refusing to agree to adoption of that report, the United States had argued that a panel under the Anti-Dumping Code could not make any specific recommendations and that the principle of non-specificity should apply to panel proceedings in other areas of the GATT as well. He urged contracting

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<sup>12</sup> Agreement on Interpretation and Application of Articles VI, XVI and XXIII (BISD 26S/56).

<sup>13</sup> Agreement on Implementation of Article VI (BISD 26S/171).

parties to consider the implications of these arguments carefully since Sweden firmly believed that application of the United States' position in areas such as anti-dumping and countervailing duties would significantly limit the effectiveness of dispute settlement in the GATT. If a panel could not recommend that a measure that was inconsistent with the GATT should be over-ruled and revoked, what was the purpose of having a panel? If the United States' position was the prevailing view then the Council had made a mistake when some years earlier it had adopted a panel report on a dispute between Finland and New Zealand over an anti-dumping duty<sup>14</sup>, which had contained exactly the same recommendation as that of the report currently before the Anti-Dumping Committee. Sweden did not believe the Council had made a mistake in adopting that report. He once again urged contracting parties to consider carefully this matter, and that the United States agree to adoption of that report at the earliest possible occasion.

The representative of Mexico supported Argentina's comments and said that the Director-General's report had confirmed once again the need to improve dispute settlement procedures. His Government believed that the dispute settlement mechanism was one of the fundamental pillars of the GATT. Without doubt, the credibility of the system depended on the effectiveness with which disputes that unavoidably arose between parties were resolved. He asked what the point of agreeing on trade rules would be if they were not respected? Mexico once again appealed to all contracting parties that had not followed strictly the spirit of the dispute settlement mechanism, and in particular those that had opposed adoption of reports or not implemented their recommendations in time, to do so as soon as possible. His delegation fully supported a discussion on this issue at the next Council meeting.

The representative of the United States expressed disappointment that Sweden had chosen to raise in the Council an important and longstanding dispute currently under consideration in the Anti-Dumping Committee. His delegation had considered the purpose of the present agenda item to be the discussion of the general problem of panel reports and their implementation. He recalled that his delegation had clearly stated in the Anti-Dumping Code Committee that it would not block a consensus to adopt the substantive findings of the Panel on anti-dumping duties on imports of Swedish steel, and had indicated its willingness to commit itself to implementing those findings. At the same time, the United States had urged the Committee -- which was its right -- to replace the Panel's specific and retroactive remedy recommendation with the traditional and general remedy recommendation on grounds that the Panel had exceeded its authority in making a specific recommendation. The United States strongly believed that a panel had the authority only to recommend that a party bring its measures into conformity with its obligations; how a party chose to do that was its own sovereign right. He noted that at the most recent meeting of the Committee, the United States had not been alone in expressing concern over the precedent of a panel recommending a signatory to adopt a specific and

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<sup>14</sup>New Zealand - Imports of Electrical Transformers from Finland  
BISD 32S/55.



retroactive remedy. The United States remained hopeful that the Committee would address this important issue at its next meeting. He once again regretted having to discuss this matter under the present agenda item.

As to non-implementation of panel reports, while the United States had already stated that it recognized the obligation of each contracting party in this regard, it shared the Community's view that there were times when the fundamental political realities had to be recognized. He had noted the references that had been made to the special responsibility of the major contracting parties; while he would not disagree with this, it should be recognized that they also carried some special burdens. The vast majority of the panel findings considered in the Council related to the practices of the largest trading nations. This was understandable because these nations represented the largest markets and were therefore more likely to be the target of disputes. He noted that nothing had been said by his or other delegations that indicated a lack of willingness to address these problems. However, this had to be done in the context of the ongoing process of improving the dispute settlement process. The United States would continue to do its very best in this regard. He would also report to his authorities on the substantial concerns that had been raised at the present meeting in respect of the importance of enhancing the dispute settlement process.

The representative of Japan, referring to the implementation of the Panel report on Section 337 of the US Tariff Act of 1930 (BISD 36S/345), said that Japan continued to be concerned by this matter. As his delegation had indicated at the April council meeting, the United States had recently initiated a new investigation under Section 337 concerning a Japanese company. Referring to the Panel report on the Community's regulation on imports of parts and components (L/6657), he reiterated that this report should be implemented quickly. Japan was also concerned with the operation of the dispute settlement mechanism under the Tokyo Round Codes and noted that five panel reports under the Subsidies Code and one under the Anti-Dumping Code had not yet been adopted.

The Council took note of the statements and of the Director-General's report in C/178 and Corr.1, and agreed to hold a discussion at its next meeting on the non-implementation of panel reports.

