

GENERAL AGREEMENT ON

TARIFFS AND TRADE

RESTRICTED

C/M/257

10 July 1992

Limited Distribution

COUNCIL

19 June 1992

MINUTES OF MEETING

Held in the Centre William Rappard
on 19 June 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. Dominic Liu, Counsellor in the Secretariat, who had passed away on 15 June.

1. Yugoslavia

- Status as a contracting party (L/7000, L/7002, L/7007, L/7008, L/7009, L/7022)

The Chairman said that the break-up of the former Socialist Federal Republic of Yugoslavia had posed the question of its status as a contracting party. While the delegation speaking in the name of the Federal Republic of Yugoslavia (FRY) had laid claim to the status of successor to the former Socialist Federal Republic of Yugoslavia (L/7000), this claim had been contested by some contracting parties and some others had reserved their position on the issue. Some contracting parties had also suggested that the delegation claiming to represent the FRY as a successor to the Socialist Federal Republic of Yugoslavia (SFRY) in GATT should not participate in GATT activities until the FRY had sought fresh membership, while others held the view that its participation should be without prejudice to the FRY's claim to successor status. He had held extensive informal consultations with contracting parties and believed there was agreement that this issue would need consideration by the Council. In these circumstances, without prejudice to the question of who should succeed the former SFRY in the GATT, and until the Council considered this issue, he proposed that the representative of the FRY should refrain from participating in the business of the Council.

The Council so agreed.

2. Requests for observer status

- (a) Albania (L/7024)
- (b) Estonia (L/7030)
- (c) Moldova (L/7026)
- (d) Turkmenistan (L/7027)

The Chairman recalled that at its meeting in May 1990, in connection with the former USSR's request for observer status, the Council had taken note of the current rules and practices concerning observer status in the GATT and had agreed that the whole issue of the status of observers and the rights and obligations of observers should be reviewed at the end of 1992 (C/M/241, item 1). On the basis of informal consultations on the requests for observer status by Albania, Estonia, Moldova and Turkmenistan, he suggested that the understandings regarding observers that had been noted at the May 1990 Council meeting should also apply to these governments if the Council approved their requests.

He then proposed that the Council take note of his statement, agree to his suggestion and agree to grant the governments of Albania, Estonia, Moldova and Turkmenistan observer status.

The Council so agreed.

The Chairman welcomed the two delegations that were present that day -- Estonia and Moldova -- to the Council. He expressed the hope that these governments' association with the work of the GATT as observers would lead to their early accession in accordance with the normal procedures under the

General Agreement. He informed the Council that a request for observer status had also recently been received from the government of Armenia. This and any other requests that might be forthcoming would be considered at future Council meetings. Referring to the increasing number of requests for observer status and the prospective increase in the number of contracting parties, he said that the Council would need to address in due course the question of the capacity of the Council room to accommodate the additional delegations at its meetings.

The representative of the European Communities said that the governments that had just been granted observer status, and any others that might be accorded such status by the year's end, should be included in the review of the whole issue of the status of observers and their rights and obligations foreseen for the end of 1992. The question of observership was very important, and was a matter both of benefits as well as obligations for observer governments during the period of their observership. The Community believed this period had to be time-limited, not open-ended, and that it was meant to be an educational process on both sides. It allowed observers to begin to understand the GATT mechanism, and contracting parties to learn about the foreign trade régimes of the observer countries concerned, through periodic reports and reviews. These issues would be uppermost in the Community's mind at the year-end review referred to earlier.

The Council took note of the statements.

3. Committee on Budget, Finance and Administration
- Report of the Committee (L/7017)

Mr. Szepesi (Hungary), Chairman of the Committee, introduced the Committee's report (L/7017) on its meeting of 26 May.

With regard to the Director-General's Financial Report on the 1990 accounts and the Report of the external auditor thereon (L/6970), he recalled that in November 1991, the Council had endorsed the Budget Committee's recommendations in connection with the Final Position of the 1990 Budget (L/6860). It had also endorsed the Director-General's recommendation with respect to the uncovered balance at 31 December 1990 (Spec(91)80). These accounts as well as the Council's recommendations had been examined and reported on by the external auditor.

With regard to Uruguay Round staff, he recalled that their contracts had been extended until 31 December 1992. Since the exact timing of the Round continued to be unknown, an assessment of the organization's needs after the Round was difficult to make at the present time, and might be no easier in October, when the 1993 budget would be discussed. However, it was clear that these staff would be needed as long as the Round continued, and beyond the end of the Round for the follow-up to it. It had been noted in the Committee's discussion that its recommendation (paragraph 23) should not prejudice any debate on the requirement of the Secretariat's staff level after the completion of the Round. It had also been made clear that this recommendation was without prejudice to the actual amount eventually approved for this item in the 1993 Budget.

The Council took note of the statement, approved the Committee's specific recommendations in paragraphs 7 and 23 of the report, and adopted the report in L/7017.

4. United States - Measures affecting alcoholic and malt beverages
- Panel report (DS23/R)

The Chairman recalled that at its meeting in May 1991, the Council had established a Panel to examine Canada's complaint. At its meeting in April 1992, the Council had considered the Panel report (DS23/R), and had agreed to revert to it at the present meeting.

The representative of Canada said that Canada supported adoption of the Panel report. He urged other contracting parties to agree to adoption at the present meeting, noting that this was the second time that the report had come before the Council. The United States was the largest single market for exports of Canadian beer, wine and cider. Approximately 10 per cent of all beer produced in Canada, or approximately CAN \$200 million, was exported to the United States which also represented an important and growing market for Canadian wine and cider. The measures found to be inconsistent by the Panel with respect to taxation, distribution, transportation, pricing, listing/delisting and access to points of sale constituted significant barriers which restricted the ability of Canadian producers to compete in the US market. Continued existence of these barriers seriously prejudiced Canadian producers of the products concerned.

The representative of the United States said that as his delegation had stated at the April Council meeting, his authorities viewed this Panel report as unprecedented. It was the first Panel report to address whether certain US state practices were inconsistent with that country's GATT obligations. Indeed, the report had examined more than 80 practices of the US federal government, 40 states, and the Commonwealth of Puerto Rico. Given the scope and complexity of the measures at issue, an impartial observer could be led to conclude that the trade interests at stake must be quite significant. But that was not the case; the beer and wine of all countries, including Canada, could freely and fairly be offered for sale in all 50 states. Commercial competitiveness, not trade barriers, determined which brands succeeded in the US market and which did not. Nonetheless, the United States took the GATT dispute settlement process very seriously. This was why it had embarked on an extensive consultation campaign with its states when Canada had first brought its complaint, which it had intensified since the Panel had issued its report. The United States had been discussing with its states and Congress ways in which it could bring its practices into compliance with its GATT obligations. It would not oppose adoption of the Panel report in the case at hand if that was the will of the Council. In addition, it would make serious efforts to achieve prompt conformity with the report, within the confines of its constitutional system. As the United States had stated previously, both before the Panel and the Council, in the US federal system the states had substantial law-making authority. This was particularly true in the area of the regulation of alcoholic beverages in respect of which the states operated under an explicit grant of authority from the 21st Amendment to the US Constitution.

While the United States would not oppose adoption of the Panel report, it would enter for the record a formal reservation regarding two portions of the report -- affecting less than a dozen practices out of more than 80 examined -- which it considered to have been incompletely examined and incorrectly reasoned by the Panel. The United States could not and did not accept the Panel's description, reasoning, or conclusions in these portions of its report as legally valid or binding, now or in the future, either with regard to those practices considered or any other practices that might fall within those categories. The matters involved concerned aspects of US constitutional law that were among the most complex issues of constitutional jurisprudence in the entire US legal system. They concerned, among other things, questions about the relationship of the authority of the states to that of the Federal Government, and the states' authority under the 21st Amendment to regulate the sale and distribution of alcoholic beverages within their borders. They concerned issues about which the US court system itself had yet to give definitive legal interpretation.

