

GENERAL AGREEMENT ON

RESTRICTED

C/M/254

10 March 1992

TARIFFS AND TRADE

Limited Distribution

COUNCIL

18 February 1992

MINUTES OF MEETING

Held in the Centre William Rappard
on 18 February 1992

Chairman: Mr. B.K. Zutshi (India)

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Prior to adoption of the Agenda, representatives rose and observed a minute of silence in memory of Mr. Radomiro Tomic, former Ambassador of Chile to the GATT, deceased on 3 January 1992.

Also prior to adoption of the Agenda, the Chairman informed the Council that on 24 December 1991, the President of the Russian Federation had informed the Secretary General of the United Nations that the membership of the former USSR in the United Nations, including the Security Council, and in other organs and organizations of the United Nations was to be continued, with the support of the Commonwealth of Independent States, by the Russian Federation. In a letter dated 26 December 1991, the Permanent Mission of the Russian Federation in Geneva had informed the GATT of this change (L/6978). Accordingly, and in line with the practice that in political matters GATT would follow decisions by the United Nations, the GATT observer status previously conferred to the former USSR would be continued through the Russian Federation.

1. Trade in Textiles

- (a) Report of the Textiles Committee (COM.TEX/72)
- (b) Report of the Textiles Surveillance Body (COM.TEX/SB/1648 and Add.1)

The Director-General, Chairman of the Textiles Committee, introduced the Committee's report on its annual review of the operation of the Multifibre Arrangement (MFA) as extended by the 1986 Protocol, and as maintained in force by the 1991 Protocol. This review had been carried out by the Committee in December 1991, pursuant to Article 10:4 of the MFA which required it to conduct such a review once a year and to report thereon to the Council. In conducting the review, the Committee had had

before it: (a) a statistical report by the Secretariat on textiles and clothing trade, and on recent developments in demand, production and trade in textiles and clothing (COM.TEX/W/239); and (b) a report by the Textiles Surveillance Body (COM.TEX/SB/1648 and Add.1).

The report of the Textiles Surveillance Body (TSB) covered its activities from 1 August 1990 to 1 October 1991, and set out details of the notifications reviewed by it during this period along with its observations thereon. With respect to the TSB membership for 1992, the Committee had decided that it would be composed of members designated by Brazil, Canada, China, the European Economic Community, Hong Kong, India, Japan, Norway, Philippines and the United States. He noted that there were currently 34 signatories to the 1991 Protocol Maintaining in Force the MFA and the 1986 Protocol.

At its meeting, the Committee had also carried out the requirement of Article 10:5 of the MFA that it "meet not later than one year before the expiry of this Arrangement to consider whether the Arrangement should be extended, modified or discontinued". Since the current Protocol would expire at the end of 1992, this procedure had satisfied the mandatory requirement of Article 10:5 and it had been agreed that, for obvious reasons, there could be no discussion on the future of the Arrangement at that meeting.

The Council took note of the statement and of the report of the Textiles Surveillance Body (COM.TEX/SB/1648 and Add.1) and adopted the report of the Textiles Committee (COM.TEX/72).

2. Committee on Balance-of-Payments Restrictions

- (a) Consultation with Israel (BOP/R/195)
- (b) Note on the meeting of 26 November 1991 (BOP/R/196)
- (c) Programme of consultations for 1992 (C/W/693)

- (a) Consultation with Israel (BOP/R/195)

Mr. Boittin, Chairman of the Committee, said that at the consultation with Israel on 26 November 1991, the Committee had noted the improvements in Israel's current account in 1989 and 1990. It had also noted that Israel's balance-of-payments position had deteriorated in 1991 and was likely to come under increasing pressure as a result, inter alia, of the economic consequences of sharply increased immigration. The Committee had welcomed that, as part of a comprehensive trade liberalization programme, Israel had abolished most of the non-tariff measures introduced for balance-of-payments reasons and had replaced them by temporary higher customs tariffs with a timetable for their reduction. The Committee had also noted that import licensing was still maintained on agricultural products and that the tariffication of import restrictions had resulted in high temporary tariffs applied to m.f.n. sources. While welcoming the tariffication process in general, members of the Committee had expressed concern about the high levels of some temporary tariffs. Some had referred to the possibility of discriminatory effects resulting from the non-application of such tariffs to free-trade area sources and had

asked Israel to take steps to minimize any harmful effects. They had also called attention to the fact that Israel, in introducing additional temporary charges on four items, had exempted some m.f.n. partners from their application and had urged Israel, in line with its undertaking to the Committee, to bring these charges into GATT conformity. The Committee had encouraged Israel to continue the process of import liberalization including the acceleration of its tariff reduction programme, and to announce a time schedule for phasing out the remaining restrictions maintained for balance-of-payments purposes, including the import levy.

The Council took note of the statement and adopted the report in BOP/R/195.

(b) Note on the meeting of 26 November 1991 (BOP/R/196)

Mr. Boittin, Chairman of the Committee, said that at its meeting on 26 November 1991, the Committee had noted, under "Other Business", that the consultations with India, Colombia, Pakistan and Sri Lanka scheduled for November 1991 had been postponed to March 1992.

The Council took note of the statement and of the Note in BOP/R/196.

(c) Programme of consultations for 1992 (C/W/693)

Mr. Boittin, Chairman of the Committee, drew attention to the Committee's programme of consultations for 1992 in document C/W/693. It was his understanding that the simplified consultation with Colombia scheduled for March might not now be necessary.

The representative of Colombia said that his Government was not applying any restrictive measures for balance-of-payments reasons and that, accordingly, it wished to announce the disinvocation of the relevant provisions of Article XVIII:B. This disinvocation was the result of the process of opening Colombia's economy to foreign trade and investment, which had enabled it to become more competitive. His Government's decision also constituted an important step towards strengthening the multilateral trading system represented by the GATT because, on the one hand, Colombia's economic liberalization fitted in with the precepts of the General Agreement and, on the other, its disinvocation of Article XVIII:B underlined the fact that those provisions were meant to deal with situations of a temporary nature. Naturally, Colombia was not operating in a vacuum. It was convinced that its trading partners, and in particular the major trading partners, were moving in the same direction and thereby contributing to the strengthening of a multilateral trading system free from unnecessary trade barriers. The best way to carry out such a process and to encourage the opening up of the economies of countries like Colombia and others in Latin America, Asia and Central Europe which had also embarked on a liberalization programme, would be to bring the Uruguay Round to a successful conclusion. He underlined that not to contribute to the Round's successful conclusion would encourage protectionism with its well-known negative consequences on trade, employment and economic growth. As a result of his Government's decision to disinvoke Article XVIII:B,

there would no longer be any need for the simplified consultation scheduled with it for March 1992.

The representative of the Czech and Slovak Federal Republic (CSFR) said that, as indicated in document C/W/693, the CSFR still maintained an import surcharge. However, he wished to note that his Government had proceeded to several successive reductions of the surcharge in the course of 1991, lowering it from 20 per cent to 10 per cent by the end of that year. This was an indication of his Government's strong commitment to further lowering and removing the surcharge.

The Council took note of the statements and of the information in C/W/693.

3. Romania - Renegotiation of Protocol of Accession
- Communication from Romania (L/6981)

The representative of Romania said that, as announced at the Forty-Seventh Session of the CONTRACTING PARTIES in December 1991, his Government had decided to formally request the renegotiation of the terms of Romania's Protocol of Accession to the GATT. This request was being made in the light of the significant steps undertaken in the process of transition to a market economy which had been notified in documents L/6838 and Add.1, and as a result of which its Protocol of Accession (BISD 18S/5), concluded in 1971 when Romania had had a centrally-planned economy, had become outdated and its specific provisions obsolete. For example, in the absence of a customs tariff at that time, Romania's list of commitments had consisted in the firm intention "to increase its imports from the contracting parties as a whole at a rate not smaller than the growth of total Romanian imports provided for in its Five-Year Plans". The Protocol also contained provisions relating to the monitoring of discriminatory measures maintained by other contracting parties, to safeguard measures and to agreed monetary rules in the absence at that time of Romania's membership in the International Monetary Fund (IMF). The situation that had induced such specific provisions in the Protocol had now completely changed. For example, the central planning system had been abolished and the State monopoly on foreign trade and foreign exchange had been dismantled; an effective customs tariff, based on the Harmonized System was in place and constituted the main trade policy instrument; economic operators enjoyed full autonomy; privatization was under way and the private sector was being expanded; the quasi-totality of prices had been liberalized; the fiscal, banking and credit systems were undergoing speedy reforms; a liberal foreign investment régime was already in place; and the internal convertibility of the national currency had been introduced. Furthermore, most of the discriminatory measures maintained by other contracting parties were gradually being eliminated. Also, Romania had become a member of the IMF as early as 1972. It was therefore imperative to bring its terms of accession to the GATT in line with the fundamental changes in its economic system. The specific provisions were no longer needed and the normal GATT principles and rules would be sufficient to govern Romania's participation in the multilateral trading system. Accordingly, Romania requested the renegotiation of the provisions of its

Protocol of Accession in order to replace it by a standard Protocol with commitments based on tariff concessions.

The Council took note of the statement and agreed to establish a working party with the following terms of reference and composition which had been the subject of informal consultations:

Terms of reference

"To examine the request of the Government of Romania to renegotiate the terms of accession of Romania to the General Agreement on Tariffs and Trade as embodied in the Protocol for the Accession of Romania of 15 October 1971, and to submit to the Council recommendations which may include a draft Protocol of Accession."

Membership

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

The Council authorized its Chairman to designate the Chairman of the Working Party in consultation with contracting parties.

4. Philippines - Rates of certain sales and specific taxes
- Extension of time-limit (C/W/694)

The Chairman recalled that at their Forty-Seventh Session, the CONTRACTING PARTIES had considered a request by the Philippines for a one-year extension of the period during which its differential rates of sales and specific taxes with respect to cigarettes could be brought into line with Article III, and had agreed to refer the matter to the Council for further consideration (SR.47/2). He drew attention to a draft decision in document C/W/694 which had been circulated to facilitate the Council's consideration of the matter.

The representative of the Philippines said that since the Session, her Government had regrettably not been able to address fully its obligation to bring into line the differential tax rates on cigarettes within the time-limit decided by the CONTRACTING PARTIES. Since the last extension of the time-limit in 1989 (BISD 36S/44), several attempts had been made by the Philippine Administration to address the issue, most recently through a bill in 1991 containing a legislative proposal to carry out the necessary modifications on cigarette taxation. In the past year, however, the Philippine Congress' agenda had been filled with more urgent issues resulting from the unexpected series of natural disasters of the past two years. In spite of this, the Administration had decided to push for adoption of the bill by Congress and all efforts had been made to include this bill in the legislative agenda during the Congress' brief and last session before national elections. Regrettably, the Congress had decided to focus its limited time on what it had deemed to be more critical and urgent legislative measures. The Congress had concluded its last session

on 7 February, and a newly-elected legislature would take up the bill in question after a new government had taken over, hopefully at the end of June. It was unlikely, however, that this bill would feature as top priority for this new Congress, given a number of pressing issues still left unattended. It would be more realistic to assume that this bill would be considered, at the earliest, sometime during the third quarter of 1992. Until then, the Philippine Government would simply not have the legislative machinery to enact the required law. For this practical reason, her Government wished to reiterate its request for a further extension of the time-limit until 31 December 1992.