## 12. Trade Policy Review Mechanism - Programme of reviews for 1992

The Chairman recalled that the Trade Policy Review Mechanism (TPRM) had been in existence since mid-1989. Up till now, fourteen trading entities had been reviewed, including the European Communities. By the end of this year, twenty-three reviews would have been conducted. The experience of the TPRM had generally been positive for the countries which had undergone the review process, as well as for other contracting parties which had taken part in the review meetings. He had been experimenting with some changes in the structure of the review meetings in order to encourage a more focused dialogue and discussion among participants, and proposed to continue with this experiment at least for the three reviews to take place in September 1991.

In line with the procedures required by the April 1989 Decision establishing the TPRM (BISD 36S/405), and following consultations, he proposed the following programme of reviews for 1992, based on contracting parties which had so far agreed to be reviewed:

- Two-year cycle: Canada, the European Communities and Japan.
- Four-year cycle: Brazil, Korea and South Africa.
- Six-year cycle: Bolivia, Egypt, Kenya, the Philippines, Poland, Romania and Uruguay.
- Least-developed countries: Bangladesh (deferred from the 1991 programme).

There were still two contracting parties which had not yet given a definite reply to the question of review in 1992 and he encouraged them to communicate a reply -- positive if possible -- to the Secretariat at the earliest possible opportunity.

He noted that the 1992 reviews of Canada, the European Communities and Japan would be the second trade policy reviews of these entities. The reviews of Canada, Korea, Egypt, Uruguay and Bangladesh were envisaged for June 1992. The Secretariat had already been contacted by some of these delegations concerning the procedures for review and the date of a visit to the capital. Other delegations on the June schedule could expect to be contacted by the Secretariat in the near future. Two delegations that had been contacted by the Secretariat about reviews in 1992 had stated that, for reasons related to domestic developments, they would prefer to be reviewed in 1993. While it was inevitable that a certain period might not be the best time for a review to be conducted, it should be emphasized that the trade policy review cycle, once engaged, was intended to be a regular and virtually automatic process. The April 1989 Decision established clear two-, four- and six-year cycles for review and it was necessary, for the efficient operation of the system, to maintain this regular pattern as far as possible.

Under the 1991 programme, the Council would conduct nine more reviews before the end of the current year. In the week of 23 September, the Council would review the trade policies and practices of Nigeria, Norway and Switzerland. In December, reviews were planned of Argentina, Austria, Finland, Ghana, Singapore and the United States. The schedule for December might need to be reconsidered in light of the Uruguay Round programme.

Referring to the rôle of discussants in the TPRM, he said that they played an important part in the meetings in helping the Chairman to focus the discussion. It was a task which, if well prepared -- as had been the case until now -- made a substantial contribution to the work. He believed representatives should regard this task as part of their normal duties and should bear this in mind when requested to serve as discussants in the future.

He noted that at a recent review meeting, he had been assisted in his task by a Vice-Chairman of the CONTRACTING PARTIES. Given the heavy workload of the GATT for the remainder of the year, and the programme of trade policy reviews proposed for 1992, it seemed to him that assistance of this type to the Council Chairman would be most useful also in future.

Finally, it was his understanding that the programme of reviews to be conducted in 1993 would be established by 31 May 1992.

The representative of Bolivia observed that although his Government had only recently acceded to the GATT, it had volunteered to be reviewed in 1992. This was a reflection of Bolivia's willingness to enable others to better understand its trade policy, which was being conducted in accordance with the General Agreement. He requested that Bolivia's review be planned for December 1992.

The Council took note of the statements and agreed with the programme of reviews for 1992 (L/6887).

### 13. EEC - Import régime for bananas

The representative of Costa Rica, speaking under "Other Business", expressed concern over a possible new import régime for bananas that might soon be introduced by the European Economic Community in the context of the ongoing process for establishing a single market by the end of 1992. This new régime might be in violation of GATT or at least of the spirit of the Uruguay Round "standstill" commitments. In particular, it might be very discriminating against Latin American exporters of bananas. While the Community's objective of establishing a single market was not questionable, any new import régime for bananas should be in conformity with GATT. He urged the Community to consider the Uruguay Round as a perfect opportunity for introducing a duty-based import régime which should eventually lead to free trade in the above-mentioned products.

The representative of Colombia said that the matter raised by Costa Rica was also of interest to his country as trade in bananas was of considerable importance to many Latin American countries. Unfortunately these products had been so far left out of the Uruguay Round negotiations. This situation was even more worrisome given the fact that bananas were tropical products of particular interest to developing countries. He hoped that the Community's new import régime for bananas would take into account all its commitments in the Uruguay Round and would be in accordance with the objective of trade liberalization pursued in the Round and in GATT in general.