The first issue related to the Panel's analysis of the applicability of Article XXIV:12 to this case, and did not directly affect any US practices at the present time. This portion of the report (paragraphs 5.78-5.80) also raised some of the constitutional issues that he would discuss shortly, and the United States could not subscribe to the analysis presented therein. The second issue concerned whether the so-called "grandfather clause" in the Protocol of Provisional Application (PPA)¹, through which the United States had acceded to the General Agreement, covered prior state as well as federal legislation, in particular the specific alcoholic beverage regulations examined by the Panel. In this portion of the report (paragraphs 5.44-5.48) the Panel, based on an incomplete analysis of US court precedent concerning fundamental constitutional issues, had made sweeping conclusions that would dramatically alter the conditions under which the United States had originally agreed to abide by GATT obligations and could, if followed in any future cases, affect the nature of the United States' obligations in the future. In general, the Panel seemed to have concluded, incorrectly, that US state statutes could never be covered by the PPA. In particular, among other things, the Panel had incorrectly extrapolated from one line of US Supreme Court cases concerning state tax issues to conclude that state issues under consideration in this portion of its report -- concerning the distribution of alcoholic beverages -- would be governed by the Commerce Clause of the US Constitution, despite explicit state authority under the 21st Amendment, and therefore would not be eligible for coverage under the PPA. These, indeed, involved weighty and complex issues of US domestic constitutional law. They had, in the United States' view, only a tenuous, if any, relationship to the United States' GATT obligations if one proceeded from the premise that the United States had intended to, and had in fact, covered prior existing state and federal legislation under the PPA. While the present meeting was not the time or place to examine these issues in detail, he wished to make it completely clear that the United States rejected the description, analysis, and conclusions of these

¹BISD Vol.IV/77.

portions of the report as being incomplete and incorrectly reasoned. Given the constraints of the present dispute settlement system, the United States had not been given an opportunity to respond to the Panel's reasoning in this area, which seemed to be based, at least in part, on information that had not been presented by either party to the dispute.

The representative of Canada said his delegation was pleased that the United States had agreed to adoption of the report. Canada looked forward to meeting with the United States soon to discuss implementation of the Panel's recommendations. The United States had been accorded ample opportunity, both during the consultative phase and during the Panel's deliberations, to provide evidence, argument and clarification concerning its federal and state law and practice. In Canada's view, the Panel had carefully considered all arguments, evidence and clarification presented to it and had properly interpreted the relevant GATT provisions. Canada believed that the Panel report should be adopted without reservations.

The representative of the European Communities said that the Community, like Canada, had a direct interest in this matter and considered that the measures found to be inconsistent by the Panel constituted a significant barrier to the US market. The Community considered the United States' comments in respect of the Panel report as a statement of national position. The Community would study these comments, although it remained convinced, like Canada, of the validity of the Panel's reasoning. Adoption of this report would not be the end of the process. The Community would pay considerable attention to the ways and means in which the United States would seek to bring its state legislation into GATT conformity and, if the latter's efforts were found to be inadequate, would revert to this matter as appropriate.

The representative of New Zealand said that his country also had an interest in this case and had made a third-party submission to the Panel. The US market for the products under examination was very important to New Zealand. His delegation urged the United States to fully implement the Panel's recommendations, and would examine carefully the United States' statement concerning the report.

The representative of Australia said that his country, too, had an interest in this case and had also made a third-party submission to the Panel. Australia supported the Panel's reasoning and conclusions and hoped that the United States would promptly and fully implement its recommendations. It regarded the United States' statement as one of national position. Australia wished to be kept informed of the steps taken by the United States toward implementation of the report.

The representative of Argentina said that his country had an important interest in the US market for the products in question, and had noted that the United States would not oppose adoption of the Panel report. In Argentina's view, the Panel's reasoning of the case relating to federal and sub-federal levels of government were in conformity with Article XXIV:12.

The Council took note of the statements and adopted the Panel report in DS23/R.

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

The Chairman recalled that at its meeting in April 1991, the Council had established a Panel to examine Brazil's complaint. At its meetings in February, March and April 1992, the Council had considered the Panel report (DS18/R), and in April had agreed to revert to it at the present meeting.

The representative of Brazil reiterated his Government's request, expressed at previous Council meetings, that the United States agree to adoption of this Panel report.

The representative of the United States said that although the United States considered the Panel's analysis and conclusions to be seriously flawed, it would agree to adoption of the report out of respect for the dispute settlement process. The United States noted, however, that Brazil had repeatedly blocked adoption of a panel report on the same issue (SCM/94) in the Subsidies Code² Committee, which had concluded that the United States had acted consistently with the Code in declining to revoke a countervailing duty order on non-rubber footwear imports from Brazil as of the date of Brazil's accession to the Code. While the United States would be justified in refusing to allow adoption of the Panel report at hand (DS18/R) until Brazil had allowed adoption of the report under the Code, it would not do so. However, it fully expected, and would insist, that Brazil follow its example and allow the report under the Code to be adopted.

The United States also wished to emphasize its disagreement with two aspects of the report. First, the Panel had ignored the fact that the Protocol of Provisional Application (PPA)³ relieved the United States from the obligation to provide any injury test for dutiable merchandise, including footwear, subject to countervailing duty orders. Second, the Panel had erroneously concluded that the United States had violated Article I. The m.f.n. clause expressly applied to "like products", and the United States had accorded identical treatment to imports of non-rubber footwear -- the "like product" -- from all countries. For these reasons, it believed that the Panel had erred in concluding that the United States had acted inconsistently with the General Agreement. Nevertheless, the United States agreed to the adoption of this report, which had expressly provided only a general ruling and had not made any specific recommendation.

The representative of Brazil welcomed the United States' decision to agree to adoption as a step in the right direction. Mere adoption, however, was not sufficient. It was important for the United States to take the necessary steps to bring itself into compliance with the Panel's

²Agreement on Interpretation and Application of Articles VI, XVI and XXIII (BISD 26S/56).

³BISD Vol.IV/77.

conclusion. Brazil therefore expected that the mental reservations expressed by the United States would not be to the detriment of implementation. As Brazil had repeatedly stated, this dispute was no academic matter, and had been brought to the Council as a result of its significant impact on Brazil's export interests. In Brazil's understanding, adoption of a panel report implied compliance with it, and it reiterated its expectation that the United States would take the necessary steps to implement the Panel's conclusion and bring itself into GATT compliance.

The representative of Australia said that against the background of a situation in which panel reports were not being adopted or their recommendations not being implemented, Australia considered the United States' decision a positive development.

The representatives of Argentina, Mexico, Colombia, Uruguay, Chile, Costa Rica, Nicaragua and Venezuela welcomed the United States' decision, which they regarded as a step in the right direction and one which would reinforce the multilateral trading system. They hoped that implementation of the Panel's conclusion would occur promptly and that Brazil would be accorded the adjustment it had been seeking.

The representative of Argentina recalled that his delegation had urged adoption of the Panel report at the March and April Council meetings. It welcomed such a development, despite the United States' mental reservations. Argentina fully agreed with Brazil that violation of the m.f.n. clause constituted a discrimination.

The representative of Mexico recalled that on several occasions in the Council his delegation had stated that it considered the m.f.n. clause to be the pillar of the General Agreement.

The representative of Colombia expressed the hope that even though the Panel had not made any specific recommendation, the United States would revoke the countervailing duties in question as from the date Brazil had assumed its obligations under the Subsidies Code. Colombia also shared the United States' expectation that the Panel report pending in the Subsidies Committee should be adopted.

The Council took note of the statements, adopted the Panel report in DS18/R, and agreed that in accordance with the procedures adopted by the Council in May 1988 (BISD 35S/331), the report was thereby derestricted.

6. EEC - Payments and subsidies paid to processors and producers of oilseeds and related animal-feed proteins
- Follow-up on the Panel report
 - Report of the members of the original oilseeds Panel (DS28/R)
 - Proposal by the European Economic Community (DS28/2)

The Chairman recalled that at its meeting in April, the Council had considered the follow-up report by the reconvened members of the Panel on this matter (DS28/R), and had agreed to revert to it at the present

meeting. He drew attention to the proposal contained in the recent communication from the European Economic Community (DS28/2).

The representative of the European Communities said that, as had been indicated in its communication circulated on 5 June (DS28/2), the Community was requesting the CONTRACTING PARTIES' authorization to enter into Article XXVIII:4 negotiations to modify its tariff concessions in respect of soya beans, rape or colza seeds, sunflower seeds and oilcake in its Schedule of concessions. This request was with a view to implementing the recommendations of the reconvened members of the Panel on this case. He recalled that Note 1 to Article XXVIII:4 in Annex I of the General Agreement stipulated that "A decision on such request [for authorization to enter into negotiations] shall be made within thirty days of its submission". The Community accordingly wished to know whether the Council would grant it the necessary authorization at the present meeting, and noted that a decision on its request would in any event need to be taken by 5 July.