The representative of the United States said that his Government had to oppose the Philippines' request for yet another extension of the exemption in its Protocol of Accession from GATT obligations to permit continued discriminatory taxation of cigarettes. He recalled that a five-year exemption had been granted when the Philippines had acceded to the GATT in 1979, based on expressions of intent that these practices would be eliminated within that five-year period. In 1984, an extension of five more years had been requested and granted (BISD 31S/7). In 1989, the Philippines had again requested an extension. The United States had then expressed serious misgivings but, despite these concerns, had supported a further two-year extension based on assurances by the Philippines that it would undertake all efforts to secure passage of the necessary legislation "within the prescribed period, or sooner". The United States had made it clear that it viewed that extension as the last one. The record showed that the United States had demonstrated flexibility and understanding on this issue. It could not agree to support the request for another extension of this exemption, and hoped that the Philippines would secure approval from its Congress for the necessary steps to bring its practices into conformity with the GATT.

The representative of the European Communities said that this exemption had not been granted to the Philippines to exempt it eternally from certain requirements under the General Agreement, but rather to give it the time necessary to amend its legislation which had been found inconsistent with these requirements. The Community believed that the period of time granted thus far had been sufficient to achieve the legislative amendments necessary to comply with the General Agreement. The Community could therefore see no justification for further maintaining this exemption.

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

5. ANDEAN Trade Preference Act

- Request by the United States for a waiver under Article XXV:5
(C/W/692, L/6980 and Add.1)

The Chairman drew attention to the request by the United States in L/6980 and Add.1 for a waiver from the provisions of Article I to implement the ANDEAN Trade Preference Act (ATPA). He also drew attention to the draft decision in C/W/692 which had been circulated to facilitate the Council's consideration of this item.

The representative of the United States said that his Government requested a waiver from Article I for ten years for the purpose of implementing the ATPA. All contracting parties were aware of the terrible menace of the use of harmful drugs which was exacting a heavy toll in terms of personal loss and cost to the United States' economy and those of other countries. The ANDEAN nations of Bolivia, Colombia, Ecuador and Peru were paying a heavy political price because of the high number of lost lives and substantial depletion of their national treasuries, and had asked for assistance in this matter through increased trade. They sought an opportunity for their people to engage in trade in legitimate products as an alternative to narcotics trafficking. In response, in October 1990, the United States' President had submitted to Congress the ANDEAN Trade Preference Initiative, a legislative package that would provide trade benefits comparable to the Caribbean Basin Initiative. This package had been introduced as the ATPA in both the House and the Senate in January 1991. In November of that year, this legislation had passed Congress at the very end of the session and the Bill had been signed into law on 4 December.

The ATPA would provide extremely modest benefits in terms of the overall impact on the United States' trade. Products covered by the ATPA which did not already receive duty-free treatment represented less than 0.1 per cent of the United States' imports. Over half the value of current imports of products eligible for benefits under the ATPA came from one sector -- cut flowers. Some sectors, including textiles and apparel, footwear, leather products, petroleum, canned tuna and rum, had been excluded from duty-free coverage under this programme. The United States believed that given the modest impact on its imports, trade would not be diverted from other suppliers. For the ANDEAN countries, however, the ATPA demonstrated that the United States recognized their sacrifices in the cooperative fight against narcotics production and trafficking. The United States urged the Council to approve its waiver request. It believed that this action could be taken without the need to go through the lengthy process of a working party because (a) the value of trade covered was very low; (b) the United States had provided contracting parties with trade data on the ATPA which it believed answered all questions that they might have; (c) in practical terms, the ATPA operated as an extension of the United States' GSP programme and focused on only four drug-producing countries; and (d) the United States agreed in the waiver decision to notify the GATT of any trade-related measures taken under this law, to consult with any interested contracting party and to submit annually a report on the implementation of the ATPA. He added that the United States' President would be meeting with the Presidents of the ANDEAN nations and the President of Mexico on 26-27 February for the second Drug Summit, and that his delegation would like to be able to report to these Presidents that the Council had recommended approval by the CONTRACTING PARTIES of the United States' waiver request.

The representative of Venezuela said that his Government shared the objectives of the ATPA of helping the four ANDEAN countries eradicate the production, processing and trafficking of narcotics. In this sense, Venezuela fully supported the United States' request as a means of contributing to the solution of these problems in countries with which

Venezuela maintained strong economic links. Venezuela regretted, however, that it should have been excluded from this initiative, and believed that this exclusion would give rise to trade and investment distortions that would go further than the United States originally intended. Venezuela hoped that the United States would reconsider its position in this regard, and requested that these preferences also be extended to it.

The representative of Colombia called on Council members to lend their support to the request and the draft waiver decision, which would permit the United States to implement the preferences under the ATPA in a GATT-consistent manner and without the unnecessary establishment of a working party. He noted that the United States undertook to notify promptly to the CONTRACTING PARTIES any change related to these preferences, to present an annual report on this matter, and further to start prompt consultations if any contracting party considered it had been adversely affected by such measures. Furthermore, the United States had clearly indicated that preferential treatment under the ATPA would not harm any other contracting party's trade. Colombia believed that this was sufficient basis for approval of the requested waiver.

The international community was aware of the enormous efforts made by Colombia in the war against narcotics. Precious human lives, resources and many lost opportunities had been the painful manifestations of a battle that Colombia had undertaken to honour its commitment to humanity and to cooperate in the eradication of this evil. As Colombia had repeatedly maintained, however, only international cooperation would make it possible to confront this crime successfully. While the ATPA was the United States' response to the nations that were engaged in combating organized criminal activities, and though it was oriented in the right direction, it was only a mere step. Further tools were needed to give assistance to the countries involved and give them a chance to operate in a legal and economic framework that would make it possible to eradicate narcotics production. Colombia had always stated that, more than assistance, the countries concerned needed better market access conditions for their products as an incentive to increase production and trade in legitimate goods. Colombia believed that the US initiative was a step in this direction and that all should support it fully. It hoped that the Council would agree at the present meeting to recommend that the CONTRACTING PARTIES adopt the draft decision.

The representative of Peru said that his country was a major producer of the coca leaf which served as the basis for cocaine production and the illicit trafficking of this drug. While it was clear from the detailed information provided by the United States that the trade affected by this waiver would be small, the political importance of this action for the countries involved in joint combat against illicit drug production and trafficking was very great. Peru lent its full support to the United States' request and noted that, under the waiver, the latter would submit an annual report to the CONTRACTING PARTIES on the implementation of the trade-related provisions of the ATPA. Peru hoped that a decision regarding the request could be taken forthwith.

The representative of Nicaragua, also on behalf of El Salvador and Guatemala, said that they were in favour of granting the waiver in order to help the countries in the region eliminate illicit drug production. The value of trade affected by the concessions in the ATPA was not so great as to distort world trade. However, with respect to their own exports, which were similar to those of the four ANDEAN countries, the ATPA would involve a greater degree of competition with negative consequences for their economies which were currently going through a difficult period. Nevertheless, these countries recognized that combating the drug problem was a responsibility incumbent upon all and, consequently, believed that the waiver should be granted. They were flexible with regard to the setting up of a working party, although they believed it more appropriate in this instance either to avoid this step or to substitute some other mechanism for which a precedent existed.

The representative of Bolivia said that close consideration of the documentation provided by the United States would show that the ATPA preferences were similar to those provided under the United States' Caribbean Basin Initiative, which had been examined by a working party, and that they would have only a very slight effect on international trade. She noted that the United States was ready to present annual reports in connection with this Act and that the ATPA would be a useful tool in supporting the efforts already being made by the four ANDEAN countries to eradicate, once and for all, all narcotics production and to encourage the production of alternative products in the medium- and long-term. Bolivia supported the waiver request, and hoped that contracting parties would give their full attention to this particular problem.

The representative of Mexico said that his Government had noted the United States' request and had given careful consideration to the documents provided and to the draft decision. It had also noted the United States' assurances that the application of this programme would not create any obstacles or difficulties for the trade of other contracting parties. Mexico had further noted from the draft decision that the United States would report annually on the trade-related provisions of this Act and that the CONTRACTING PARTIES would review the operation of the waiver also on an annual basis. Accordingly, Mexico had no difficulty with the granting of this waiver.

The representative of Uruguay said that the United States' trade relations resulted in a constant process of fragmentation and distortion of world trade by virtue of that Government's extension of differential and preferential treatment. However, Uruguay would support the waiver request because of its solidarity with the Latin American countries engaged in combating narcotics trafficking.

The representative of Thailand said that his delegation had examined with interest the United States' request and the draft waiver decision. This request appeared to constitute another case of a major contracting party seeking temporary relief from its obligations under Article I in order to grant special trade preferences to a certain country or group of countries on a unilateral or bilateral basis. According to the United States, the preferential trade opportunities under the ATPA were to be used

as incentives for encouraging the ANDEAN nations concerned to move out of illicit drugs and into legitimate products. As a country that had been fighting against the growing of illicit crops among certain groups of its population, Thailand well understood the difficulties governments faced in solving this problem. Therefore, it respected the US initiative and would not question the motive or reason behind it. Nonetheless, as a GATT contracting party, Thailand wished to register certain views on the matter. First, as was rightly pointed out in the United States' communication, the tariff preference provisions of the ATPA did not fall specifically within any of the categories of programmes authorized in paragraph 2 (a) to (d) of the Enabling Clause.¹ In Thailand's understanding, this Clause provided for the granting of trade preferences to developing countries to help foster their development process; therefore, special preferences under it should be economic or poverty-related. Second, and without prejudice to any decision at the present meeting, Thailand noted that while previous waivers of the same nature had specified clearly that they would not preclude contracting parties' right to have recourse to Articles XXII and XXIII, the present draft decision was silent on this point. Thailand wished to emphasize that providing contracting parties with the usual recourse to Articles XXII and XXIII in the proposed waiver decision would not in any way deprive or reduce the intended preferences; it would simply assure minimal GATT rights. Finally, Thailand would not stand in the way of any consensus on this request.

The representative of Korea said that his Government understood the motive behind the United States' request and that the ATPA would have a positive effect in the battle against narcotics. Korea noted that the waiver would have a minor negative impact on international trade and was therefore in favour of it being granted. Furthermore, given that data relating to the tariff preferences was readily available and that the United States had indicated its readiness to provide written answers to any questions from other contracting parties, Korea supported the request that the waiver be granted without establishing a working party.

The representative of India said that his delegation had examined the United States' request and had also listened with attention to its statement. India appreciated the stated objectives of the ATPA to assist the trade and economic development of the beneficiary ANDEAN countries by encouraging legitimate trade growth through more liberal market access, thereby providing an alternative to narcotics production and trafficking. This was a constructive approach to fighting the drug menace. At the same time, however, he noted that the waiver request was based on non-economic criteria. India had consistently maintained that any m.f.n. derogations would have to be considered very carefully. For these reasons, it seemed appropriate that the issues raised by the ATPA should be deliberated upon fully. Therefore, while India supported the granting of the waiver request, it also sought the establishment of a working party thereafter to

¹Differential and More Favourable Treatment, Reciprocity and Fuller Participation of Developing Countries (BISD 26S/203).

examine the issues in greater detail, and for the periodic review of the trade-related provisions of the Act.

The representative of Tunisia said that a waiver was traditionally a controversial issue in the GATT. Tunisia understood well the concerns that waivers prompted, particularly if they granted substantial tariff preferences that risked, even if that were not the intention, prejudicing third parties' interests. Tunisia had examined carefully the draft decision and the documentation substantiating the United States' request, and had listened with attention to the previous speakers. In Tunisia's view, even if a distortion in world trade, however minor, could result from trade preferences, it was important to also look carefully at the positive effect which the corresponding expansion of trade would have for the countries concerned, i.e., the four ANDEAN countries. For this reason, Tunisia supported action on the waiver request at the present meeting, and hoped that when this sort of situation was encountered in future in other areas and for other reasons, it would also be given sympathetic approval by all contracting parties.