The representative of the United States welcomed the statement by Costa Rica supporting trade liberalization for an agricultural product of particular importance to his country. In the context of the Uruguay Round, the United States had strongly advocated a comprehensive approach that would result in the progressive substantial reduction of all trade-distorting policies affecting all agricultural products -- including tropical agricultural products such as bananas. Costa Rica's statement



illustrated the type of broad interest that existed among contracting parties for substantial trade liberalization in agricultural products.

The representatives of Chile, Peru, Venezuela and Mexico shared the concerns expressed by Costa Rica and Colombia in connection with a possible new Community import régime for bananas that might discriminate against Latin American countries, and expressed support for the request addressed by Costa Rica to the Community for the introduction of a liberal trade régime on those products in accordance with the objectives of the Uruguay Round.

The representative of Venezuela emphasized that a new import régime in the Community which would close the market for products of such importance to developing countries would be totally unacceptable.

The representative of Mexico reiterated the importance attached by his delegation to the opening of markets by trading partners for tropical and all other agricultural products.

The representative of Côte d'Ivoire recalled that her country was also a large producer and exporter of bananas. For well-known reasons, most of its exports were sold in the Community market. Côte d'Ivoire therefore wished to participate in any eventual consultations between the Community and banana exporting countries.

The representative of Honduras, speaking as an observer, supported the views of other Latin American delegations and said that the concerns expressed by Costa Rica should also be taken into account in the Uruguay Round negotiating group on market access.

The representative of the European Communities observed that the previous speakers seemed to be better informed than his own delegation about the Community's new import régime on bananas to take effect in 1993. However, he had noted the statements and would seek further information from his authorities on this matter.

The Council took note of the statements.

14. United States - Countervailing duty and anti-dumping actions on salmon  
(DS24/1 and 2)

The representative of Norway, speaking under "Other Business", said that Norway had recently held consultations with the United States under Articles XXII:1 and XXIII:1 concerning the latter's anti-dumping and countervailing duties on imports of fresh and chilled Atlantic salmon from Norway. He informed the Council that upon Norway's request the two countries had agreed to consider the Article XXIII:1 consultations as constituting also consultations under Articles 3:2 of the Subsidies Code<sup>15</sup>

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<sup>15</sup> Agreement on Interpretation and Application of Articles VI, XVI and XXIII (BISD 26S/56).

and 15:2 of the Anti-Dumping Code<sup>16</sup>. Requests for conciliation under those Agreements were being circulated to the members of their respective Committees.

The Council took note of the statement.

15. Restrictions on imports of carrageenan from the Philippines

The representative of the Philippines, speaking under "Other Business", expressed concern over the recent measure adopted by the European Community (EC Directive 90/612) which could adversely affect carrageenan exports from the Philippines and other developing countries. Under this measure, the purity criterion for carrageenan had been specified as acid insoluble matter content of not more than 2 per cent. However, this specification, which was based on one formulated by the WHO/FAO Joint Experts Committee on Food Additives (JECFA), was for refined carrageenan while Philippine natural grade carrageenan was semi-refined. Nevertheless, Philippine natural grade carrageenan was identical to refined carrageenan in composition and chemical content, the only difference being that it had between 8 to 18 per cent of acid insoluble matter content. While the Community had adopted its definition of carrageenan on the basis of an earlier one by JECFA, it had not taken into account that the JECFA had not established that the acid insoluble matter in Philippine natural grade carrageenan was harmful for human consumption. An independent study had established that the acid insoluble matter composition of Philippine natural grade carrageenan was 1 per cent inorganic salt, 4 per cent protein, and 95 per cent cellulose, which it concluded was not detrimental but, on the contrary, could be beneficial because of its high cellulose content. The Community had also failed to consider that the United States' Food and Drug Administration had approved Philippine natural grade carrageenan as safe for human consumption through a decision of 12 July 1990 which had recently been reaffirmed.

His Government believed that the Community's directive was not based on sound scientific evidence, and regarded the redefinition of a commodity to suit internal production and competition requirements as an unjustifiable non-tariff barrier. When the directive took effect on 26 October 1991, it would have the following effects: (1) Philippine natural grade carrageenan would be confined to pet foods and non-food uses, and potential export growth, particularly for food uses, would be precluded; (2) the livelihood of about 300,000 people in the Philippines' seaweed industry who had moved away from dynamite fishing, drift net fishing and other environmentally harmful fishing practices would be adversely affected; and (3) European consumers would have to pay up to five times more for carrageenan. The Philippines therefore requested that the Community reconsider and terminate its directive without delay. The Philippines was also dismayed by Canada's recent move to restrict -- if not prohibit -- Philippine natural grade carrageenan, which it had imported for

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<sup>16</sup> Agreement on the Implementation of Article VI (BISD 26S/171).

the past ten years. These imports would now come to an end because Canada had adopted standards similar to the Community's on permissible acid insoluble matter content.