The representative of the United States recalled that at the April Council meeting, his delegation had reviewed at length the procedural record of this case, and the history of the United States' efforts to obtain from the Community a commitment to modify its oilseeds régime in a manner which would correct the nullification and impairment of its concessions both to the United States and to other exporters of these products. At the present meeting, the United States had a number of comments and questions regarding the precise intentions and objectives behind the Community's recent proposal to request authorization from the Council to enter into Article XXVIII negotiations. The United States believed there were reasons to be concerned, and that a clarification was needed before the Council could decide on how to dispose of this matter. The United States continued to be very disappointed that the Community had thus far given no indication of how it intended to modify its oilseeds support system so as to eliminate the impairment that had been found, not once but twice, by the Panel on this matter.

The obvious source of the problem that had given rise to this entire dispute was the Community's continuing insistence to maintain that support system, and the United States believed that this basic problem had to be addressed if there were to be any hopes of resolving the dispute amicably. The report of the reconvened Panel had indeed recommended that the Community either modify its oilseeds support system or renegotiate its concessions under Article XXVIII. In the United States' view, the report had not broken any new ground in this regard. Article XXVIII did provide a contracting party the right to modify or withdraw a tariff concession by negotiating an agreement with other contracting parties. However, the objective of such negotiations was to try to maintain "a general level of reciprocal and mutually advantageous concessions, no less favourable to trade than that provided for prior to such negotiations". It was also clear that under Article XXVIII, the contracting parties being offered compensation had the right to judge whether the compensation being proposed was in fact acceptable. In the case at hand, a precondition to any negotiations was that the compensation acceptable to the United States would have to include a remedy that addressed the impairment that had been

found to exist to US oilseed producers. Compensation provided on other products would not compensate US oilseed producers for the trade damage they had suffered, and were continuing to suffer, due to the Community's unfair subsidies. The United States estimated that the Community's oilseeds support policies had already resulted in damage to its trade of roughly US\$1 billion annually. Other contracting parties' oilseeds and oilmeal exporters had suffered similar damage, perhaps also as much as US\$1 billion dollars. The data provided in the Annexes to the Community's communication in DS28/2, showed that current imports of oilseeds and oilmeal were worth roughly US\$5.5 to 6 billion annually. In the United States' view, the Community's proposal did not in any way contribute to solving the fundamental impairment problem, and was potentially damaging to current trade as well. The United States had no doubt that other oilseed and oilmeal exporters would want to express their concerns about the Community's intentions in this regard.

The United States would therefore ask the Community to share with the Council (a) any plan it had for utilizing Article XXVIII negotiations in a constructive manner and, in particular, how it envisaged providing US\$1 to 2 billion in compensation aimed at oilseed exporters to offset the existing impairment; and (b) its possible intentions for any further action in respect of the current US\$5.5 to 6 billion in trade, in such a manner as to maintain a general level of reciprocal and mutually advantageous concessions, no less favourable than that provided for prior to such negotiations.

The representative of the European Communities said that while the United States' impatience and disappointment was understandable, this did not justify its taking an emotional position on the issue at hand. If his understanding was correct, the United States was concerned about how to maintain, within the global context, the balance of benefits that the oilseeds sector had derived in the multilateral system of GATT. It was this that had given rise to the United States' worries over the Community's recourse to Article XXVIII procedures. However, if this were the United States' main concern, then why had it published a list of possible items for retaliatory action? Would such a list be conducive to protecting the interests of US oilseeds producers? He would return to this question to demonstrate the absurdity of retaliatory measures, particularly if they were taken on a unilateral basis.

He recalled that the reconvened Panel had recommended (paragraph 92 of DS28/R) that the Community should act expeditiously to eliminate the impairment of its tariff concessions, either by modifying its new oilseeds support system or by renegotiating its tariff concessions for oilseeds under Article XXVIII. The Panel had thus given the Community a free choice between the two options, while insisting on the need to act expeditiously. Since the United States had a tendency to react with a certain haste, understandable in this case because of the frustrations it had encountered since 1988, the Community had opted for a multilateral and transparent solution. In the Community's view, Article XXVIII offered two options: the multilateral option in paragraph 4, and what was in effect a bilateral option in paragraph 5. The Community had opted for the provision of Article XXVIII which it believed would give the most satisfaction at the

multilateral level and which would, at the same time, allow the CONTRACTING PARTIES to have a degree of control over the proceedings. The bilateral option in paragraph 5, furthermore, did not provide any strict guarantee as to the time period for the procedures to be followed thereunder, and would be determined by the free choice of the two parties concerned. The risk under this bilateral option was that if one of the parties had a unilateral set of instruments at its disposal, it could have an advantage in the negotiations that the other did not. The United States' announcement, and subsequent publication, of a proposed list of items for unilateral retaliatory action explained, in political terms, the reasons for the Community's recourse to paragraph 4, not 5, of Article XXVIII:4. He hoped that contracting parties would now understand more clearly the reasons behind the Community's choice. As he had stated earlier, paragraph 4 permitted the CONTRACTING PARTIES to exercise some control and almost permanent monitoring over the negotiations thereunder, as stipulated in its sub-paragraphs (c) and (d). Furthermore, these provisions provided very strict time frames: thirty days for the CONTRACTING PARTIES to decide whether to authorize a contracting party to enter into renegotiations; sixty days thereafter for the contracting parties primarily concerned to reach agreement; and thirty days for a final determination by the CONTRACTING PARTIES under sub-paragraph (d). The advantage of having recourse to paragraph 4 was that it would allow the Community to have the necessary flexibility in the negotiations, particularly in identifying the needs of the contracting parties concerned, and would permit the respect of the rights of all contracting parties concerned, and thus the harmonious functioning of the multilateral system. The flexibility to which he had referred meant that the Community would have no preconceived ideas before it entered the negotiations. It also meant that the interests of all interested contracting parties would be covered.

As to the possibility of modifying the Community's oilseeds régime, which had consistently been requested by the United States, he noted that the Community had already taken a first step. However, that gesture had been found to be insufficient by the reconvened members of the Panel. In this connection, he quoted from the report of a Working Party on Other Barriers to Trade established in 1955 to assist the CONTRACTING PARTIES' review of the General Agreement (L/334 and Addendum, BISD 3S/222). Paragraph 14 of that report stated that "The Working Party also agreed that there was nothing to prevent contracting parties, when they negotiate for the binding or reduction of tariffs, from negotiating on matters, such as subsidies, which might affect the practical effects of tariff concessions, and from incorporating in the appropriate schedule annexed to the Agreement the results of such negotiations; provided that the results of such negotiations should not conflict with other provisions of the Agreement". He said that he was recalling this simply in passing, and no more, and that everything was a matter of negotiation, under well-defined and precise limits. He believed that it was premature to speak of US\$ 5 or 6 billion in compensation, and one would have to endeavour to reach a compromise through negotiations. In conclusion, the Community's emphasis in resolving this dispute was on multilateralism, on transparency, on a refusal to have any untimely unilateral action, and on a desire to abide by existing rules and procedures.

The representative of the United States said that the Community's response to his query as to how it envisioned utilizing paragraph 4 of Article XXVIII in a constructive manner was not very comforting. A large part of the Community's statement had described what its rights were in this regard and what its flexibility and leeway might be, which, of course, gave the United States added cause for concern. The Community had also indicated its displeasure at the United States' publication of a list of possible items to be subject to withdrawal of concessions. The Community had asked, with respect to the items on that list, what they had to do with soya. In this regard, he recalled that the United States had made very clear what it would consider to be an acceptable form of compromise to resolve this matter, namely one that would address the legitimate concerns of soya exporters both in the United States and elsewhere that had brought this case to the GATT in the first instance. This would be an issue that the United States would raise with the Community in any bilateral negotiation when compensation was discussed, namely, what had that compensation to do with soya.