The representative of Switzerland said his Government fully recognized the extreme political importance of the objective pursued by the United States. Given the measure envisaged, Switzerland welcomed the straightforward and transparent form in which the United States had chosen to seek GATT justification by means of a waiver. While Switzerland supported a decision on the waiver at the present Council meeting, it considered it appropriate that the information on the application of the waiver and the measure itself be considered in a working party during the implementation of the waiver. It therefore supported the proposal to establish a working party for this purpose after the waiver had been granted.

The representative of Chile said that his country recognized the magnitude of the problem of narcotics trafficking which affected Bolivia, Colombia, Ecuador and Peru. It also understood the United States' concern in overcoming this problem which affected all countries. However, Chile was seriously concerned that the measures proposed were not the most appropriate, not only because they could be prejudicial to third parties' trade but also because they did not deal with the root of the drug problem and instead with only a partial aspect thereof. The narcotics problem was related more with the demand for, and consumption of narcotics, and not only with the supply thereof. To tackle the problem at its roots, additional economic resources had to be allocated in the major consuming countries, which the proposed measures would not provide. Unless narcotics consumption itself was reduced, sources of supply would just be transferred from one place to another. For these reasons, Chile would support the establishment of a working party to follow carefully the effects of this waiver on trade in the region as a whole.

The representative of Morocco said that his Government understood fully the underlying reasons for the United States' request. While Morocco was always in favour of ensuring that normal GATT procedures were respected, in this particular case it shared Switzerland's view. Morocco

wished to see this waiver granted immediately, and to have a working party established to follow closely and in detail the repercussions of the ATPA on third countries.

The representative of Japan said that he had noted the laudable intention of the ATPA to help certain beneficiary countries reduce the production and trafficking of drugs by offering other opportunities. He had also noted from the United States' statement that the trade impact on the United States would not be large while that on the ANDEAN countries was estimated to be about 5 percentage points. This being said, he believed that the traditional GATT practice was for waiver requests to be examined by a working party prior to their approval, and this would be Japan's preferred approach in the case at hand. Noting that certain delegations had raised, among other questions, the possible trade impact of this particular measure, he said that all contracting parties' views needed to be fully taken into account in discussing this waiver request. It was not clear how other contracting parties' interests could be taken into account once the waiver had been granted and the ATPA put into effect.

The representative of Brazil said that narcotics trafficking was one of the more urgent and serious problems that the world faced and Brazil, for its part, had already participated in a series of initiatives to help the countries affected by this situation. The objectives of the ATPA, therefore, were very praiseworthy. Brazil had noted the United States' willingness to enter into consultations with countries that might be affected by these measures, and believed that this was also a positive aspect. However, it had doubts as to the efficacy with which the proposed measures would meet their objectives and, in this respect, agreed fully with Chile that the real causes of narcotics trafficking were not being tackled by these measures. The ATPA trade preferences, which did not attack the core of the problem, could have two kinds of trade-diversion effects. First, they could have a diversion effect on the exports of some countries which produced products similar to those of the four ANDEAN countries. Indeed, producers in Brazil had already been affected by similar actions taken by other important trade partners in the past. Second, and of even greater concern, was trade-diversion in another sense: if the root causes for narcotics trade were not addressed, then suppliers in other countries might spring up to profit from a market that was still open. Perhaps, in the future, these countries might also qualify for similar preferential treatment under a waiver. These were potential but very serious problems. Given, however, that the objectives of the US measures were praiseworthy, and that the beneficiary countries were Brazil's close allies, Brazil would support the granting of the waiver. It would, however, ask that a working party be established thereafter to monitor the application of the waiver.

The representative of Argentina said that his Government was in support of the development of trade based on respect for the objectives of the General Agreement, i.e., the liberalization of trade with full respect for the m.f.n. principle. Argentina's traditional position when considering an initiative such as the one at hand had been to ensure that there was no fragmentation of the General Agreement because of the application of different types of waivers. In this particular instance,

Argentina had taken into consideration the situation involved and the general aim of the request, and the economic and political magnitude of the problem for the beneficiary countries in enabling them to diversify their productive activity, particularly in the area of agriculture, and to try and shift it away from illicit crops. For this reason, Argentina would support the United States' request. He noted that paragraph 2 of the draft decision stated that the tariff preferences would be designed so as not to raise barriers or create undue difficulties for other contracting parties' trade. Also, paragraphs 3 and 4 referred to the need for consultations. Argentina believed that these provisions were important to ensure that the United States' stated objectives of assisting the beneficiaries without diverting or disrupting trade were in fact fulfilled. Regarding Thailand's comment that the draft decision omitted any reference to Articles XXII and XXIII, Argentina believed that although this was not explicitly referred to therein, recourse to these Articles should not be precluded for any contracting party which believed that GATT benefits accruing to it were being nullified or impaired. Finally, with respect to the establishment of a working party after the waiver had been granted, Argentina was flexible and would accept any consensus.

The representative of Pakistan said that Article I was the very essence and foundation of the GATT and, as such, any requests for derogations therefrom merited careful examination particularly because preferential and other similar arrangements weakened the multilateral trading system. The United States' request had also been made at a time when participants in the Uruguay Round were engaged in a far-reaching process of preserving the GATT system and strengthening and expanding it to bring a larger portion of world trade under multilaterally-agreed rules. However, Pakistan was fully aware of the drug problem and remained committed to tackling it. From that perspective, Pakistan could agree, as a very special case, to the request. It also believed that it would be logical to establish a working party after the waiver had been granted to consider the issues and the implications of this waiver.

The representative of the European Communities said that any help and encouragement that might be given to the four ANDEAN countries, including in the manner proposed by the United States, was a welcome development given the need to assist in the conversion of their trade from undesirable to more desirable sectors. However, a request for a waiver, particularly when it involved a derogation from obligations under Article I, was not a matter that the Community could simply overlook. The normal procedure, as some had observed, would have been to establish a working party to investigate the justification for the waiver and to proceed from there. However, this was a case where one could certainly derogate from the normal procedure. At the same time, the Community sympathized with those who had suggested that some kind of process which went a little further than mere annual reporting of the kind under the Caribbean Basin Initiative Waiver (BISD 31S/20) would be a good idea. It would perhaps be best to leave the Chairman to decide how to establish a working party or other mechanism and under what conditions. The Community was ready to approve and accept at the present meeting the principle of a waiver for the proposed measures.

The representative of Hong Kong said that his Government's view had always been that waiver requests were a serious matter and should be considered carefully. His delegation had therefore listened attentively to the United States' statement and had noted its readiness to enter into consultations with any contracting party over any aspect of the waiver. While his delegation would have preferred the normal procedure of first establishing a working party, it would agree to the granting of the waiver for the reasons explained by the United States. At the same time, however, Hong Kong would support the call for a working party to be established immediately afterwards to look into and report on the implementation of the waiver.

The representative of the United States said that his delegation had noted the interests and concerns expressed. Many delegations had recognized the importance of this type of programme to deal with the very critical development needs in the region; indeed, the GATT itself had recognized the important relationship between tariff preferences and economic development in the past. He reiterated that the United States was willing to see full GATT surveillance of this initiative; it would endeavour to provide contracting parties with full information about its implementation and to allow full consultations for any possible concerns that might arise. With regard to concerns about trade diversion, he said that the increased volume of trade eligible for preferential benefits under the ATPA was very modest in comparison to the overall trade with the region. Preferential imports would be increased by about US\$290 million, while the current value of non-dutiable imports from the region was about US\$2.7 billion most of which -- about US\$2 billion -- consisted of products that were duty-free on an m.f.n. basis. The potential for trade diversion was, therefore, quite small. The United States did not believe that this would be a problem for other contracting parties and, in light of the important need to help promote economic activity in these countries, believed it to be justifiable.

With regard to comments that the ATPA alone would not fulfil the stated objectives of controlling drugs and that greater emphasis had to be put on demand, the United States agreed that one could not attack solely the supply side of the problem. In this connection, he noted that the US President's Drug Programme contained elements relating both to demand and supply, and that legislation enacted in the past several years in the United States had been designed specifically to address the demand for drugs in the form of greater education, greater treatment of drug offenders and other such elements. One should recognize, however, that an important element of controlling the drug problem was to provide alternative development to countries which presently found their people engaged in the lucrative business of producing and selling narcotics. This was the intention of the relatively modest effort under the ATPA. The United States looked forward to further discussion on this matter at future occasions as necessary, and would work with other contracting parties to ensure that full GATT surveillance for this programme was achieved.

The Chairman said that there appeared to be an emerging consensus to grant the waiver to the United States without the prior establishment of a working party. There also appeared to be some consensus that a working

party should be established after the waiver had been granted. However, he did not believe that he had the means, at the present time, to give a precise indication as to the terms of reference and modalities therefor. In the light of this, he proposed that the Council take note of the statements, approve the text of the draft decision in C/W/692, and recommend its adoption by the CONTRACTING PARTIES by postal ballot. He also proposed that the Council further agree in principle to establish a working party, the modalities and terms of reference for which would be established through informal consultations that he himself would conduct.

The representative of Japan said that his delegation was prepared to accept the Chairman's proposals except as regards paragraph 2 of the draft decision. He wondered whether the collective purpose would not be better served if this paragraph were adjusted to read: "Such tariff preferences shall not raise barriers or create undue difficulties for the trade of other contracting parties", in other words, by deleting the words "be designed ... to".

The representative of the United States said that the language in C/W/692 had been used previously in other waiver decisions. His delegation recognized the point raised by Japan but, in fairness to the United States, the present language afforded the kind of guidance that was necessary to ensure that the United States did not design a programme to raise barriers or create undue difficulties. He wondered if the change being suggested had a substantive effect. If in the Council's understanding it did, then his delegation would perhaps be willing to agree to it.

The Council agreed to the Chairman's proposals.

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

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

At the Council meeting in November 1991, the previous Chairman had announced that his successor would carry out such consultations. Having done so in this capacity, he was now in a position to announce that Mr. Boittin (France) had agreed to continue for another year as Chairman of the Committee on Balance-of-Payments Restrictions, Mr. Szepesi (Hungary) as Chairman of the Committee on Budget, Finance and Administration and

Mr. de la Peña (Mexico) and Mr. Tuusvuori (Finland), respectively as Chairman and Vice-Chairman of the Committee on Tariff Concessions.

The Council approved the appointments.

7. Canada - Import, distribution and sale of certain alcoholic drinks by provincial marketing agencies
- Panel report (DS17/R)

The Chairman recalled that at their Forty-Seventh Session, the CONTRACTING PARTIES had considered this matter and had referred it to the Council for further consideration.

The representative of the United States recalled Canada's stated intention at the Forty-Seventh Session to agree to adoption of this Panel report at the first regular meeting of the Council in 1992, and renewed the United States' request that the report be adopted. He drew attention to the Panel's recommendation that the CONTRACTING PARTIES request Canada to report to them on measures taken regarding access to points of sale and differential mark-ups before the end of March 1992, and regarding other matters -- such as minimum price requirements, restrictions on private delivery and on volume discounting of imported beer -- before the end of July 1992. The United States believed that the timely fulfilment of these reporting requirements was very important.

The representative of Canada noted that Canada had indeed stated its intention to agree to adoption of the Panel report at the first regular meeting of the Council in 1992, and to comply with the Panel's recommendations in reporting on action taken on the respective issues by the end of March and July 1992. In standing by these commitments, Canada wished to supplement its comments at the Forty-Seventh Session on certain of the Panel's conclusions.