The carrageenan case highlighted the urgent need for an agreement on sanitary and phytosanitary measures in the Uruguay Round negotiations on agriculture. Participants in the negotiations would have to move in earnest to conclude the Round so that incidents such as the present one might be prevented. In the meantime, his Government appealed to the Community to show goodwill and a sense of fairness in dealing with this problem. It also requested Canada to reconsider its recent decision. The Philippines was prepared to continue consultations on this matter and remained convinced that a fair solution was possible.

The representative of Thailand, on behalf of ASEAN contracting parties other than the Philippines, said that the most serious consequence of the Community's directive would be on the livelihood of the 25,000 highly skilled and semi-skilled persons involved in the processing, manufacturing and marketing of Philippine carrageenan, as well as that of the 300,000 farmers and fishermen who were being encouraged to move away from environmentally unsound fishing practices into this alternative source of income. The directive, if left unamended, would confine Philippine natural grade carrageenan to pet foods and non-food use, ruling out any potential of export growth. There appeared to be no scientific evidence cautioning against human consumption of this product -- indeed, it might well be beneficial. These countries believed that contracting parties should refrain from establishing non-tariff barriers to trade under the guise of sanitary and phytosanitary measures. They supported the Philippines' request that the Community, as well as Canada, redress this matter in an amiable and just manner. They affirmed the need to negotiate improved rules and disciplines in the ongoing Uruguay Round to ensure fair play by all in the international trading system.

The representative of the European Communities said that some consultations on the matter had already taken place. He noted, however, that since 1989 the Community had been applying the Codex Alimentarius which was the recognized international point of reference. Therefore, the argument that the Community had imposed a non-tariff measure with no scientific basis was difficult to understand. Nevertheless, the Community was willing to explore this issue further with the contracting party concerned.

The representative of Canada said that under his country's Food and Drug Act carrageenan was considered a food additive, and that Canada itself had no particular specification for this product. Under its regulations, when there were no specifications for a certain food additive, those published by the United States' National Academy of Sciences were to be relied upon. In 1986, that body had specified that the maximum allowable acid insoluble matter for carrageenan when used as a food additive was 2 per cent, and this had automatically become the new specification for Canada. However, the Food and Drug Act provided opportunity for review of food additive specifications and Canada was prepared to consider any application by carrageenan importers for a review. His delegation had

noted the Philippines' concerns at the present meeting and would report thereon to its authorities.

The representative of the Philippines welcomed Canada's and the Community's readiness to hold further consultations and looked forward thereto.

The Council took note of the statements.

16. Restrictions on exports from Peru following the cholera epidemic  
(Spec(91)12, L/6845)

The representative of Peru, speaking under "Other Business", recalled that her delegation had informed the Council at its May meeting of the World Health Assembly Resolution (WHA44.6) calling upon member States not to apply to countries affected by the cholera epidemic import restrictions that were not justifiable on public health grounds. Her delegation had also welcomed the positive steps taken by the Community toward eliminating import restrictions applied individually by three of its member States. She reiterated that the Community's regulations should take precedence over national regulations in those member States, and noted with concern that differences of views on this matter still persisted in the Community which might adversely affect some of Peru's fresh fruit and vegetable exports. Peru had been holding consultations with three other contracting parties that still maintained import restrictions, two of which -- both Latin American countries -- had taken steps to eliminate the restrictions or replace them with less trade-distorting measures which would themselves be eliminated soon. Nonetheless, despite all its efforts, the trade problems facing Peru following the cholera epidemic were far from resolved. She noted that Austria had recently imposed restrictions on food imports from Peru following a decision by its Ministry of Health that had been reconfirmed on 19 June, despite adequate guarantees for health control provided by Peru similar to those previously provided to the Community and the United States. Peru had also offered to provide Austria with all the necessary technical information and had reiterated the recommendations adopted by the World Health Organization (WHO).

In accordance with procedures under the streamlined mechanism for reconciling the interests of contracting parties in the event of trade-damaging acts (BISD 36S/67), Peru requested governments still maintaining import restrictions against its exports to notify the Director-General, and that Austria hold informal consultations with Peru in order to reach a common understanding of the problem and to find the most efficient way to resolve it.

The representative of Colombia recalled that his country had also encountered similar problems and expressed support for Peru's statement.

The representative of Austria said that he had been informed by his country's Ministry of Health that a contamination via food imports from Peru was still possible. He drew attention to a WHO Press Release of 22 February 1991 (WHO/13) which had outlined cases in which contamination would be possible. The products to which Austria's decision

applied represented an amount of US\$ 700,000 out of approximately US\$ 10 million of Austria's total food imports from Peru in 1990. He noted that the most important food import from Peru -- fishmeal -- representing a value of US\$ 9 to 9.5 million was not covered by the above-mentioned measure. However, even though the value of Peruvian imports affected by the measure was not very high, Austria was prepared to consult with Peru.