He recalled that most contracting parties, including the EC member States, had reserved their right to engage in Article XXVIII negotiations at any time, and did not have to come to the Council for authorization. The United States questioned the appropriateness of proceeding under paragraph 4 in this regard, i.e., the need to come to the Council. This provision referred to "special circumstances", and the United States wondered why the Community believed it necessary or desirable to invoke these special circumstances. He noted that the Community had not asked for a particular time period for these negotiations. He assumed that it agreed to utilizing the sixty-day period outlined in this paragraph. He asked whether the Community could commit itself, as the United would, to conducting the negotiations with other contracting parties within this period.

With regard to negotiation procedures, he noted that under Article XXVIII the proposed modifications and the compensatory adjustments that the Community was prepared to offer should be provided as soon as possible. Accordingly, the United States asked the Community if it could state when it would submit its proposed modifications and its proposed compensation package. He pointed out that by proposing to modify bindings with respect to the stated products, the Community was essentially increasing the scope of the problem from what the United States estimated to be US\$1 to 2 billion in nullification at present to perhaps US\$7 to 8 billion in possible compensation. This was unsettling. The Community was asking Council authorization to resort to Article XXVIII -- a process it had a right to without seeking Council authorization -- and there was an implication that perhaps, pursuant to that process, it might not only seek to maintain the existing oilseeds subsidy régime but, in addition, tamper with the tariff bindings on these products, thereby adding insult to injury by seeking to raise barriers even further. Thus, while the United States recognized that there was a right to resort to Article XXVIII, there was also a right on the part of other contracting parties to refuse to agree to a compensation package thereunder unless it addressed their specific concerns. The United States had stated its concerns clearly. It was the United States' expectation that any negotiations should result in

compensation for the nullification and impairment of the tariff bindings concerned aimed specifically at oilseeds producers and, in addition, the scope of the discussion should include compensation for the current value of trade and for the value of the bindings. In sum, any negotiations should address the underlying problem, should provide for trade creation in an amount to compensate for the impairment, and should fully compensate for any adjustments affecting roughly US\$6 billion in current trade. There could be no peace for the Community in this matter unless these legitimate concerns had been addressed. While the United States would not object to a positive Council decision on the Community's request at the present meeting, it would note that its expectations and understandings with respect to any such authorization were clear and on record.

The representative of Argentina said he wished to underline that a very high percentage of his country's total exports consisted of oilseeds and its by-products, of which ten per cent were exported to the Community. It was clear therefore that other countries were also directly concerned in the dispute at hand, and that they would have to present their own views as to what should be decided by the Council at its present meeting.

The representative of the European Communities said that while it was true that the Community had the right to have recourse to Article XXVIII at any time, in this particular case the reconvened Panel members had recommended this course of action to the Community in their report. That was an innovation which had changed to a certain extent the background and the point of view of these negotiations. Although paragraph 5 of Article XXVIII was traditionally invoked to modify concessions, the Panel had made a clear-cut recommendation in this case. Whether paragraph 4 or 5 was used, in both instances the global level of benefits existing prior to the negotiations would need to be restored. He underlined that even though specific concessions had been granted at regular intervals, they formed a global balance. One was indeed in special circumstances, without precedent, which corresponded to the requirement in paragraph 4. With respect to the United States' desire to seek compensation for the soya sector, he said this was an innovative line of reasoning which, if followed, risked changing the spirit of Article XXVIII. The philosophy behind Article XXVIII renegotiations was the maintenance of the general level of reciprocal and mutually advantageous concessions.

With regard to procedures, he said that as soon as the CONTRACTING PARTIES' authorization to enter into negotiations had been granted, the Community would communicate to the contracting parties with which the respective concessions had been negotiated initially, the modifications that the Community envisaged. There would be an element of flexibility involved here, because the Community would need to know the desires of its trading partners before formalizing its offers within the stated sixty-day period. He added that contracting parties that had an interest in this matter as principal suppliers and which therefore had negotiating rights, as well as those that had a substantial interest and therefore the right to consult, should communicate in writing to the Community their wish to enter into negotiations or consultations, within ninety calendar days. The Community wished to respect fully the procedural rules under Article XXVIII. He hoped his response would alleviate the United States' concerns.

He added that if the Council granted the Community this authorization to negotiate, he would make some comments as to what could endanger these negotiations, in particular the unilateral intentions on the United States' part.

The representative of Argentina recalled that in his previous statement he had stressed the importance of oilseed trade for his country. He also recalled that Argentina had intervened as a third party in both the original and reconvened Panel proceedings on this dispute, and had also intervened each time this matter had been discussed in the Council. This was not just by coincidence, but due essentially to the fact that Argentina considered itself to be a main supplier of these products and that it therefore had the right to participate actively not only in discussions on this matter, but also in any negotiations related thereto. His delegation had followed attentively the Community's and the United States' arguments on some of the principal aspects of this question. He recalled that in its presentations to the Panel -- in particular to the reconvened Panel -- and also in the Council discussions, Argentina had stressed important aspects which had not been mentioned in the Panel's reports, i.e., the question of the continuing inconsistency of the Community's measures with Article III. This was a substantial issue, in Argentina's view, and recognition thereof in the Panel's report would have implied the need for the Community to modify its oilseeds régime. However, since the reconvened Panel had concluded only that there was a continuing nullification and impairment of tariff concessions from measures not in violation of Article III, he wished to refer to this matter again, because it was certainly true that contracting parties had the right to negotiate on different types of measures, in particular on subsidies, when they discussed the exchange of concessions. In the case at hand, the subsidies in question had not been in effect at the time the tariff concessions had been negotiated but had been introduced and increased substantially afterwards, thus modifying expectations in respect of the concessions and leading to the Panel's finding of nullification and impairment of benefits.

He wished to emphasize here a point of great concern to Argentina, namely that, in its view, the current provisions of Article XXIII, when they placed non-violating measures on the same footing, so to speak, as measures that violated GATT provisions, they implied that the CONTRACTING PARTIES, on the basis of a panel report, could require the modification of such measures although there would be no obligation to do so. He stressed that in the Uruguay Round negotiations on dispute settlement, the Community and the United States had not insisted on maintaining the current provisions on dispute settlement, and that in the Draft Final Act (MTN.TNC/W/FA) non-violation measures had been excluded from any explicit obligation to be modified as a result of a recommendation by a panel or the CONTRACTING PARTIES. This point was important because it was quite possible that in certain instances such measures would need to be modified in order to restore the balance of concessions. Argentina believed that this aspect deserved to be pointed out, because it could have an important bearing on the future functioning of the multilateral trading system. He stressed that this position had also been defended by several other contracting parties present in the room. One had to consider what the consequences might be for the future when decisions were adopted, or

negotiating positions determined, without adequately measuring their impact.

He then turned to the aspect of the discussion which he said had great importance for the Council, namely, the resolution of the matter at hand under the General Agreement. First, with respect to the Community's and the United States' arguments and presentations, he had heard quite clearly that there was an acceptance of the reconvened Panel's conclusions that the measures in question should either be modified or that compensation should be granted. This aspect had to be stressed, and, in conformity with Article XXIII:2, the Council -- at its present meeting -- should consider adoption of the Panel report. This question was of great legal importance, in that it would give more security to the entire process of the negotiations to be carried out at a later stage. As there had been no opposition by any of the parties that had intervened, he believed that this was a decision which had to be taken by the Council at its present meeting.

Another aspect that needed to be raised here was the reference to possible retaliatory measures, and the publication by the United States of a list of possible items for withdrawal of concessions. This was perhaps not a question that could be considered at the present meeting. Article XXIII:2 clearly stated that an authorization by the CONTRACTING PARTIES was needed to apply any such measures of reprisal.

With regard to the Community's intention to renegotiate under Article XXVIII, he recalled that the United States had earlier posed a specific question to the Community, and that it had not been satisfied by the latter's response. A point of importance here was that if the Community had asked for the renegotiation of concessions, it was due to the creation of a kind of trade injury stemming from the subsidies granted by the Community. The estimated amount of this injury was very high -- perhaps as high as US\$1 billion -- but this figure would need to be discussed by the CONTRACTING PARTIES. He stressed that these renegotiations did not concern directly the present customs duties nor the terms of the concessions because a change of either would imply introducing in the negotiations much of what one had already heard of in the Uruguay Round, i.e., "rebalancing" proposals. This had to be said quite clearly. Argentina understood that one was going to renegotiate concessions in order to restore or to correct the prejudice and impairment created to the parties concerned by the application of domestic subsidies by the Community. Argentina believed it important to know the Community's position in this respect; it had listened very carefully to the Community's manifestation of good intentions, and would not -- and could not -- interpret them in a different way than it had just mentioned.