This was the first time that a Panel had ruled that a contracting party had not met its obligations under Article XXIV:12. While Canada did not contest that it still had outstanding obligations from the 1988 Panel report² with respect to marketing of beer, it would not wish that the considerable efforts that had been made to bring its practices into line with its GATT obligations should pass without due recognition. The provincial systems had undergone significant changes since that Panel's recommendations. Through a bilateral agreement with the European Communities, concluded following adoption of the earlier Panel report, Canada's Provinces had taken the necessary steps to bring their practices on wine and spirits into GATT compliance. Certain commitments on the treatment of beer had also been included in this agreement, including the provision of national treatment on listing practices which the current

²Canada - Import, distribution and sale of alcoholic drinks by provincial marketing agencies (BISD 35S/37).

Panel had upheld. This agreement was being applied on an m.f.n. basis. As Canada did not yet have a national market for beer, the Federal Government had also been working actively with the Provinces in promoting the reduction of inter-provincial barriers to trade in beer. This was being accomplished through an intergovernmental agreement which would allow Canada's industry to adapt to global competition. Canada's GATT obligations lay at the heart of these efforts which had been endorsed at the first ministers' level in Canada.

In addressing the Panel's recommendations, Canada wished to draw attention to certain aspects of the conclusions which underlay Canada's approach to the implementation of the recommendations. Canada's right to maintain its import monopoly on alcoholic beverages through the provincial liquor boards had not been at issue before the Panel and was in full conformity with GATT provisions. The Panel had also upheld the methods of assessing mark-ups and taxes on imported beer. Canada would also hold that as part of the necessary regulatory function to ensure responsible use of alcoholic beverages, provincial liquor boards had the authority to exercise GATT-consistent price control based on conditions laid down in the conclusions of the report. Canada also noted that the "effective equality of opportunities" standard referred to in paragraph 5.12 of the report meant that the rules or standards applicable to imported products need not in all cases be identical with those applicable to domestic products provided that, in spite of the differences, the no less favourable treatment standard was met. However, "treatment no less favourable" did not require more favourable treatment for imports. The national obligation was both a minimum and a maximum standard for dealing with imported products within the domestic market. Finally, Canada believed it important to note that the right of a contracting party to apply internal taxes or charges to the sale of beverage alcohol containers in accordance with the national treatment principle, as might be necessary for environmental protection, had not been questioned by the Panel.

Since the Forty-Seventh Session, Canada had continued extensive consultations with its provinces, at ministerial and officials levels, to address the Panel's recommendations. Canada was committed to meeting its obligations in this matter. However, the issues were complex and Canada had not yet finalized the details for implementing each of the Panel's recommendations. Some changes could be implemented administratively, while others would require legislative action. Canada would be reporting on action taken by the end of March 1992, as called for by the Panel, and on other issues as appropriate by the end of July 1992. He noted with concern that on 27 December 1991, the United States had published a determination in the US Federal Register, following an investigation under Section 301 of the Omnibus Trade and Competitiveness Act of 1988, stating that the United States' rights under a trade agreement were being nullified or impaired and that it would initiate retaliatory action no later than 10 April 1992 in the absence of satisfactory progress. The Notice went on to indicate that the United States Trade Representative would impose substantially increased duties on beer and malt beverages from Canada to offset the nullification or impairment. Canada considered it inappropriate for the United States to be imposing arbitrary deadlines for retaliatory action in this case,

particularly in advance of the time frames recommended by the Panel. Canada considered that any action taken at any point in this dispute without the requisite authorization of the CONTRACTING PARTIES would be contrary to the United States' GATT obligations. On the basis of the foregoing, Canada would agree, in concert with other contracting parties, to adoption of the Panel report.

The Council took note of the statements, adopted the Panel report in DS17/R and agreed that in accordance with the procedures adopted by the Council in May 1988 (BISD 35S/331), the report was thereby derestricted.

8. United States - Denial of MFN treatment as to non-rubber footwear from Brazil
- Panel report (DS18/R)

The Chairman recalled that in April 1991, the Council had established a panel to examine the complaint by Brazil. The report of the Panel (DS18/R) was now before the Council. Introducing the report on behalf of the Chairman of the Panel, he said that the Panel had submitted its report to the parties to the dispute on 13 December 1991 and to the contracting parties on 10 January 1992. The Panel had found that the United States had failed to grant, pursuant to Section 104(b) of the Trade Agreements Act of 1979, to products originating in contracting parties signatories to the Subsidies Agreement³ the advantage accorded in Section 331 of the Trade Act of 1974 to like products originating in countries beneficiaries of the United States' GSP programme. That advantage consisted of the automatic backdating of the revocation of countervailing duty orders issued without an injury determination to the date on which the United States had assumed the obligation to provide an injury determination under Article VI:6(a). Accordingly, the Panel had concluded that the United States had acted inconsistently with Article I:1. The only remedy that had been sought by Brazil in this case was a general ruling on the matter in dispute. The Panel had therefore not included in its report a recommendation on action by the United States.

The representative of Brazil said that his Government was gratified by the Panel's conclusion which was important for Brazil, on the one hand, because of its commercial relevance to a large industry in the country, and for all contracting parties, on the other, because it upheld the m.f.n. requirement of Article I -- the heart of the General Agreement. Brazil accordingly requested the Council to adopt the report and to recommend that the United States take the necessary steps to bring itself into compliance with the requirements of Article I:1 and, in accordance with the 1982 Ministerial Declaration (BISD 29S/9), report to the Council within a specified time-period, which should not be later than the next Council meeting, on the action it had taken in this regard. Brazil stood ready to

³Agreement on the Interpretation and Application of Articles VI, XVI and XXIII (BISD 26S/56).

discuss with the United States the details of how such action could best be accomplished.

The representative of the United States noted that this was the first time that the report was being considered for adoption. His authorities were in the process of considering its findings and the implications of its adoption. The United States therefore requested that consideration of this matter be deferred to the next Council meeting.

The representative of India said that as an interested third party, India had made a submission to this Panel, although the Panel had not addressed the specific issue raised by India, namely, whether the United States could have levied countervailing duties on the importation of products alleged to have been subsidized without determination of an injury once the obligation under the Subsidies Code had become effective for it. This notwithstanding, India agreed with the basic findings of the Panel and would support adoption of its report.

The representative of Brazil said that he was disappointed with the United States' statement. As the Chairman had indicated, the Panel report had been provided to the parties to the dispute two months earlier, and circulated to contracting parties on 10 January 1992. Brazil hoped therefore that the United States' request to defer consideration of the report was not intended to delay the dispute settlement process. The April 1989 Decision on improvements to the GATT dispute settlement rules and procedures (BISD 36S/61) specifically stated, in paragraph G.3, that such delays should be avoided. Brazil hoped that the United States' request for more time to consider the report would not be repeated at the next Council meeting.

The representative of Chile said that m.f.n. treatment and non-discrimination were the basic tenets of the GATT and it was important to ensure that they were respected and applied by all. The Panel report at hand substantiated the legitimacy of Brazil's complaint, and Chile supported the adoption thereof.

The representative of Colombia said his delegation fully supported the principle of automaticity in the dispute settlement process and, accordingly, believed that this Panel report should be adopted without delay.

The representative of Uruguay said his delegation also supported the Panel's conclusions and believed its report should be adopted without delay.

The representative of Venezuela expressed his delegation's full support for the immediate adoption of the Panel report.

The representative of Mexico said that full respect for the basic principles of the GATT -- such as that of m.f.n. treatment -- was of the utmost importance. Mexico welcomed the Panel's conclusions and supported adoption of its report.

The representative of the United States said that while his delegation would work towards achieving a favourable outcome on this matter, it would underline that this was a dispute between the United States and Brazil, and that numerous interventions by other delegations were not helpful.

The representative of Nicaragua said that while he recognized that this dispute involved the United States and Brazil, at stake was one of the basic principles of the GATT which affected all contracting parties. His delegation hoped that this matter would be resolved as soon as possible.

The representative of Jamaica associated her delegation with others that had spoken in support of adoption of the Panel report. While this dispute involved Brazil and the United States, the principles at stake, and which Jamaica supported, were those of m.f.n. treatment and automaticity of adoption of panel reports.

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

9. United States - Restrictions on imports of tuna
- Panel report (DS21/R)
- Communication from Venezuela (DS21/2)

The Chairman recalled that its meeting in February 1991, the Council had established a panel to examine the complaint by Mexico. The Panel's report (DS21/R) had been circulated to contracting parties on 3 September 1991 and derestricted on 29 November at the request of the parties to the dispute. It was on the Agenda of the present meeting at the European Communities' request. He also drew attention to Venezuela's recent communication regarding this matter (DS21/2).

Mr. Szepesi (Hungary), Chairman of the Panel, introduced its report, which was being discussed in the Council for the first time. The Panel had met with the parties on 14-15 May and 17 June 1991. Australia, the European Communities, Indonesia, Japan, Korea, the Philippines, Senegal, Thailand and Venezuela had made oral presentations to the Panel on 15 May and Canada and Norway had submitted their respective views in writing. The Panel had submitted its conclusions to the parties on 16 August. The Panel's views and considerations were contained in Section 6 of its report and its conclusions in Section 7.

He underlined that the Panel's task had been limited to an examination of the matter "in the light of the relevant GATT provisions", and that it had not been called upon to make a finding on the appropriateness of the United States' and Mexico's conservation policies as such. Also, a contracting party was free, under GATT provisions, to tax or regulate imported products and like domestic products as long as its taxes or regulations did not discriminate against imported products or afford protection to domestic producers. A contracting party was also free to tax or regulate domestic production for environmental purposes. As a corollary to these rights, however, a contracting party could not restrict imports of

a product merely because it originated in a country with environmental policies different from its own. The provisions for exceptions under Articles XX(b) and (g) did not specify criteria limiting the range of life or health protection policies, or resource conservation policies, for their invocation. If the CONTRACTING PARTIES were to permit import restrictions, like those in this case, in response to differences in environmental regulations of producers, then they would need to impose limits on the range of policy differences justifying such responses and to develop criteria so as to prevent abuse. If the CONTRACTING PARTIES were to decide to permit trade measures of this type in particular circumstances, it would therefore be preferable for them not to do so by interpreting Article XX but by amending or supplementing GATT provisions or waiving obligations thereunder. Such an approach would enable the CONTRACTING PARTIES to impose such limits and develop such criteria.

The representative of the European Communities recalled that at the CONTRACTING PARTIES' Forty-Seventh Session, the Community had stated that this Panel report was a matter of general interest and concern to all contracting parties and not just to the two parties to the dispute. It had also expressed its intention to place this issue on the Agenda of the first Council meeting in 1992, for two reasons.

First, because the report addressed a number of critical principles affecting trade and the environment -- a subject of keen topical interest at the present time. It raised issues which affected the interests of all contracting parties, and each of them had a responsibility to indicate its views. The Community believed the time had come to consider this report at the multilateral level, and it clearly and unambiguously favoured its adoption. In this connection, he requested the United States and Mexico to provide a clear indication of the nature and content of their bilateral discussions, and of their intention with regard to adoption. The Community believed that the report sent an overall positive message about the possibility of reconciling trade and environmental policies. In this regard, he underlined the following points: (1) the Panel had made it clear that the GATT imposed few constraints on a contracting party's right to implement domestic environmental policies. A very important conclusion was that environmental protection standards chosen by a country were not subject to review under GATT provisions; (2) the Panel had indicated that to tackle global environmental challenges beyond the jurisdiction of any contracting party, solutions based on international cooperation should be sought. Contrary to some interpretations, the Community found nothing in the report which questioned the legitimacy of applying trade restrictions based on a multilateral convention; (3) the Panel had only condemned a unilateral trade restriction of an extra-jurisdictional nature which, moreover, had been applied on the basis of totally unpredictable conditions.