The representative of Chile, also on behalf of Mexico, expressed full support for Peru's statement. He emphasized that Austria's response to Peru's request to remove the measure would have a significant psychological impact particularly on the subject of environment. If some contracting parties had hesitated in accepting a working group on trade and environment it was because they feared that work on this subject might facilitate the establishment of new trade restrictions. Austria therefore bore a considerable responsibility regarding this matter.

The representative of the European Communities recalled that in pursuance of the procedures under the streamlined mechanism, the Community's regulation on fresh vegetable and fish product imports had been notified in document L/6845. The Community was pursuing its consultations with Peru on some other related issues with a view to resolving any difficulties arising from its regulation.

The representative of Peru said that Austria's measures should not be seen only in terms of trade value but also as a matter of principle since they set a bad example for other contracting parties which had larger food imports from Peru, and could have a multiplier effect. She recalled that the WHO had clearly indicated that there had been no single recorded case of cholera contamination through imported products. Her delegation welcomed Austria's willingness to hold consultations.

The Council took note of the statements.

17. Korea - 1992-1994 Programme of liberalization (L/6834)

The representative of Korea, speaking under "Other Business", said that pursuant to the discussion on its 1992-1994 liberalization programme (L/6834) at the May Council meeting, Korea had held a plurilateral consultation on 1 July with five interested contracting parties. The consultation had centred on the areas of product coverage, future import régime and the linkage between the Uruguay Round results and Korea's 1989 balance-of-payments (BOP) undertaking<sup>17</sup>. Dissatisfaction had been expressed with regard to product coverage and Korea had been requested to liberalize nine additional products starting in 1992. Korea had explained that in view of the difficult domestic situation, the product coverage was the result of its best and maximum efforts to address contracting parties' interests and that it would be difficult to accommodate their requests at the present time. The contracting parties concerned and Korea had agreed

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<sup>17</sup> BOP/R/183 and Add.1.



to hold further consultations on this issue if necessary. Korea had also given a detailed explanation of the future import régime for the liberalized products which it believed had provided a better understanding thereof and had contributed to mitigating concerns in this regard. On the linkage between the results of the Uruguay Round and the BOP undertaking, Korea had explained that bringing all its BOP restrictions still in place at the time of the completion of the Uruguay Round into conformity with the final results thereof would not be contrary to Korea's 1989 undertaking. Korea's intention was not to evade its BOP obligations but to expedite and advance its liberalization process. Nevertheless, the contracting parties concerned had reiterated that Korea's BOP obligations were separate from its Uruguay Round obligations and should be fulfilled independently. Although differences of views remained on this matter, Korea believed that the consultations had provided an opportunity to understand better the concerns of all.

The representative of Australia welcomed Korea's report on the 1 July consultation as continuing evidence of its desire to meet fully its undertakings. The recent consultation had highlighted three areas of outstanding differences: product coverage, the nature of liberalization and linkage with the Uruguay Round. Korea had claimed that its 1992-1994 programme had fulfilled its 1989 BOP commitments and had stressed the domestic difficulties of going further. He noted that the 133 items in the programme represented just under 50 per cent of the items to be liberalized, and that this was in line with Korea's commitment requiring it "to phase out remaining restrictions in a generally even manner".<sup>18</sup> However, Australia strongly believed that Korea's programme did not fulfil its commitment "to give all due consideration ... to the interests of other contracting parties in a balanced manner"<sup>18</sup> and remained disappointed by its lack of qualitative balance and the absence of commercially relevant opening. He noted too that Korea's programme included only 33 of the 97 items on the request list submitted jointly by Australia and three other contracting parties. Australia expected the majority of these requests to be met in the first liberalization tranche. Australia considered the timing of liberalization of the 33 included items to be skewed, with only 8 to be liberalized in 1992, 11 in 1993 and 14 in 1994. During the recent consultation, Australia had submitted -- jointly with the United States, Canada and New Zealand -- a request for Korea to add 9 items to this programme. The addition of these items would mean inclusion of 42 items in Korea's 1992-1994 programme, or only some 43 per cent of those originally sought, and would restore the balance required by Korea's 1989 undertaking. In submitting these additional requests, the countries involved had been both specific and restrained and in recognition of Korea's domestic difficulties, had not made undue demands. Australia had always urged Korea to use the time available to it to institute gradual rather than overnight changes for individual items. Further consideration of the product coverage issue was necessary and Australia welcomed Korea's willingness to continue consultations thereon.