A third aspect, which had been mentioned both by the Community and the United States, concerned Article XXVIII, in particular the fixing of time limits and strict conditions. Of course, paragraph 4 did determine specific situations to cover these possibilities, but Argentina wished to underline that nothing could keep the CONTRACTING PARTIES -- which after all were allowed to interpret the General Agreement -- from fixing time limits or negotiating conditions under other provisions or paragraphs of Article XXVIII. As far as Argentina was concerned, it had not taken a stand in favour of one or the other possibilities of renegotiations under

the various paragraphs of this Article. However, it wished to state also that the Council at the present meeting, on behalf of the CONTRACTING PARTIES, could also determine time limits for these negotiations.

A final aspect which he wished to stress was that Argentina, in some of its exports in the oilseeds sector, was principal supplier to the Community. In light, therefore, of what he had stressed earlier about the incidence of oilseeds and by-products exports in the totality of Argentina's exports -- and in particular about its export of oilseeds and by-products to the Community -- Argentina believed that Note 5 to paragraph 1 of Article XXVIII in Annex I of the General Agreement should be taken into consideration in order to recognize Argentina's negotiating rights as principal supplier. As this was a decision which had to be taken by the CONTRACTING PARTIES, Argentina wished to stress that it understood that the Council could also adopt that decision. Moreover, in saying this, Argentina was looking forward to the modification of Article XXVIII in conformity with the understandings reached in the Uruguay Round.

In brief, Argentina proposed that the report of the Panel be adopted, that the renegotiations requested by the Community be carried out in order to compensate for the damages or impairments due to the subsidization, and that Argentina's negotiating rights of principal supplier be recognized. Argentina would submit a written communication to the Community in this respect.

The representative of Brazil said that the Community's proposal represented a step in the wrong direction, and had complicated the question of implementation of the reconvened Panel's recommendations. Brazil, as was clear from the Annexes to document DS28/2, had a major interest in oilseeds trade, being a principal supplier of one item and a substantial supplier of others. He added that the liberalization of oilseeds trade had been one of the major reasons behind Brazil's becoming an active participant in the Uruguay Round agricultural negotiations, and it would be disappointing, if in what all hoped were the final stages of the negotiations, there would be steps backward. He recalled that at the April Council meeting, his delegation had expressed its views on the unsatisfactory and insufficient nature of the Community's measures until then to comply with the Panel's recommendations. Following the assurances by the Community that it would submit concrete proposals, prior to the present meeting, to settle the matter and avoid deepening the dispute, Brazil had refrained from supporting other initiatives which would have implied harsher action. Brazil had indicated at that meeting that the United States should not take any unilateral action against the Community and that any action in this matter should be taken within the GATT framework. Brazil regretted that the United States had published a list of products for possible retaliation, which would not help to resolve this dispute. Brazil also regretted that the Community had chosen the second of the two options suggested by the reconvened Panel members for the resolution of the dispute, for this would entail a long and burdensome process, the outcome of which no-one could ensure. This procedure would also be totally unsatisfactory for those contracting parties with substantial interests in the products concerned. In Brazil's view, it would be more appropriate for the Community to withdraw the measures

identified by the Panel as being GATT inconsistent. It was not in keeping with the spirit and the objectives of the GATT to make other contracting parties pay for these measures.

Brazil recognized that GATT rules permitted the Community to renegotiate concessions in its Schedule. However, the circumstances in which the Community's proposal was being presented, i.e., after a protracted process of nearly four years, raised concerns as to whether this would actually be the final round in this endless dispute. With regard to the Community's choice to seek renegotiation under paragraph 4 of Article XXVIII, Brazil wished to know what the Community considered to be the "special circumstances" mentioned in that paragraph that justified its recourse thereto. Was the Community implying that compliance with GATT rules was a special circumstance? It was not clear to Brazil how the Article XXVIII negotiations would redress the oilseeds exporters' unfavourable situation that resulted from the Community's subsidies, when tariffs on these products were already bound at zero. The Community's measures affected several contracting parties. It was conceivable that for some of these parties compensation on other products might be satisfactory. For others, it would be very difficult to find products for which the trade potential was such as to provide adequate compensation. In this context, he recalled Brazil's opposition to the concept of "rebalancing" that had been voiced in the Uruguay Round agricultural negotiations, and expressed concern that by accepting some parts of the Community's proposal, the Council would implicitly or explicitly be legitimizing this idea. Finally, Brazil supported Argentina's suggestion that the reconvened Panel members' report be adopted as a separate matter and as an initial step, and that the Council should then discuss implementation of its recommendations.

The representative of Thailand said that his Government had followed this dispute with great interest and concern. This dispute had been with the Council since 1988. Throughout this period, contracting parties had witnessed attempts by the parties concerned to resolve the problem in a manner that had led eventually to further problems. In Thailand's view, the continuation of such a cycle could result in putting the GATT dispute settlement rules and procedures to a test. As a matter of principle, Thailand wished to record its disagreement with any attempt to prescribe self-authorized retaliatory action by any contracting party and urged that the case be settled on the basis of GATT rules and procedures. A genuine settlement could only be achieved if these rules and procedures were implemented not only in accordance with their objectives, but also to the letter. Thailand, therefore, regarded the Community's proposal with interest and hoped that that the proposal, in its present form or otherwise, would lead to a real settlement of the case at hand in the very near future.

The representative of Canada said that his country had an interest in this matter as the leading exporter of oilseeds to the Community. Canada had held Article XXIII:1 consultations with the Community and had received some assurances from the latter. Canada considered that the Community had to take action to compensate for impairment in the light of the Panel's ruling and, like the United States, wished this to be done in the oilseeds sector. As a holder of initial negotiating rights, Canada considered its

trade benefits had been impaired by the Community's actions and expected to be compensated accordingly. The Community's decision to use Article XXVIII raised a second and separate issue for contracting parties. If the Community wished to raise its tariffs on oilseeds, it was required to offer compensation for this action as well as for the impairment. However, this step was of concern to Canada since its clear interest was to have compensation for lost oilseeds trade. Canada was disappointed at the lack of information in the Community's notification as to what steps it intended to take. However, Canada had noted that the Community intended to send a letter to holders of initial negotiating rights in the products concerned, setting out some of its intentions. Like others, in particular the United States and Brazil, Canada was also puzzled about the Community's decision to have recourse to paragraph 4 of Article XXVIII when paragraph 5 was open to it. In Canada's understanding, the former was designed to provide urgent relief to an industry threatened with import competition. This was not the case here, and especially not in Canada's case, since its oilseeds industry had virtually been completely eliminated from the Community's market by the latter's support measures. Nevertheless, if it was to be paragraph 4, contracting parties needed some clarification with respect to the time periods mentioned therein. For instance, when did the thirty-day period for authorization of the Community's request begin? He recalled that Note 1 to paragraph 4 in Annex I of the General Agreement stated that "Any request for authorization to enter into negotiations shall be accompanied by all relevant statistical and other data". Thus far, contracting parties had only received statistical data for the years 1989 to 1991. They were, however, interested in statistical data for the three-year period prior to the putting in place of the support measures that had precipitated this dispute. Furthermore, sub-paragraph (c) of paragraph 4 provided a negotiating period of sixty days. Canada wondered whether it was optimistic to think that the issue could be resolved with interested parties within that time and, therefore, wished to know on what basis any agreed time period could be extended. Was this to be done by the CONTRACTING PARTIES, or was it to be done by notification by the contracting parties concerned, as could be done under paragraph 5 of Article XXVIII? Finally, if that Article were used, Canada wished to assert its rights as a holder of initial negotiating rights, and to enter into negotiations with the Community.

The representative of Finland, on behalf of the Nordic countries, noted with satisfaction that the United States and the Community had appeared to agree on a settlement procedure that the Nordic countries considered was in line with the reconvened Panel's recommendations. The Nordic countries joined others in condemning the United States' threat of unilateral measures, which they did not consider as having a legal basis or as contributing to the resolution of the differences between the parties concerned. He recalled that at earlier Council meetings, both when the initial Panel report as well as the follow-up report of the reconvened Panel members had been discussed, the Nordic countries had expressed certain reservations, which they wished to reiterate. He noted that several of the issues dealt with in the report of the reconvened Panel members were the subject of negotiations in the Uruguay Round. Implicit in the Nordic countries' reservations was that negotiating procedures in the Uruguay Round should not be prejudged.