The second reason for wanting this debate was that the Community, among many other contracting parties, had been affected directly by the operation of the United States' Marine Mammal Protection Act. As a result of a ruling this year, he understood that the United States had embargoed

imports of certain types of tuna -- whatever its origin -- from at least four member States of the Community, and that only the passage of legislation banning Community imports of the tuna in question from other countries would exonerate it from the embargo. Such extra-territorial measures, taken unilaterally, were unacceptable.

He said that adoption of the report and modification of US legislation would not compromise the effectiveness of measures to reduce incidental dolphin mortality in tuna fishing -- an objective which the Community fully shared. The Community would certainly join in any serious endeavour to tackle the issue of dolphin mortality and other environmental problems arising from the use of certain fishing practices. Adoption of the report was also a necessary first step in clarifying the relationship between environmental policies and GATT provisions. The Community believed that work aimed at ensuring that the global environmental dimension was better integrated into the GATT system needed to proceed urgently. A number of issues such as the relationship between multilateral environmental conventions and the GATT were already being examined in a working group. For these reasons, the Community considered it desirable that the Council adopt this report at its present meeting. Even though the parties to the dispute appeared reluctant to engage in the present debate, they were to be commended for having agreed to derestrict the report, thus sending the right signal that this was a matter of critical importance and interest. In the Community's view, the parties to this dispute would be doing a disservice by settling the issue behind the scenes, because what had started as a bilateral issue had now become a matter of concern to all. By adopting the report, the Council would be acknowledging this fact.

The representative of Venezuela recalled that in March 1991, Venezuela's tuna exports had been subjected to an embargo by the United States on the basis of the latter's Marine Mammal Protection Act, despite the fact that his country's tuna fishing fleet had achieved a 75 per cent reduction in the incidental taking of dolphins in the eastern tropical Pacific Ocean over the past three years. On 31 January 1992, the United States had extended the embargo to all tuna fish and fish product imports from twenty "intermediary nations" including Venezuela. Since the United States had imposed the primary embargo on tuna from Venezuela and Mexico, no embargoes on intermediary nations had been imposed -- perhaps an encouragement to those nations that were GATT contracting parties to violate their commitments under it. The United States had then decided to impose a secondary embargo on tuna imports from Costa Rica, France, Italy, Japan and Panama because those countries imported tuna caught by Venezuela and Mexico in the eastern tropical Pacific. The matter had been further complicated when an environmental group had argued before a US Federal Court that the Marine Mammal Protection Act required that the secondary embargo cover all tuna fish and tuna fish products irrespective of their origin and of the fishing technique, so long as they were embarked to the United States by or from an intermediary nation. On 10 January, the District Court dealing with the case had accepted this argument and had ruled that the Commerce Department was obliged to extend the embargo to all those nations which imported tuna from Venezuela and Mexico. The arbitrariness and injustice of this embargo for Venezuela was heightened by

the fact that it had taken a series of actions to ensure dolphin protection such as: active participation in the inter-governmental programme to save dolphins of the Inter-American Tropical Tuna Commission (IATTC); presence since August 1991 of certified international observers on all of Venezuela's tuna fishing vessels; the use of dolphin-safe nets by all tuna fishing vessels and the training of crews to carry out dolphin rescue operations; a prohibition on the use of night spear fishing and explosives; educational workshops for all captains or heads of industrial fishing enterprises; frequent inspections of the tuna fish fleet to check on the fulfilment of norms and the status of all equipment on board for dolphin rescue operations; commitment in the Food and Agriculture Organization's International Fisheries Committee to a contribution of US\$500,000 to set up an international fund for the development of dolphin safe techniques; and finally, a ban, as of August 1991, on the use of large drift nets in order to protect other aquatic species. Venezuela stood ready to contribute to designing a multilateral framework for tuna stock management and dolphin protection with the objective of drawing up a set of standards to guarantee the complete elimination of dolphin mortality cases. While pursuing the elimination of the embargo through other channels, Venezuela reserved its right to request Article XXIII:1 consultations if these multilateral negotiations did not rapidly lead to an agreement.

It was difficult to imagine a greater affront to the international trading system and the principle of national sovereignty than this United States Act, which went even beyond Section 301 of the United States Trade and Competitiveness Act of 1988 in dictating the precise contents of foreign laws. These facts underscored the need for immediate Council action to protest the tuna embargo and send a clear message to the United States Congress. The harm caused by this embargo to the world trading system was considerable. Furthermore, it affected Venezuela's fishing sector and, in particular, the livelihoods of the 30,000 residents of Cumana, a Venezuelan city that depended on the tuna industry. He noted that in a statement on 11 February on the question of trade and environment, the GATT Director-General had advocated the importance of "multilateral action in order to increase trade and to improve environment standards. Both objectives should be pursued simultaneously and, in fact, each could lend the other strength". Venezuela fully endorsed that statement and called upon the United States to take action in that same spirit. It also called on the Council to adopt the Panel report.

The representative of Mexico said that Mexico fully shared the ecological objectives set forth in the Marine Mammal Protection Act which was the basis of the US embargo. Mexico itself had had legislation protecting various aquatic species since the 1930s. Indeed, for dolphins, Mexico's legislation contained some of the most advanced provisions in existence. For example, dolphin fishing, their import and export, and the use of night spear fishing and explosives were prohibited. The incidental catch of dolphins in Mexico had been reduced by seventy per cent over the past five years. Furthermore, provisions concerning the protection of marine mammals had recently been considerably strengthened. In this context, he emphasized that Mexico's request for a panel a year earlier had been based upon substantive elements. Indeed, it endeavoured to show the

protectionist nature of the US embargo and not to confuse them with legitimate ecological concerns. Mexico believed that the US legislation and the embargo imposed thereunder, quite irrespective of its basic ecological motivations, in fact clearly favoured the trading interests of that country's fishing fleet and was directed less toward the protection of dolphins. Mexico had demonstrated to the Panel that the US legislation was discriminatory both between third parties because of the considerable regional content, and also in the very different treatment of other nations' fleets, subjecting these to undefined criteria which varied considerably and regarding which information was not provided until the end of each fishing season. With regard to the structure and level of its ecological objectives, the Act was based upon unilaterally-established criteria and not on any international agreement or scientific evidence. Its strictest disciplines were applied only in the so-called eastern tropical Pacific, an area where the United States' fleet was absent, and to yellowfin tuna and certain types of dolphins caught by purse-seine fishing. All these specific provisions in the Act were unjustified, given the incidental dolphin mortality rate also experienced in other fishing areas and through other fishing techniques. The dolphin, it would seem, should also benefit from non-discrimination.

Mexico believed that dolphin protection should not be based on unilateral and trade protectionist measures. This global and complex problem required international cooperation for lasting solutions. Mexico welcomed the Panel report, which had made an important appeal to the CONTRACTING PARTIES to seek out together solutions to include the environment dimension in the multilateral framework of GATT. The Panel had recognized the right of contracting parties to define and implement their internal environmental policies, and to cooperate with one another in harmonizing such policies. The reactions to the Panel's conclusions in the press and in some ecological organizations deserved to be commented upon in this context. These conclusions had been interpreted as being inimical to environmental protection, because of the rejection of the use of extra-territorial measures for the protection of life and health. It should be clear to all, however, that this interpretation of the Panel report was inaccurate. While the Panel had criticized the US embargo because of the extra-jurisdictional nature of the measures which supported it, it had also indicated that the situation would have been otherwise if a multilateral agreement on such measures had existed. The Panel had expressly safeguarded international conventions on the protection of the environment and species; it had not weakened the applicability of these instruments, but rather had strengthened and confirmed it. Mexico fully agreed with and supported this multilateral orientation and had made proposals for the setting up of a multilateral instrument on the issues raised by this report in the Food and Agriculture Organization and in the Latin American Fisheries Organization, as well as in the ongoing dialogue with US authorities on this subject. Mexico trusted that once public opinion and parties concerned with environmental protection had examined and understood both the true commercial aspects of this case and the real scope of the Panel's report for the protection of species, this issue would be viewed with the maturity and positive spirit that the quality and

balanced nature of the report merited. His authorities preferred to give all concerned the time and the necessary positive atmosphere to carry out a study and examination of this complex matter.

The representative of Argentina said that the Panel report was very meaningful in terms of the objectives and interpretation of the relevant GATT provisions, and was also an important precedent for questions relating to trade and the environment. Argentina therefore agreed with the elements highlighted by the Community with regard to the advisability of adopting the report. It believed that the CONTRACTING PARTIES could not let public opinion decide their course and that they bore the responsibility of ensuring that GATT rights and obligations were respected. The General Agreement should be used to guide public opinion now in terms of what should be the GATT's policy with regard to trade and the environment. The Panel report would be an important precedent for developing work on this subject and would reaffirm that Article XX exceptions could not be used for discrimination or for protectionist purposes. Since environmental questions were important to all as a result of their growing interdependence with economic and industrial policies, the suggestion by the Panel for the CONTRACTING PARTIES to take joint action to decide on measures permissible under GATT was appropriate. This was consistent with work being done in the Uruguay Round in certain other areas where international standards were being set by the participants and which in fact would be used to help in the formulation of national policies. The time had come for the Panel report to be examined by the Council and the parties concerned, and for it to be adopted. This would be excellent both for the GATT itself and also for the promoters of environmental causes. In Argentina's view, the Panel report was by no means inconsistent with the defence of the environment; on the contrary it had established a precedent which was consistent with the work that had been done by the GATT Secretariat and also in the Group on Environmental Measures and International Trade.

The representative of India said that his delegation welcomed the opportunity to address this Panel report because the issue of linkage between trade and environment was of critical importance to the multilateral trading system. This issue had been dealt with at considerable length in earlier Council meetings and would no doubt be treated in detail at the United Nations Conference on Environment and Development. He recalled that his delegation had consistently been of the view that the GATT was well equipped to deal adequately and effectively with the trade-related issues of environmental protection, and noted with satisfaction that the Panel report had brought out clearly the applicability of GATT rules in this area. His authorities had had the opportunity to examine the Panel's findings and had found them legally sound and well-reasoned. India had no difficulty in agreeing with the Panel's view that the US measures could not be justified under either Article III:4, or Article XX(b) or XX(g). It further agreed with the Panel that there could be no extra-territorial or extra-jurisdictional application under either Article XX(b) or XX(g). It drew particular attention to the Panel's concluding remarks that a contracting party could not restrict imports of a product merely on the ground that it originated in a country with environmental policies different from its own. This

point had repeatedly been stressed by a number of delegations, including his own, in previous discussions. He recalled the Panel's conclusion that GATT provisions imposed few constraints on contracting parties' implementation of domestic environmental policies. This was an appropriate response to allegations by some interest groups and lobbies that the GATT was insensitive or unfriendly to the environment.

However, with regard to the Panel's suggestion that if the CONTRACTING PARTIES were to decide to permit trade measures of the type dealt with by the Panel to address environmental concerns, it would be preferable for them to do so by amending or supplementing the provisions of the General Agreement, he recalled that India had consistently argued that in matters affecting the global environment it would be inappropriate for individual countries to unilaterally introduce trade measures or countermeasures, and for the GATT to decide upon measures for the protection thereof. Appropriate environmental agreements would have to evolve for that purpose, not in the GATT but in other relevant international fora. Consequently, any measures or countermeasures to protect the global environment should derive their mandate from international environmental agreements so negotiated.