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<sup>18</sup> BOP/R/183 and Add.1.

Australia believed that an assessment of whether Korea was meeting its commitment could not be made unless its specific intentions for each item were clear. He welcomed Korea's assurances that its BOP restrictions, once liberalized, would not be replaced by other measures with similar effect. Australia was also concerned that any linkage of Korea's BOP commitments to an outcome of the Uruguay Round might be used to justify delay in liberalization or in other ways shield Korea's farmers from the loss of protection. He emphasized that Korea's BOP commitment would continue separate from and regardless of a Uruguay Round outcome. Korea's trading partners were withholding application of their GATT rights on the basis of assured liberalization, and could not be expected to accept, as part of an outcome of the Uruguay Round, the tariffication of GATT-illegal BOP measures and then to "pay" for a reduction in these tariff equivalents. Australia looked forward to consulting further with Korea on all of these outstanding issues and reserved its GATT rights in the meantime. It would revert to this matter at a future meeting if necessary.

The representative of the United States shared the views of others who had consulted with Korea on 1 July. The United States considered it totally unsatisfactory that Korea was not prepared to take account of its trading partners' interests by expanding the list of products covered in the 1992 tranche.

The representative of New Zealand said that her country, which had also participated in the 1 July consultation, regretted that there had been no progress, particularly on the product coverage issue. New Zealand would continue to explore with Korea the scope for more extensive liberalization. She added that New Zealand considered the Uruguay Round to be a separate undertaking from Korea's BOP liberalization. Rather than weaken in any sense Korea's liberalization programme, the Round should result in access to its market additional to its BOP obligations. In the 1 July consultation, an understanding had been reached that Korea would provide details of the mechanism used to implement liberalization of the items on the 1992-1994 programme. This would be a useful contribution to transparency and predictability for traders in Korea's market, and New Zealand looked forward to receiving details.

The representative of Canada strongly encouraged Korea to agree to liberalize the nine additional products requested by Canada and other contracting parties, beginning in 1992. Canada was concerned that many items in which it had an export interest were currently scheduled for liberalization only at the end of the 1992-1994 period, and encouraged Korea to adjust its programme to allow for a more evenly balanced implementation.

The representative of the European Communities recalled that the Community had previously expressed its disappointment regarding Korea's 1992-1994 programme. Korea's offer to hold a consultation on 1 July had been welcome in this regard. While the Community had not associated itself with the list of nine products submitted at the consultation for immediate consideration by Korea, it had made clear that further consideration should be given to the list of priority items it had previously notified. The

Community hoped that Korea would be in a position to provide information, rapidly and in writing, on the trade régime for the products which were part of the first liberalization tranche.

The Council took note of the statements.

18. Norway - Restrictions on imports of apples and pears  
- Follow-up on the Panel report (BISD 36S/306, L/6651)

The representative of the United States, speaking under "Other Business", recalled that in February 1990, Norway had notified contracting parties (L/6651) of changes envisaged in its import policy for apples and pears, in response to a Panel finding in June 1989 (BISD 36S/306) that its policy was inconsistent with its GATT obligations. In Article XXIII:1 consultations in May 1990, the United States had informed Norway of its serious concern that Norway's new import régime on apples and pears was inconsistent with Article XI:2(c). The United States considered that Norway had not yet brought its import measures on these products into conformity with its GATT obligations, and reserved its rights on this matter.

The representative of Norway said that his Government had taken utmost care to fulfil all the requirements of Article XI:2(c), and that the new import régime was consistent with its existing GATT obligations. Norway had not delayed implementation of the Panel's recommendations until the conclusion of the Uruguay Round. Norway would review its import régime after the Round and would adapt its import policy, including on apples and pears, in order to comply with the commitments that might be undertaken therein.

The Council took note of the statements.

19. Establishment of a panel under the April 1989 improvements to the GATT dispute settlement rules and procedures (BISD 36S/61, C/M/249 - Item 10, C/M/250 - Item 16)

The Chairman, speaking under "Other Business", said that as had been suggested at the May Council meeting, he had consulted with the Secretariat's legal service and had held informal bilateral consultations with the parties concerned on the matter raised in connection with the application of the April 1989 improvements to the GATT dispute settlement rules and procedures (BISD 36S/61). He intended to hold informal plurilateral consultations with the parties concerned prior to the next Council meeting in order to ensure that there was a common understanding on the matter.

The Council took note of the statement.

20. Chairmanship of the Committee on Budget, Finance and Administration

The Chairman, speaking under "Other Business", informed the Council that Mr. Broadbridge (Hong Kong), would no longer be in a position to continue to Chair the Committee on Budget, Finance and Administration. Since the Committee was likely to meet before the next meeting of the Council, he had taken it upon himself to consult informally with delegations on the appointment of a successor to Mr. Broadbridge. On the basis of his consultations, he proposed that Mr. Szepesi (Hungary) be appointed as Chairman for the remainder of the current term of office.