The representative of Poland said that his Government agreed with the essential findings of the reconvened Panel members and with their recommendations. Consequently, Poland encouraged the parties directly involved to resolve this dispute along the lines suggested by the Panel, without recourse to unilateral actions. Poland's position on this issue was consistent with its respect for the GATT dispute settlement system, and was also motivated by its interests as a principal supplier of one of the commodities covered by the Community's disputed measures, and a substantial supplier of another. Poland believed strongly that it would be preferable to resolve this dispute in the most straightforward manner, i.e., through modification of the Community's new support system for oilseeds. However, it noted that the Community's proposal at hand was based on one of the recommendations of the reconvened Panel members, and rested on the legal basis of the relevant GATT provisions. Therefore, if the CONTRACTING PARTIES decided to grant the Community's renegotiation request, Poland would wish to state its strong intention and its legal rights to participate in such renegotiations to the extent they related to its trading interests.

The representative of Pakistan drew attention to the import data presented in the Annexes to the Community's proposal and said that while the dynamics of international trade meant that Pakistan was not listed among the main suppliers for the products concerned, it had initial negotiating rights in respect of three of them. This dispute had given rise, over the years, to continuing friction in international trade and had indeed also threatened to impact negatively on the prospects for the Uruguay Round. Pakistan was gratified that at the present meeting there was a ray of hope that this continuing friction could be ended. It viewed the Community's proposal in a positive light, and looked forward to further proposals for compensatory adjustments. Pakistan reserved its rights as a holder of initial negotiating rights in these products. It hoped that the report of the reconvened Panel members could be adopted at the present meeting. The Council could consider the Community's proposal separately.

The representative of India recalled that at the April Council meeting, the Community had stated its intention to come forward with a concrete proposal for a solution to this dispute before the present meeting. Also at the April Council meeting, the United States had indicated its intention to take unilateral retaliatory action. Strong concern had been expressed by several contracting parties, including India, on the United States' intention. India therefore regretted that in the interim the latter had published a list of products on which retaliatory action was being proposed. He noted that the Community had come forward with a proposal to resolve this matter and was seeking authorization to enter into Article XXVIII negotiations. India noted that this request was in line and in conformity with the recommendations of the reconvened Panel members. It also noted the frustration and disappointment on the part of some contracting parties at the further delays that such renegotiations would involve. However, India hoped that the further process to be undertaken in pursuance of the Community's proposal would lead to an amicable and expeditious settlement of this long pending dispute in line with the recommendations of the reconvened Panel members.

The representative of Austria recalled that at the April Council meeting, his delegation had encouraged the United States and the Community to seek a mutually acceptable solution to the disputed matter. It had been encouraged then by the Community's indication that it would present concrete proposals by the present Council meeting and by the United States' readiness to discuss the matter further with the Community. The Council now had the Community's concrete proposal before it, which Austria found to be in conformity with the reconvened Panel's recommendations, and appropriate to resolve the dispute. Contrary to others' views, Austria did not believe that the Community's request was a step in the wrong direction. Indeed, the Panel had suggested Article XXVIII negotiations as a means of resolving the dispute. With regard to the United States' intention to introduce unilateral retaliatory measures, he recalled his Government's position that any action should be authorized by the CONTRACTING PARTIES. Unilateral action would severely affect the credibility of the multilateral trading system, and since the United States had repeatedly underlined its respect for the GATT, it should refrain from unilateralism. Austria was hopeful that a solution would be possible since the United States obviously did not have the intention to oppose the Article XXVIII:4 procedures.

The representative of Australia said that his country's interest in this dispute arose from its wider implications, and for this reason Australia had, and would continue, to follow it very closely. Australia wished to express its support for the adoption of the report of the reconvened Panel members, because it believed that the report contained and confirmed a number of important principles, and also because an adopted report would provide a secure basis for the Council to monitor or maintain surveillance of the resolution of this issue and the implementation of the Panel's recommendations.

The representative of Uruguay said that his country had trade interests in oilseeds and oilseed products similar to those of Argentina and Brazil, and shared their concerns. Uruguay reserved its right to participate in any subsequent discussions regarding this dispute.

The representative of Switzerland recalled that at the April Council meeting, his delegation, too, had expressed its concern about the dangers of unilateral action on the United States' part. He noted that the original Panel report, as well as the follow-up report, had both given pre-eminence to multilateral action as opposed to unilateral action to resolve this dispute. Switzerland was pleased to note that a multilateral solution appeared to be at hand. He recalled that the reconvened Panel members had referred to the principle that a contracting party had a legitimate expectation that the value of a tariff concession under Article II would not be nullified or impaired by the subsequent introduction or increase of domestic subsidies. Switzerland believed that this principle should be interpreted with a great deal of caution, otherwise there was a risk that any domestic subsidy which did not exist at the time the tariff concession had been granted would be prohibited. This conclusion appeared to be incompatible with Article 11 of the Subsidies

Code⁴ which authorized, under certain conditions, certain subsidies independent of any possible tariff bindings. Switzerland also considered that the reconvened Panel's conclusions were in line with the General Agreement in its present context and did not prejudge the interpretation of the results of the Uruguay Round.

The representative of Colombia reiterated his Government's support for the conclusions and recommendations of the reconvened Panel members' report, and asked that the Community agree to its adoption. Colombia noted the Community's proposal to renegotiate its tariff concessions on oilseeds under Article XXVIII. It hoped that it would be possible to take steps towards the implementation of the Panel's recommendations, subject to the adoption of the report. Finally, Colombia could not support the adoption of unilateral measures outside of the GATT, and urged that if the United States could not reach a mutually satisfactory agreement with the Community, it should take further action to redress its grievance under Article XXIII.

The representative of Japan said that his country was concerned with the broader implications of this dispute, a dispute which had arisen as a result of a decline in US exports of soyabeans to the Community. The reasons for this appeared to be complex. Among other factors, there appeared to have been a diversification of sources of imports, as well as import substitution caused by the Community's domestic subsidies. This import substitution effort might have had something to do with the US embargo on soyabeans in the 1970s. Although there seemed to be many reasons behind the decline of US soyabean exports, subsidies in the Community did appear to have played some rôle. For these reasons, Japan believed that the question of subsidies needed to be addressed in order to finally settle this dispute. The Community had proposed Article XXVIII renegotiations of its tariff concessions. This was in accordance with the recommendations of the reconvened Panel members. Japan also noted that the Community was within its GATT rights to pursue this approach. Whether or not this would in fact lead to the ultimate solution of this dispute was another question. All should collectively try to seek a solution that was satisfactory to everyone concerned, and which was consistent with the letter and the spirit of the GATT. This should be done in an expeditious, multilateral and transparent manner without unilateral departure from multilateral rules or threats thereof, so that a workable GATT system could be maintained. Previous speakers had referred to the contents of the reconvened Panel members' report. Japan had already noted at a previous Council meeting that the exact legal nature of this report perhaps warranted further consideration. There were certain elements therein which required careful consideration, especially the reference to the causal relationship between impairment of benefits of tariff concessions, on the one hand, and domestic subsidies introduced subsequently, on the other. This question needed to be examined carefully and on a case-by-case basis.

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

Japan believed that, at least as far as this particular reference in the report was concerned, it could not serve as a precedent or a guide for future disputes.

The representative of the Philippines said that while the Community's proposal to renegotiate its tariff concessions for oilseeds and oilcake was within the parameters of the recommendations of the reconvened Panel members, the Philippines viewed this option as the less desirable of the two that had been recommended. Firstly, the trade structure in these commodities at the time the original concessions had been granted had changed markedly over the years. For this reason, the Philippines believed that the Community's renegotiation of its tariff concessions would raise new problems. Secondly, the Philippines did not know how the negotiations might possibly affect products not in the Community's list. Furthermore, such an option would have implications on the parallel process of the Uruguay Round negotiations, in which the Community expected to lower trade-distorting subsidies instead of maintaining them, and to implement tariff-reduction commitments instead of renegotiating tariffs to higher levels. Finally, the Philippines wished to encourage the United States to exercise maximum restraint on its threat to resort to unilateral action, and to pursue its rights within the multilateral system. The Philippines fully understood the United States' frustrations, but considered that unilateral action was not and could not be the right solution.