His delegation would support the adoption of this report. The importance of the trade and environment issue had also been underscored by the Secretariat's study on that subject in the forthcoming GATT annual report on International Trade 1990-1991. This study warned against the use of unilateral trade measures to offset the competitive effects of different environmental standards and saw a serious danger of environmental issues and concerns being hijacked and exploited by protectionist elements. India considered that the Panel report was timely, balanced and sound, and that an impartial reading thereof would remove many of the misconceptions amongst some groups regarding the interface between trade issues, GATT and the environment. He reiterated India's support for the early adoption of the report.

The representative of Canada said that Canada considered it appropriate -- indeed vital -- that governments should act to safeguard their environment, including their natural resource base. It therefore welcomed the Panel report and the reaffirmation therein of the right of contracting parties to establish their own domestic environmental policies. Naturally, measures taken pursuant to such policies had to be GATT consistent. In instances in which a government wished to extend the application of its environmental policy beyond its jurisdiction, its actions could cause concern to other contracting parties. Canada therefore welcomed the Panel's reaffirmation that such measures could not be applied extra-jurisdictionally on a unilateral basis to enforce policies upon parties adopting different environmental standards. In cases where an environmental issue extended beyond the area of a contracting party's jurisdiction, Canada would wish to see it addressed and resolved through international cooperation pursuant to an international agreement. His delegation was pleased to see that the Panel considered such an agreement to be a reasonable approach to dealing with trans-boundary issues. Canada fully supported the Panel's conclusions that the application of the

secondary embargo to intermediary nations was inconsistent with the United States' GATT obligations. In effect, under penalty of being denied their GATT rights by the United States, trading partners were being led to deny such rights to others. That a contracting party was required to embark on such a course in pursuit of an environmental standard unilaterally imposed by another was clearly unacceptable. In fact, the secondary embargo now extended import bans, by recent US judicial action, to a large number of contracting parties. This clearly took the issue beyond a mere bilateral dispute between Mexico and the United States to one of direct impact on many contracting parties. For this reason, consideration of this report by Council with a view to its early adoption was a matter of significant interest and some urgency, particularly in light of the provisions of an amendment to the Act -- the Pelly Amendment -- which could extend the embargo to other fish products. Canada supported adoption of the report.

The representative of Costa Rica said that his country recognized the importance of environmental protection for the entire international community. However, the increasing use of environmental protection measures to restrict trade was a matter of deep concern. The recent US embargo on the import of yellowfin tuna from the eastern tropical Pacific had affected all countries fishing in this region or buying from countries fishing there -- the so-called intermediary nations. Costa Rica supported Venezuela's statement that the tuna fish embargo, as the Panel report showed, was a violation of GATT provisions. Costa Rica did not doubt that the United States had an important concern to reduce dolphin mortality in tuna fishing. For this reason, Costa Rica had been working with other Latin-American countries in the framework of the IATTC, to search for a solution to this problem. The existing dolphin mortality rate had been reduced as a result to less than 80 per cent. The US legislation, however, went much beyond environmental needs and restricted otherwise legitimate trade. Efforts made to resolve the dolphin mortality problem had not been taken into account, and very serious economic and social damage had been inflicted not only on countries directly affected, but also on the so-called intermediary nations. As the Panel report had stated, when an environmental problem went beyond a country's borders, inter-governmental cooperation was essential and unilateral measures were to be avoided in particular when these were contrary to the main objectives of the multilateral trading system, as in the case at hand. Costa Rica therefore believed that the Council should take steps to request the United States to take the necessary action to bring its legislation into GATT conformity.

The representative of Thailand, on behalf of the ASEAN contracting parties, said that these countries fully supported the view that there was a sense of urgency for a GATT solution to the matter at hand. The Panel's conclusions and recommendations were well-known to practically all traders in these products. The effectiveness of the multilateral dispute settlement mechanism had once again been put to a test and the lack of a Council decision would affect not only the credibility of the multilateral trading system but also the future conduct of individual countries' trade policies. The ASEAN contracting parties had examined the Panel report and had concluded that its findings were well-reasoned and comprehensive and its recommendations logical and reasonable. Their implication had an

important bearing on the predictability and the prospect of world trade in tuna products. In terms of multilateral rules and disciplines, the findings reaffirmed the requirement for adherence by all contracting parties to the fundamental GATT objective and principle of openness and non-discrimination in trade. The Panel had concluded that the US embargoes on yellowfin tuna and tuna products from Mexico and intermediary nations as well as the provision of the Marine Mammal Protection Act under which they had been imposed, were GATT inconsistent. Notwithstanding the Panel's findings, the United States had recently expanded the embargo provisions governing intermediary nations, which had adversely affected current and potential tuna and tuna products exports of several developing countries, including their own. The Panel had ruled against the extra-territorial application of unilateral trade measures introduced for environmental reasons. The ASEAN contracting parties did not agree with the link made by the United States between restrictions applied to the intermediary nations and measures to prevent imports from countries directly subject to the embargo. Requiring intermediary nations to impose GATT-inconsistent measures in order to avoid the US embargo would affect each contracting party's right to determine autonomously its own trade policy. This undermined the fundamental principles of the GATT. The ASEAN contracting parties supported adoption of the report and sought an early and full implementation of its recommendations.

The representative of Senegal said that the tuna industry held an important place in Senegal's economy, and that the dispute at hand had had secondary effects on the value of Senegal's exports. Senegal believed that the Panel report took environmental problems fully into account, while also fully respecting GATT provisions. His delegation supported its adoption and hoped to see a speedy implementation of its recommendations.

The representative of Sweden, on behalf of the Nordic countries, underlined the importance these countries attached to the rôle of GATT dispute settlement panels. The increased clarity and certainty that panels contributed to the multilateral framework was vital for the functioning of the GATT. The Nordic countries, as others before them, also placed great emphasis on the Council's rôle in this context of discussing panel reports, evaluating their conclusions, and formally adopting the reports. In the case at hand, the parties to the dispute had appeared to have decided to settle their problem bilaterally. While that certainly was their right, this outcome, however appropriate for the parties to the dispute, would unfortunately leave a Panel report of great interest to other contracting parties in limbo. The Nordic countries therefore welcomed the present opportunity to hold at least part of the discussion that normally surrounded a panel report. Their interest in this report stemmed mainly from the fact that it had broken new ground in the trade and environment field. It had presented interesting analyses of several issues, and in particular the application of process requirements to imports and the use of trade measures to enforce environmental regulations focused on extra-territorial problems. On both these issues, the Nordic countries regarded the Panel's findings and the conclusions to be well-reasoned.

On the first issue, they believed it important to exercise restraint in placing process requirements on imported products. Normally, the

effects that production processes could have on the importing country were transmitted through the product itself. Process requirements should therefore be designed to affect product characteristics, except in the unusual circumstances that the said production process directly affected the importing country. On the second issue, they believed, like the Panel, that extra-territorial issues were most appropriately tackled through multilateral cooperation and not through unilateral measures. The sovereignty of nations was then respected to a fuller extent, a comprehensive approach to tackling a problem became possible, and efforts were not wasted at the individual country level that might work at cross purposes. A coordinated approach quite simply seemed more effective. The Nordic countries noted with satisfaction that this particular issue would be discussed in the Group on Environmental Measures and International Trade.

He noted that the report had stirred a certain amount of controversy outside trade policy circles. The Nordic countries, for their part, did not see this report as being inimical to environmental concerns. The Panel's analysis had indicated that there were limits to the ways in which national legislation could be extended to other countries, and pointed in the direction of more international cooperation in the environmental field. They believed this to be the strongest form of response to global and regional environmental concerns, and therefore firmly endorsed the report in this respect. They also welcomed the interest expressed in the Council for a strong GATT involvement in trade-related environmental issues in order to safeguard both trade interests and the environment.

The representative of Peru said that his delegation had followed the development of this matter with great interest. This dispute was a very important precedent because it would set standards according to which the trade and environment relationship would be analysed in the GATT. The Panel report had shown that a contracting party's fishing fleet received clearly discriminatory treatment related to its nationality and its nation's domestic legislation for dolphin protection. Such discriminatory treatment, however, should have no relation at all to protection measures that all contracting parties in all areas of the world should give marine mammals. Even more serious was the attempt to apply this measure selectively only to a given geographic area -- the eastern tropical Pacific Ocean -- which seemed to have been almost abandoned nowadays by the US tuna fishing fleet. Peru believed it was of vital importance that the Panel's conclusions be adopted as soon as possible as a very clear message to world public opinion that any environmental protection measure of a trans-border nature had to be based on a multilateral consensus. It was necessary, at all costs, to avoid the application of unilateral measures which had not been clearly supported internationally on the basis of scientific criteria. In Peru's opinion, such criteria should be developed in the respective international organizations competent for environmental matters -- in particular those that would emerge from the UNCED -- and not in the GATT, which should limit itself to the promotion of international trade and subject its action to the environmental criteria adopted in the pertinent organizations. For this reason, Peru wished to state its reservation with respect to the last part of paragraph 6.3 of the Panel report which suggested that the CONTRACTING PARTIES might wish to amend or

supplement GATT provisions to permit trade measures of this type in particular circumstances. This went beyond the Panel's terms of reference. It would be sufficient for multilateral provisions on the environment to be respected by the GATT in reaching any conclusions concerning measures related to trade and the environment.

The representative of Japan said that this issue was of general interest and concern not only because a considerable number of contracting parties were being affected by the measure in question, but also because the issue had an important bearing on GATT's rôle in general and on the functioning of the dispute settlement procedure in particular. Japan had a direct interest in this issue. It had participated in the Panel process as an interested third party and its views had been reflected in the report. Japan, among others, had been named as an intermediary nation and subjected to an embargo, a situation which could not be justified under the GATT. He noted that the report did not deny the right of individual contracting parties to pursue their internal environmental policies. Furthermore, it did not prohibit countries from cooperating to harmonize such policies, nor did it deny the CONTRACTING PARTIES' right to address international environmental problems. The report did say, however, that a contracting party could not restrict imports of a product merely because it originated in a country with environmental policies different from its own. As such, the Panel report had presented a balanced picture of the relationships between trade and environment policies, and Japan urged the Council to adopt it.

The representative of Australia said that this issue was of clear interest to his country as demonstrated through its third-party submission to the Panel. The remarks by several previous speakers had clearly shown that this issue was located within a much wider field of important current interests, concerns and sensitivities. The international community would have opportunities to debate trade and environment issues for some time to come. With respect to the matters raised by the report in its conclusions, Australia's view was that the United States' unilateral extra-jurisdictional measures in relation to both the primary and intermediary embargoes were clearly GATT inconsistent. Australia therefore urged the United States to take steps to eliminate these measures. Recent developments in relation to a US Federal Court ruling were disturbing and Australia sought clarification thereon in the context of the United States' obligations under Articles I, X, and XI. In Australia's view, it would be severely prejudicial to contracting parties' rights and obligations if a precondition for their access to the US yellowfin tuna market were that they prohibited imports of the same product from countries unilaterally designated from time to time under the primary embargo. The further extension of unilateral extra-jurisdictional measures could also raise concerns in relation to contracting parties' obligations under other GATT-consistent trade treaties. In conclusion, and beyond questions of GATT consistency, Australia considered that the proliferation of such unilateral measures was not conducive to meeting the United States' objectives as set out in the Marine Mammal Protection Act in respect of relations with other contracting parties.