The Council so agreed.

21. Committee on Balance-of-Payments Restrictions  
- Consultation with Brazil

Mr. Boittin, Chairman of the Committee on Balance-of-Payments Restrictions, speaking under "Other Business", recalled that a full consultation with Brazil was to have been held in 1991. However, at its meeting on 9 July, the Committee had been informed by Brazil<sup>19</sup> of wide-ranging liberalization measures that it had recently implemented, and that trade restrictions under Article XVIII:B which still remained in the informatics sector would not be increased and would be eliminated by October 1992. Consequently, Brazil would disinvoke Article XVIII:B on the understanding that contracting parties would not challenge the restrictions in the informatics area until the date foreseen for their elimination, i.e. October 1992. The Committee had welcomed this decision and, regarding the residual restrictions in the informatics sector, had confirmed Brazil's understanding on the basis that Brazil would not increase such restrictions but would eliminate them by October 1992 at the latest.

The representative of Brazil said that since taking office in March 1990, the present Government of Brazil had adopted far-reaching trade liberalization measures as part of a wider economic programme. He presented a summary of the important actions that had recently been taken in the trade area, along the lines of Brazil's statement at the 9 July meeting of the BOP Committee.<sup>19</sup> He also cited the trade liberalization measures that had been adopted since 1990 in the informatics sector and indicated that Brazil intended to eliminate the remaining residual import restrictions in that sector notified under Article XVIII:B, not later than October 1992. In light of the substantial trade reforms it had undertaken, Brazil was disinvoking Article XVIII:B on the understanding that contracting parties would not challenge the residual restrictions in the informatics area until the date foreseen for their elimination, i.e., October 1992. Despite its considerable BOP difficulties, mainly as a result of the external debt burden, Brazil had decided to disinvoke Article

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<sup>19</sup> See BOP/R/194.

XVIII:B to indicate its commitment to trade liberalization, and as evidence of its position that Article XVIII:B was, and should remain, an important instrument for BOP protection, to be invoked when needed and disinvoked when circumstances allowed it. In light of the cancellation of its scheduled BOP consultations, Brazil would be prepared to have its trade policies reviewed by the Council, under the Trade Policy Review Mechanism, in the second half of 1992.

Brazil's disinvocation of Article XVIII:B was the latest in a series of radical and courageous actions taken by many developing countries to show their commitment to the multilateral trading system. In the light of a paralyzing and depressing mood that was slowly taking hold of the Uruguay Round negotiations, he asked if it was too much to expect that each contracting party would practice what it preached and spare no effort to breach the impasse in the negotiations, thus allowing those far-reaching actions to bear full fruit.

The representatives of Canada, the United States, Australia, Switzerland, the European Communities, Austria, Sweden on behalf of the Nordic countries, Japan, Peru, India, New Zealand, Chile, Hungary, Argentina, Colombia, Korea, Pakistan, Senegal, Hong Kong, Thailand on behalf of the ASEAN contracting parties and Yugoslavia said they were impressed at the scope of Brazil's trade liberalization programme and welcomed its decision to disinvoke Article XVIII:B, which set an exemplary precedent and was a significant contribution to the multilateral trading system as embodied in the GATT.

The representatives of the United States, Switzerland, the European Communities, Sweden on behalf of the Nordic countries, Peru, India, New Zealand, Chile, Hungary, Argentina, Colombia, Korea, Pakistan and Senegal emphasized the need to complete the Uruguay Round negotiations speedily and successfully and thus to contribute towards the creation of a favourable external environment in support of measures such as those taken by Brazil.

The representatives of Peru, India and Senegal emphasized the continuing importance and significance of the provisions of Article XVIII:B for developing contracting parties needing GATT cover for BOP measures.

The representative of Canada said that as a former Chairman of a Uruguay Round negotiating group which had spent considerable time debating whether or not to hold negotiations on the BOP provisions of the GATT, he attached particular significance to the last part of Brazil's statement, which all members should convey to their authorities.