The representative of Korea said that although Korea did not export oilseeds to the Community, it was pleased to note that the Community's proposal appeared to have received a positive response from many contracting parties. Korea hoped that the United States, a major contracting party whose serious concern over the impairment of its benefits under the GATT resulting from the Community's oilseeds régime was understandable, would accept this proposal. An amicable resolution of this dispute had a few important merits which all should appreciate. It would lead to the avoidance of unilateral measures that were against GATT principles. It would also have effects on the ongoing bilateral negotiations between the United States and the European Community on agriculture in the context of the Uruguay Round, which would in turn contribute a great deal in helping facilitate a successful conclusion of the Round. With regard to the options recommended by the reconvened Panel as a means of resolving this dispute, Korea believed they were reasonable and consistent with GATT principles. Finally, his delegation fully shared Switzerland's view that subsidies which belonged in the "green" category in the Uruguay Round Draft Final Act (MTN.TNC/W/FA) could, after its entry into force, also be challenged on the grounds that they nullified or impaired benefits accorded to the contracting parties under Article II. This point had just been referred to by Japan, and he agreed with the latter that the Panel's findings should not constitute a precedent in dealing with cases of a similar nature in the future.

The representative of Chile said that two problems needed to be taken up separately in order to be able to make progress: first, the adoption of the report of the reconvened Panel, and second, the analysis of the various actions to be taken afterwards to implement that Panel's recommendations. Accordingly, he suggested that the Council at its present meeting first adopt the report and then deal with the measures to be taken.

The representative of Brazil said that his delegation wished to make clear his country's intention to assert its rights as a principal supplier -- as defined in paragraph 1 of Article XXVIII and in the notes and supplementary provisions in Annex I to the General Agreement -- in respect of both soyabean and soyacake.

The representative of the European Communities said he had been a little disappointed by the general course of the statements made by parties that had not been the complainants in this dispute. A lot of false notes had been struck. It was true that while the Community had spoken of "rebalancing" of a global nature in the context of the Uruguay Round negotiations on agriculture, it had not mentioned "rebalancing" in the context of offering compensation in the present case. Several representatives had also spoken in support of the adoption of the report of the reconvened Panel members. He recalled that at the April Council meeting, the United States had stated clearly that because the members of the Panel had been reconvened, this was not a new panel and that their report was in the nature of a follow-up to the recommendations of the earlier Panel that had still to be settled. If the Council wished to have a discussion on the adoption of this report, the Community would participate, though it would find such a discussion very inappropriate. With regard to the requests for clarification as to the nature of the "special circumstances" that paragraph 4 of Article XXVIII called for, he reiterated that the difference between a spontaneous action by a contracting party as compared to the present circumstances was that this course of action had been recommended by the Panel. The Community had not requested renegotiations on its own initiative. He asked what the Council considered to be important at the present meeting. Was it that it should deal with the adoption of the follow-up report by the members of the earlier Panel, or that it should take note at least that the Community, which had been given a free choice, had been sovereign in its decision to opt for one of the two alternatives suggested in the follow-up report.

He noted that the United States had insisted earlier that in order to conform to the General Agreement and its various provisions, the Community had to change its oilseeds régime. In this connection, he recalled his earlier quotation from the report of the 1955 Working Party on Other Barriers to Trade. While the Community had not existed at the time of that report, it had adopted the sacred heritage of its member States that were among the founders of the GATT. In conclusion, he said that the Community requested the authorization to renegotiate its tariff concessions and, as he had stated earlier, a response was required by 5 July at the latest.

The representative of the United States said it was his Government's strongly held view that the report at hand was a follow-up report by the panelists that had made the original determinations, as part of their monitoring of the Community's implementation efforts. In that regard, the United States did not believe that it was either appropriate or relevant to discuss the adoption of a follow-up report. That report was before the Council to consider its recommendations, to direct the efforts of the parties, and did not require adoption. This was one case where the Community and the United States saw the matter similarly, and he therefore would ask others pressing for adoption to recognize that step as unnecessary. With respect to some of the observations just made by the

Community, he saw some promise and some concern in them because, on the one hand, the Community's earlier statements had seemed to indicate that its request for Article XXVIII negotiations left it a great deal of flexibility to propose all kinds of things that the United States would find extremely unacceptable, such as tariff increases. On the other hand, the Community had indeed tried to indicate that, according to the early history of Article XXVIII there was the possibility to have an Article XXVIII process relating to subsidy practices. This gave rise both to profound concern about the Community's intentions and future actions in any such proceeding and also hope that perhaps this could be a move in the right direction towards a settlement of the case in a manner that would protect the legitimate interests of the United States and other oilseed-exporting countries.

Finally, with regard to several representatives' comments about the publication of a proposed list of items for retaliation by the United States, and any proposed course of action with respect thereto, he noted that the United States would continue to receive public comments and hold public hearings on that list, and that it did this because it felt the need to be prepared to withdraw equivalent trade concessions should negotiations with the Community fail. In saying this, the United States wanted to make it clear that its objective was to solve problems and not create new ones. The United States sought an ultimate settlement of this matter in a way that brought the Community's policies into conformity with its international obligations without others having to resort to withdrawals of concessions. However, there had been a problem in getting this matter addressed. He recalled that at the April Council meeting, his delegation had provided a brief history of the very frustrating and difficult efforts that the United States had experienced over a four-year period to have the Community come forward with any kind of proposal to resolve this issue. Judging from the recent activity on the EC Commission's part on this matter, there was reason to be hopeful, but the United States would remain vigilant.

The representative of Argentina said that having listened to the Community's previous statement, he wished to stress that Argentina was looking for a quick solution to the problem before the Council, and that his delegation's earlier statement had been made to that effect. He also stressed that, at times, what was essential was invisible to the eyes. He referred to paragraph I.3 of the April 1989 Decision on improvements to the GATT dispute settlement rules and procedures, which stated: "The Council shall monitor the implementation of recommendations or rulings under Article XXIII:2. The issue of implementation of the recommendations or rulings may be raised at the Council by any contracting party at any time following their adoption." He then referred to Article XXIII:2, which stated: "CONTRACTING PARTIES shall promptly investigate any matter so referred to them and shall make appropriate recommendations to the contracting parties which they consider to be concerned, or give a ruling on the matter, as appropriate". He said that the purpose of his statement had been to underline that one had to respect all the legal provisions in the General Agreement in regard to the matter under consideration.

It was clear from the statements by the Community and the United States that they interpreted the reconvened Panel members' report as a

follow-up of the first Panel report, and therefore a continuation thereof. One could thus interpret this to mean that the follow-up report had been adopted along with the original Panel report. If that was indeed the interpretation of the situation, Argentina could share it, and believed that this was the solution to the problem.

With respect to the question of "rebalancing", he was pleased to hear from the Community that that concept had nothing to do with the renegotiations being proposed to resolve the dispute at hand. Argentina had referred to this in order that the Community could clarify for contracting parties its intentions with respect to its renegotiation under Article XXVIII, as had already been queried by the United States. It was clear from the Community's statement that it intended to renegotiate with the intention only of providing compensation for the effects of the subsidies, and that tariffs and other terms of its concessions were not to be changed. Argentina believed that it had been interesting to hear this from the Community, and that it had demonstrated that its reference to "rebalancing" had not been inopportune. He underlined that Argentina did not wish to change the object of the discussion, and that it was trying to reach a common understanding and, most of all, a mutually satisfactory solution for all concerned.

The Chairman proposed that the Council take note of the statements and agree to authorize the European Communities to enter into negotiations, under paragraph 4 of Article XXVIII, for modification of the Community's tariff concessions with respect to the tariff positions mentioned in the document DS28/2 for oilseeds and oilcake (CN 1201.00.90, 1205.00.90, 1206.00.90, 2304.00.00, 2306.30.00 and 2306.40.00) in its Schedule LXXX-EC.

The Council so agreed.

The representative of Argentina said that while he agreed with the authorization just given to the Community, he wished to stress that the renegotiation would be the consequence of the recommendation of the follow-up Panel. It was for this reason that the CONTRACTING PARTIES had adopted a recommendation or a ruling with respect to the question of the renegotiation of oilseeds concessions by the Community which was of concern to all. Argentina believed it important to make this clear.