The representative of Hong Kong said that while his country's trade was not affected by the dispute, Hong Kong was a staunch supporter of the multilateral trading system, and attached the utmost importance to upholding the principle of free-trade and to the preservation and improvement of the environment. His delegation agreed with the principle at the basis of the Panel report's conclusions that a contracting party could not restrict imports of a product merely because it originated in a country with environment policies different from its own. His delegation also agreed with the views expressed in paragraph 6.4 of the report, and in particular the reference to the "present rules of the General Agreement". Hong Kong supported those delegations that had requested adoption of the report. Now that the Panel had completed its deliberations, it was the collective responsibility of the CONTRACTING PARTIES to decide within a reasonable time period whether the report should be adopted with or without any further recommendations. This task could not be avoided without jeopardizing the credibility of the GATT, which was the competent body to deal with trade disputes including those that might have environmental implications.

The representative of Korea said that his delegation shared the previous speakers' concern about the United States' restrictive measures concerning certain tuna imports, as well as the recent Federal Court ruling which excessively expanded the embargo on tuna and tuna products currently enforced under domestic US law. This dispute had drawn a great deal of attention when Mexico had brought it before the Council because it had been a typical example of a trade-restrictive measure taken for environmental reasons. His delegation supported adoption of the Panel report as its conclusions had made it clear that unilateral actions were not consistent with GATT provisions. Korea believed that unilateral and extra-territorial actions of any country in the interest of environmental protection could not be justified under GATT principles. Korea noted the conclusions in the report that the US embargo on imports of certain yellowfin tuna and tuna products from Mexico was contrary to Article XI:1 and not justified by Article XX(b) or (g). Korea also noted that a chapter on environment in the forthcoming GATT annual report on International Trade 1990-1991 stated that GATT rules would not prevent governments from adopting efficient policies to safeguard their own domestic environment, and also that the rules were not likely to block regional efforts. While Korea was committed firmly to supporting any efforts of the international community for environmental protection, it was of the view that trade measures in the interests of environmental protection had to be taken on the basis of multilateral cooperation and understanding, and not unilaterally. Multilateral cooperation in this area was needed now more than ever. Korea therefore not only supported adoption of the Panel report, but remained concerned about its proper implementation.

The representative of Bolivia said that while Bolivia had not been affected by the restrictive measures, it could not remain indifferent as this matter touched upon important GATT issues and on the preservation of the environment. There was no doubt that each contracting party was clearly concerned with preserving animal species and the general ecological balance. However, some measures, under the pretext of environmental protection, were being wrongly applied by contracting parties and led to

trade distortion. The Panel's recommendations, in Bolivia's opinion, represented the outset of a serious appeal to deal with these issues multilaterally. For these reasons, Bolivia agreed with the statements by the European Communities, Argentina and others, and favoured adoption of the Panel report and its early implementation.

The representative of Colombia said that his delegation would join those that had supported adoption of the Panel report. He noted that the Panel's recommendations in paragraphs 6.1 to 6.4 and the conclusions in paragraph 7.1 to 7.3 of the report, and the use of primary embargoes by the United States and the application of the principle of intermediary nations constituted an important precedent which showed the path to the future linkage between import restrictions for environmental reasons and the General Agreement. For this reason, the time was right to support adoption of the report.

The representative of Brazil pointed out that some issues, even though they had originated as bilateral disputes, were matters of general and multilateral interest. The application of the mfn clause was one of these instances, the issue of environment and trade was another. Of course the relation between trade and environment was complex, and Brazil was concerned about having important and meaningful standards on environment. Whatever the standards, it was important that they be multilaterally agreed in the appropriate forum. It was also important, as had been stressed by others, that environmental matters be subject to international cooperation rather than international dispute. More significantly, the Panel report set out in clear terms the limits to action outside national jurisdiction that contracting parties could take in order to address particular environmental concerns. Of utmost relevance was the conclusion that national measures should be consistent with the contracting parties' GATT obligations. Brazil thought, therefore, that the Panel report should serve as an important reference in the discussions which had just begun in the context of the Group on Environmental Measures and International Trade, and indeed in the broader context of the UNCED itself. His delegation thus looked forward to its early adoption.

The representative of the United States said that in commenting on the general issue of environmental protection and its relation to the GATT, he would refrain from discussing in detail the reasoning or findings of this Panel report since it was not being considered for adoption at the present meeting. He would assure other contracting parties, however, that their statements would be fully transmitted to his authorities. The United States felt a strong sense of obligation to support efforts to protect the earth's living marine resources such as dolphins, and noted support for this objective by many other countries, including Mexico. The issues raised by the Panel report were complicated and deserved much attention by the United States and Mexico, as well as other contracting parties. The report raised a number of questions which were particularly broad in scope and of potentially great significance to both the global environment and to the GATT system. The United States remained hopeful of being able to work out a solution which would accommodate the many interests involved. It would, like some previous speakers, invite all those interested in questions relating to the intersection of trade and environmental policy to

support and participate in the efforts of the Group on Environmental Measures and International Trade.

His delegation would report back to its authorities the views expressed by nearly all other contracting parties that the GATT did not authorize a contracting party to impose trade restrictions in order to force another contracting party to adopt different environmental or conservation measures. He had to disagree, however, to some extent with the Community which had stated that this report would not cause a collision between trade and environmental interests. Clearly, certain US Congressmen would see a conflict and, in their view, international efforts thus far to impose dolphin-safe fishing methods in the eastern tropical Pacific had fallen short of expectations. If one were to prevent these conflicts between environmental and trade interests -- conflicts where, in the final analysis, no government was a winner -- one had to find a way to address multilaterally the resource conservation or environmental questions that transcended national boundaries. These solutions, in the United States' view, had to reflect a high degree of respect for the environment and for natural resources. He recognized that this message was aimed at two targets: those in the United States who believed that these problems could be solved unilaterally through trade measures, and those outside the United States who perhaps were reluctant to accept any need for drawing a greater inter-relationship between the GATT and the environment. In the final analysis, the United States did not want to restrict trade. That was not its objective. However, it felt very strongly about preserving mankind's natural resources -- the common heritage of all nations. The only rational answer for all was, therefore, to try to work together to achieve these objectives.

As to the matter of recent US court orders concerning tuna imports, he said that though the United States recognized the hardship and the trade disruption caused by them, the Administration had no discretion in implementing such orders. It had vigorously pursued its available remedies within the United States' judicial system first by asking the Federal District Court, which had initially heard this case, to withhold imposing the embargo until the Government had appealed the case and, when that request had been denied, by asking the Court of Appeals to stay the order of the District Court pending appeal. In requesting these stays, senior government officials had provided affidavits to the Courts concerning the adverse impact and trade disruption of the embargo. The Administration had now appealed the order imposing the embargo but, unfortunately, the Appeals Court had refused to suspend the embargo pending of this appeal. The Administration would continue to review its options and to press for a prompt resolution of its court appeal. At this point, however, the only way to obtain relief from the court order in the near future might be through legislation. In the meantime, the United States would be pleased to work with individual countries to provide them with information regarding the measures it had imposed, and to seek to answer any questions they might have. He was certain that there would be other occasions to discuss this matter in the GATT. It was good that this issue of trade sanctions for environmental purposes was now being openly debated. All should acknowledge that this difficult subject had to be addressed and resolved if serious trade problems were to be avoided in the future. From

the large number of delegations that had spoken, it was obvious that this issue was on the minds of many people in much broader terms than the mere facts of this particular dispute.

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

10. EEC - Trade measures taken for non-economic reasons
- Recourse to Article XXIII:2 by Yugoslavia (DS27/2)

The Chairman recalled that at the CONTRACTING PARTIES' Forty-Seventh Session, Yugoslavia had raised the matter of trade measures taken against it for non-economic reasons by the European Communities, and that on 23 December 1991 Yugoslavia had requested consultations with the European Communities (DS27/1). He drew attention to the recent communication from Yugoslavia requesting the establishment of a panel to examine its complaint (DS27/2).

The representative of Yugoslavia recalled that on 11 November 1991, the European Economic Community and its member States had adopted a set of broad economic sanctions against Yugoslavia, thereby suspending the benefits of previously granted trade concessions. On 2 December, the Community and its member States had decided to apply "selective measures" in favour of "those parties which contribute to progress towards peace". Yugoslavia's evaluation of these sanctions had been set out clearly at the Session and in its communications in L/6945 and DS27/2, and he would not go into details at the present meeting. However, he would draw attention to the fact that on 23 December 1991, Yugoslavia had formally requested Article XXIII:1 consultations with the Community to which the latter had regrettably not yet replied. Therefore, and in the firm belief that its GATT rights had been violated, Yugoslavia formally requested the prompt establishment of a panel pursuant to Article XXIII:2 and to paragraphs C.1 and F(a) of the April 1989 Decision on improvements to the GATT dispute settlement rules and procedures (BISD 36S/61). Considerable efforts were currently being invested by the entire international community to formulate and implement a meaningful, comprehensive and effective peace programme for Yugoslavia. All should participate in this endeavour, each to its own capacity, and Yugoslavia hoped that the Community would see it fit to join therein.

The representative of the European Communities said that in a continually changing situation the Community had taken certain measures with effects it believed were limited and which essentially consisted of withdrawing preferences. The Community therefore questioned whether the issue in this case involved a violation of Article I. Moreover, the extent to which preferences had been granted or withdrawn had itself been subject to evolution as the situation in Yugoslavia had changed. Under the circumstances, and given the fluidity of the situation, the Community had thus far felt unable to accede to Yugoslavia's request for consultations. The climate was changing, however. Indeed, in a declaration made the previous day, the Community and its member States had noted with appreciation Serbia's constructive attitude, which would be taken into

account when reviewing the question of positive measures. In a delicate and continually evolving situation, the Community's primary objective had to be to do nothing that would hamper the peace processes that had been engaged in to find a political solution to Yugoslavia's difficulties. The Community believed that the establishment of a GATT panel could only exacerbate the problem. But, in the light of developments, the Community now felt able to respond positively to Yugoslavia's request for consultations, under the proviso that these should be without prejudice to the legal basis of the measures the Community had had to take.

The representative of Chile said that her Government supported the right of any contracting party to request establishment of a panel when it considered its GATT rights to have been affected by another party. For this reason, Chile supported Yugoslavia's request.

The representative of Cuba expressed support for the establishment of a panel for the same reasons as Chile's.

The representative of Venezuela added his Government's support for Yugoslavia's request.

The representative of India recalled his delegation's statement at the Session that trade measures for non-economic reasons should be taken only within the framework of a decision by the UN Security Council, in the absence of which there was a serious risk that such measures would be unilateral and arbitrary, and would undermine the multilateral trading system. India had also expressed the hope then that there would be an amicable settlement of the matter to the satisfaction of all parties concerned. Yugoslavia's request at the present meeting indicated that the matter had not been so resolved. India had listened with attention to the Community's statement and had noted the latter's readiness to enter into consultations with Yugoslavia. India believed that Yugoslavia's request for a panel to examine the GATT-consistency of the Community's measures encompassed an issue which was covered by GATT provisions. While it supported this request, India nevertheless hoped that consultations would enable the two parties to arrive at a mutually satisfactory solution which would contribute to the peace process.

The representative of Yugoslavia said his delegation had listened with attention to the other speakers. He reiterated that his Government was willing to hold consultations on this matter with the Community, although it would do so without prejudice to its request for a panel. If the problem were not resolved through consultations prior to the next Council meeting, Yugoslavia would expect a panel to be established at that meeting in accordance with paragraph F(a) of the 1989 Decision on dispute settlement procedures.