The representative of the United States said that Brazil's disinvocation of Article XVIII:B could only succeed against the backdrop of a substantial liberalization of the world economy. He recalled that the United States had been highly critical in the past of the web of protectionist trade restrictions maintained by Brazil mostly under the guise of BOP authority. These policies had not helped to improve Brazil's economy, a fact recognized by the new Government which had taken dramatic and forceful steps to reform it and had earned the United States'



respect and admiration therefor. Brazil's recognition of the need for reform served as a reminder to all who believed that economic development could be achieved through economic isolation. He warned that developing countries could not be expected to continue the much needed process of trade liberalization if developed countries turned their backs on them. Brazil and many other countries were being affected adversely by the lack of progress in the Uruguay Round negotiations in which agricultural export subsidies were a particular problem, as were the still too high barriers on industrial products. It was therefore critical to achieve a breakthrough in the Uruguay Round by the end of the year, thereby enabling a revamping of the GATT system and providing the critical foundation for a truly liberalized world economy. If this effort failed one could not expect courageous leaders in the developing, and other countries to survive.

The representative of Australia noted that Brazil's decision was a timely one and the latest in a series of trade liberalizing steps taken by it which showed its commitment to an open multilateral trading system.

The representative of Switzerland assured Brazil of Switzerland's full support for its trade liberalization programme of which the recent decision was only a part. Echoing the United States' remarks, he said that Switzerland would work toward a successful conclusion of the Uruguay Round. Switzerland had no doubt that the residual restrictions in the informatics sector would be eliminated by October 1992 at the latest.

The representative of Austria said that Brazil was one of Austria's important trading partners, and hoped that the announced measures would have a positive effect on their bilateral trade.

The representative of Sweden, on behalf of the Nordic countries, said that Brazil's decision was a further step towards the ultimate goal of having all contracting parties abide by the same trading rules. He hoped that this decision would serve as an example to others.

The representative of Japan commended Brazil for a decision that had been taken despite enormous difficulties such as its external debt problem. This action was a good precedent for others to take into account.

The representative of Peru supported the United States' call for all trading partners to take the necessary steps to support Brazil's ambitious liberalization programme. One such step would be to work towards a successful conclusion of the Uruguay Round, in particular in the areas of agriculture, textiles and other sectors of interest to Brazil. She also referred to Argentina's and Peru's own liberalization efforts, and to their recent removal of all import restrictions under Article XVIII:B (L/6811 and L/6813).

The representative of India said that Brazil's decision had been taken at a particularly difficult time given its debt-related balance of payments problems, and was a courageous one. India fully supported Brazil's request that it be allowed to maintain its existing level of restrictions in the informatics sector for a limited duration. The capacity of developing countries to take such actions would depend on the external trading

environment they faced and India hoped that there would be greater accommodation in the Uruguay Round in areas of interest to the developing countries, such as textiles. Brazil's decision had further vindicated India's position that the BOP provisions of the GATT were functioning very well and did not require either substantial or procedural change.

The representative of New Zealand agreed fully with the call to support Brazil's courageous measures through the speedy and successful conclusion of the Uruguay Round negotiations, in particular in agriculture.

The representative of Chile said that trade liberalization had brought good results for Chile, and he wished the same for Brazil. He encouraged other contracting parties which had congratulated Brazil on its measures to also take steps to increase access to their markets.

The representative of Hungary agreed with the United States that the external environment played a decisive rôle in the eventual success of policies such as had been adopted recently by Brazil.

The representative of Argentina stressed that trade liberalization measures such as those recently undertaken by Brazil, Argentina and other Latin American countries had very important domestic implications which should be fully appreciated by all. He agreed that the best way to help developing countries in their trade liberalization efforts would be to bring the Uruguay Round to a successful conclusion, taking account of these countries' interests.

The representative of Korea said that Brazil's decision was admirable because it had been taken inspite of a huge debt burden and difficulties with its balance of payments. Korea was convinced that this would be a considerable contribution to facilitating the successful conclusion of the Uruguay Round.

The representative of Senegal said that Brazil's decision was evidence that Article XVIII:B was useful and hoped that the successful conclusion of the Uruguay Round would prove that Brazil had done the right thing.

The Council took note of the statements.

## 22. Items under "Other Business"

The Chairman, speaking under "Other Business", said that a number of items appeared to have been placed on the agenda of the present meeting under "Other Business" with the intention of holding a substantive discussion thereon. He hoped that representatives would appreciate the difficulty of conducting a proper discussion of substantive issues if these were raised only during the Council meeting itself. Items placed under "Other Business" were usually ones that had arisen too late for inscription on the airgram convening the Council meeting, but on which their sponsors nonetheless wished to make an announcement. On such items, it was not normally expected that there would be a substantive discussion. He suggested that greater discipline be exercised in this regard in the future. Accordingly, he would encourage representatives wishing to

initiate an in-depth discussion on issues to bring these to the notice of the Secretariat in sufficient time in order to have them placed on the airgram<sup>20</sup>, thus allowing all parties concerned to prepare themselves for the discussion.

The Council took note of the statement.

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<sup>20</sup> A note by the Secretariat on the practice relating to the issuance of airgrams convening Council meetings has been circulated as Spec(91)73.