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

11. Trade and environment
- GATT's contribution to the UNCED

The Chairman recalled that the question of GATT's contribution to the forthcoming United Nations Conference on Environment and Development (UNCED) had been among the subjects of the informal consultation process carried out by the CONTRACTING PARTIES' Chairman in the course of 1991. He also recalled that the Secretariat had circulated two factual background notes on the subject in documents L/6892 and Add.1 and L/6896. Also, an advance copy of a study by the Secretariat -- which would appear as a chapter in the GATT annual report on International Trade 1990-1991 -- had recently been made available. Following consultations with a large number of delegations on this subject, he proposed that the Council invite the Director-General to send to the UNCED the factual note contained in document L/6896, together with the chapter on trade and environment from the GATT annual report, as the Secretariat's contribution. It would, of course, be understood that these documents would be sent on the Secretariat's own responsibility and would not in any way purport to reflect the views of contracting parties, individually or collectively. This would be inscribed in a cover note to each document.

The Council agreed to the proposal.

12. Roster of non-governmental panelists
- Proposed nomination by Israel (C/W/691)

The Chairman drew attention to document C/W/691 containing a proposal by Israel for nomination to the roster of non-governmental panelists.

The Council approved the proposed nomination.

13. Agreements among Argentina, Brazil, Paraguay and Uruguay

The representative of Brazil, speaking also on behalf of Argentina and Uruguay, under "Other Business", said that on 17 February, the Secretary-General of the Latin American Integration Association (LAIA) had notified the GATT of the entry into force of the Treaty establishing the Southern Cone Common Market (MERCOSUR). This notification, made under the Enabling Clause⁴, referred to the fact that Argentina, Brazil, Paraguay and Uruguay had signed an Economic Complementarity Agreement under the Montevideo Treaty of 1980. In conformity with Article I of that Agreement, which legally incorporated the MERCOSUR Treaty into the Montevideo Treaty, MERCOSUR aimed at facilitating conditions for the establishment of a common market, the main instruments of which would be a programme of trade liberalization, the coordination of macro-economic policies, the formation of a common external tariff and the adoption of sectoral agreements with

⁴Differential and More Favourable Treatment, Reciprocity and Fuller Participation of Developing Countries (BISD 26S/203).

regard to the mobility of factors of production. The MERCOSUR was expected to be completed by 31 December 1994. Its objectives were compatible with those of the General Agreement which aimed to promote trade among contracting parties. The parties to the MERCOSUR were willing to consider all aspects of this Treaty in greater detail with other contracting parties at the next meeting of the Committee on Trade and Development which he said was the organ of the CONTRACTING PARTIES with competence in this particular matter.

The representative of the European Communities thanked Brazil for the information provided. The MERCOSUR was one of several regional agreements that were either in the making or already concluded, in particular in Latin America, and the Community believed that their notification was a matter of concern to the GATT, both in the interests of information and in order that the correct procedures might be followed. The Community did not wish to elaborate at this stage what the correct procedures might be with regard to the MERCOSUR, and acknowledged that there could be differing opinions thereon. In the Community's view, the MERCOSUR went well beyond the simple reduction or elimination of tariffs for the purposes of regional interests. It was for the Council to consider how the particular elements of the MERCOSUR affected the functioning of the General Agreement, and how they should be discussed.

The representative of the United States encouraged the contracting parties involved in the laudable effort of creating a common market with a common external tariff to follow Article XXIV requirements. While it was clear that the "Enabling Clause" provided for notification to the GATT and for review of less comprehensive trade preferences among developing countries, there was no substitute for following Article XXIV procedures which were developed precisely to cope with the creation of custom unions and free-trade areas. The United States supported open market policies and was, therefore, encouraged by and supportive of the efforts of many Latin American countries to reduce barriers to trade and investment. It believed that a strong multilateral trading system was fundamental to a prosperous America and that a successful Uruguay Round which strengthened this system was its most important element. It further believed that transparency was an essential element in maintaining a strong GATT, and in this regard, Article XXIV involving customs unions and free-trade areas played an integral rôle in ensuring the transparency of m.f.n. derogations. Furthermore, by following Article XXIV, a signal was sent to the international community that such an agreement would be trade generating and thus help to attract investment -- clearly an objective of the parties to the emerging Southern Cone Common Market.

The representative of Argentina said that the MERCOSUR was being implemented within the framework of the LAIA, which he noted dated back to 1960. He recalled that the Montevideo Treaty of 1980 had changed the objectives of the LAIA in order to achieve a common market encompassing most of the Latin American countries. The LAIA's secretariat had notified the Committee on Trade and Development regularly in respect of the various economic agreements in the Latin American region and complete transparency had been maintained. As had been indicated by Brazil, the parties to the MERCOSUR stood ready to examine this Treaty in greater detail with other

contracting parties. In this connection, he noted that the Treaty had only now been notified to GATT for no other reason than that it had only recently been ratified and had entered into force. As to the forum, Argentina believed that there was no impediment to analyzing the MERCOSUR Treaty in total transparency and in depth in the Committee on Trade and Development.

The representative of Australia thanked Brazil for the information that had been provided. Australia strongly supported transparency in this matter and noted that the parties to the MERCOSUR had themselves acknowledged the importance of this. At an appropriate time it would be important to subject these arrangements to some form of GATT examination which, on first thought, Australia would see as being done under Article XXIV.

The representative of New Zealand thanked the parties to the MERCOSUR for the information they had provided. New Zealand hoped that the countries concerned would give very careful consideration to taking the Article XXIV route.

The representative of Japan said that his Government had been following developments among the MERCOSUR countries closely and with considerable interest, and welcomed their intention to provide further information in the interests of transparency. Japan would examine that information very carefully.

The Council took note of the statements.

14. US/Japan automotive arrangements

The representative of Australia, speaking under "Other Business", expressed concern at recent official statements in Japan and the United States endorsing arrangements to greatly increase Japan's purchases of US auto parts by 1995. The arrangements would see an additional US\$2 billion in United States' exports to Japan and US\$8 billion in sales to Japanese automobile plants in the United States. Although presented as private undertakings by industry, these arrangements had been endorsed at Government level. As such, they appeared to fall into the category of grey-area measures, in respect of which efforts were being made in the Uruguay Round safeguards agreement to strengthen GATT disciplines. Australia was concerned that these arrangements had the potential to discriminate against other suppliers of automotive parts and believed that the GATT should monitor them. It might be claimed, in defence of such arrangements, that other suppliers would have opportunities to compete on the basis of price and quality. If that were truly the case, the need for and the purpose of such arrangements was not clear. Australia was also concerned that such bilateral arrangements should not be regarded as a model to guide the further development of international trade. Certainly, Australia would not see these as being in the interests of a freer and more open multilateral trading system if arrangements which today influenced decisions in respect of imports or purchases of automotive parts would tomorrow be taken as a model to influence trade in other sectors.

The representative of Canada said that his country had a significant automobile and parts trade with both Japan and the United States. In this context, it supported initiatives to liberalize trade leading to more open markets. While Canada shared Australia's concerns, it presumed and expected that such initiatives would be consistent with the m.f.n. principle of the GATT. If reality turned out to the contrary, Canada would revert to this matter in the future.

The representative of Brazil said that his country also was an exporter of automobiles and parts, and that its interests could be affected by some provisions of these arrangements depending on how they were applied. These arrangements were of special concern at a time when Brazil was liberalizing the automobile sector in its own market. Brazil reserved the right to revert to this matter in the future.

The representative of the United States said that his delegation had not had sufficient notice of Australia's intention to raise this matter at the present meeting and was, as a result, unable to make any substantive comments thereon. In this connection, he recalled that at the July 1991 Council meeting, the Chairman had encouraged representatives wanting to have a substantive debate on any issue to bring these to the notice of the Secretariat in sufficient time to have them placed on the airgram convening the meeting, thus allowing all parties concerned to prepare themselves for the discussion.

The Council took note of the statements.

15. Finland - Estonia Free-Trade Arrangement

The representative of Finland, speaking under "Other Business", informed the Council that on 13 February, Finland and Estonia had signed a Protocol regarding a temporary arrangement on trade and economic cooperation between their two countries. The arrangement provided for free trade in industrial products between Finland and Estonia in accordance with the relevant GATT provisions. A formal notification of this arrangement would be made in due course.

The Council took note of the statement.

16. EEC - Association Agreements with Hungary, Poland and the Czech and Slovak Federal Republic

The representative of the European Communities, speaking under "Other Business", said that on 16 December 1991, three agreements -- referred to as "European Agreements" -- had been signed between the Community and Hungary, Poland and the Czech and Slovak Federal Republic. These agreements established an association between the Community's member States

⁵ See C/M/251, item 22.

and each of the three countries concerned. Also on 16 December, three interim agreements had been signed between the same parties, which took up the trade provisions of the "European Agreements" as a whole. The interim agreements would enter into force on 1 March 1992, pending the entry into force of the basic agreements themselves following ratification by national parliaments. The interim agreements provided for the gradual setting up of a free-trade area between the Community and each of the three countries in the sense of Article XXIV. The free-trade régime would be implemented over a transitional period of a maximum of ten years, at the end of which customs duties and other trade restrictive measures between the parties would be eliminated. The texts of these agreements would be communicated to contracting parties in conformity with GATT procedures.

The representative of Hungary, also on behalf of Poland and the Czech and Slovak Federal Republic, said that the three countries had decided to make a joint declaration in connection with the agreements referred to by the Community because in spite of the definite differences which existed -- differences which reflected the diverse conditions that prevailed in their countries -- the basic conception, structure and essential provisions of these agreements had been the outcome of a similar approach. The agreements set up an association and a free-trade area under Article XXIV between the Community, on the one hand, and each of the three countries separately on the other. Interim agreements signed at the same time as the association agreements took up the trade provisions of the latter so as to implement these without waiting for the ratification procedures for the basic agreements to be completed. In the course of the ten-year transitional period which was expected to be necessary for establishing the free-trade area, the parties would eliminate tariffs and other barriers to trade asymmetrically. That elimination would be carried out more quickly by the Community than by its other partners. This was justified because of the disparate economic and social conditions in the different countries involved. At the same time, this asymmetry reflected the Community's will to contribute decisive support to the transitional process in Hungary, Poland and the Czech and Slovak Federal Republic towards a market economy. The association agreements not only met their countries' current reciprocal needs for increased market access but also their ultimate objective of acceding to the European Communities, which the association intended to facilitate.

The Council took note of the statements.

17. EFTA - Turkey Free-Trade Agreement

The representative of Iceland, speaking under "Other Business", said that a free-trade agreement between the EFTA countries and Turkey, initialled on 17 October and signed on 10 December 1991, was expected to enter into force on 1 April 1992 after the ratification process in the different countries concerned. On the entry into force of the Agreement, the EFTA countries would eliminate all duties on those products from Turkey falling within its scope, except for some sensitive goods such as textiles, on which a transition period for tariff dismantlement -- until the end of 1995 -- was foreseen. During the same transition period Turkey would

gradually abolish all duties on products from the EFTA countries. The Agreement also laid down provisions in areas such as public procurement, intellectual property rights, state aid, competition and dumping. An evolutionary clause provided the possibility of developing relations in areas not covered by the Agreement. In addition, bilateral agreements had been concluded between each EFTA country and Turkey covering agricultural products. The objective of the Agreements was to abolish tariffs and other restrictions on substantially all trade between the EFTA countries and Turkey. Information on these Agreements would be provided to contracting parties in due course.

The Council took note of the statement.