The representative of the European Communities said that the comments just made by Argentina committed only Argentina and not any other government. This being said, he called on all contracting parties to facilitate the negotiations that the Community was about to enter into with the authorization that had just been given. He also cautioned the United States against making another faux-pas after the first one -- the publication of the proposed list of items for possible retaliation. Even though the United States would argue that it had not as yet taken any concrete retaliatory measures, the Community believed that the proposed measures constituted harassment and discouraged trade. The Community understood that when one entered into negotiation to seek compensation for incurred damage, one looked for means to impose pressure on the other party. However, such means could not be valid unless they were civilized and in conformity with the obligations that linked all within the GATT. Recalling the adage that "people in glass houses should not throw stones",

he reminded the United States of its own record on the implementation of the Panel report on Section 337⁵. He referred also to a report emanating from Japan that had stated quite clearly that among Japan's ten most important trading partners, all were "sinners" in one respect or another in trade matters. He recalled that in February 1989, during a discussion in the Council on the subject of unilateral measures, the Director-General had stated that his own conclusion was to "remind governments that the cornerstone of cooperation under the GATT was their readiness to submit their differences of views as to the GATT-conformity of their measures to the process of consultation and dispute settlement provided by the General Agreement" (C/163, page 14). The Director-General had gone on to explain what the drafters of the dispute settlement provisions had had in mind, and had quoted from a statement by one of the drafters, as saying: "We have asked the nations of the world to confer upon an international organization the right to limit their power to retaliate. We have sought to take retaliation, to discipline it, to keep it within bounds. By subjecting it to the restraints of international control, we have endeavoured to check its spread and growth, to convert it from a weapon of economic warfare to an instrument of international order" (C/163, page 14). The Director-General had further said that "there was no exception in the General Agreement which could justify discriminatory import tariffs imposed for the particular purpose of inducing another contracting party to bring its trade policies into conformity with the General Agreement. The CONTRACTING PARTIES could, however, -- in particular where it was found that a contracting party was maintaining measures contrary to the General Agreement -- be requested to authorize, in accordance with Article XXIII:2, the suspension of obligations towards a contracting party failing to observe its obligations under the General Agreement" (C/163, page 14). If the United States were indeed to retaliate by taking unilateral action, the Community would, in keeping with the advice given by the Director-General, ask for authorization to take measures to suspend obligations towards the United States, the contracting party that was "failing to observe its obligations under the General Agreement".

The representative of Brazil said he would not address the question of unilateral action because all knew Brazil's opinion on that. His delegation had been surprised to a certain extent by the decision which had just been taken, and because the Chairman had apparently read from the discussion that there was a consensus to grant the Community's request to renegotiate under paragraph 4 of Article XXVIII. Brazil still had serious doubts as to whether the "special circumstances" mentioned therein prevailed in this particular case. He had listened very carefully to what the Community had said earlier about the possibility of conducting negotiations under that provision in a more multilateral way than under paragraph 5. Apparently, what had been left to the Council was an option between a bad alternative and a worse alternative. He was not completely clear at this stage how the former was a better alternative than the latter. He wished to state clearly for the record that Brazil was not

⁵United States - Section 337 of the Tariff Act of 1930 (BISD 36S/345).

convinced that the Community's request should be granted on the basis it had proposed. Having said this, Brazil would not oppose a consensus if one existed.

The representative of Australia said he wished to intervene briefly as one who had earlier supported adoption of the report of the reconvened Panel members. Australia believed it important to have the linkage clearly established between the CONTRACTING PARTIES, the original Panel and its report, and the follow-up report, and also a linkage then to the CONTRACTING PARTIES' decisions regarding implementation, including that taken at the present meeting. Australia had believed adoption of the report was the appropriate course for this purpose. However, his delegation had listened carefully to the statements by the United States and the Community, and agreed with Argentina that both the Community and the United States clearly regarded this report as a follow-up and as integral to the original Panel report -- an extension thereof. He therefore believed it important that the record of the present meeting should show that this report was regarded by the CONTRACTING PARTIES as an extension or a follow-up of the original Panel report and also as integral to it.

The Chairman said that the Council had already taken a decision in terms of the procedure to authorize the Community under paragraph 4 of Article XXVIII to negotiate modifications of its tariff concessions in the context of the follow-up on this matter. It had indeed been his reading of the discussion that there was a consensus that the Community be authorized to negotiate under that provision. As to the issue of the status of the follow-up report of the original Panel members, this matter was obviously not free of controversy and interpretation. Two different views had been given at this very meeting; he did not see the prospect of resolving the issue now.

7. Canada - Import, distribution and sale of certain alcoholic drinks by provincial marketing agencies
- Follow-up on the Panel report (DS17/R, DS17/5)
- Communication from the United States (DS17/6)

The Chairman recalled that in February 1991, the Council had established a Panel to examine the United States' complaint regarding this matter. At its meeting in February 1992, the Council had adopted the Panel's report (DS17/R). As called for in the Panel's recommendations, Canada had submitted, on 31 March 1992, a report on its intentions to bring its provincial practices into GATT compliance (DS17/5). That report had been referred to by the European Communities at the April Council meeting. He drew attention to the United States' recent communication concerning this matter (DS17/6).

The representative of the United States said that the United States found elements of Canada's plan as outlined in DS17/5 to be unacceptable. Especially disturbing was the notion that while barriers to inter-provincial trade would be removed by July 1992, they would remain in effect until 31 March 1995 against foreign imports. Further, the United States found the maintenance of minimum-price requirements in a manner that

severely limited or even eliminated any ability to compete on the basis of price to be GATT-inconsistent and unacceptable. Nonetheless, the United States had worked hard to seek a bilateral resolution of the issue with Canada and, on 25 April 1992, the two countries had reached an agreement in principle to guide future negotiations. In this agreement, the United States had accepted, in a spirit of compromise, the continuation of Canada's discriminatory practices for another eighteen months to allow for a transition period for Canada's industry. The United States had also accepted the continuation of the minimum-price requirements, provided they were made GATT consistent. The United States and Canada had further agreed to resume bilateral negotiations to arrive at a full and final agreement based on the principles agreed to on 25 April.

However, since that date, the United States' good-faith efforts had been met with continuing attempts by Canada's provincial governments to circumvent the Panel's basic findings that had been the basis for the agreement in principle. This had been especially true on the part of the province of Ontario -- the largest market for imported beer in Canada -- which insisted on maintaining a discriminatory distribution system that required special warehousing, with substantial attendant costs, for imported beer. Such a practice had also been maintained by the province of Quebec. Ontario had also stated its intention to maintain a minimum-price requirement that would severely limit, or even eliminate altogether, the ability of US beers to compete on the basis of price. While Ontario had stated that its minimum price would not be set in relation to domestic beer prices, as specifically recommended by the Panel, it had not taken steps to make its minimum-price régime GATT consistent in other respects. The Panel had noted that one of the basic purposes of Article III was to ensure that internal charges and regulations did not frustrate the effect of tariff concessions granted under Article II. The effect of Ontario's minimum-price requirements was the prevention of price competition such that tariff concessions granted to the United States were nullified. Worse still, Ontario had announced a new discriminatory practice on 30 April, just five days after the agreement in principle had been reached, which raised the serious question as to whether Ontario was determined to frustrate the entry of imported beer in one way or another. Ontario had announced a heavy tax on non-refillable alcohol beverage containers, which essentially affected cans containing beer. He noted that while Canadian domestic beer was sold primarily in refillable bottles, most US beer was imported into Canada in cans. Ontario professed to be motivated by environmental concerns, but the tax applied only to non-refillable alcohol beverage containers -- principally cans containing beer -- and not all cans or even all cans containing beverages. He added that the recycling rate for aluminium cans was often higher than for glass containers and that the shipment of beer in aluminium cans therefore had definite environmental advantages with regard to energy efficiency and lower fuel consumption because it was so much lighter to transport. The United States thus seriously questioned the motives underlying the new tax in Ontario. It appeared evident that Ontario's primary motivation was to create yet another barrier to trade and to frustrate the sale of imported beer.

Contrary to making progress in negotiations with Canada toward an acceptable resolution of the matter, the United States thus found that the current level of discrimination was worse than when the agreement in

principle had been signed on 25 April. Accordingly, the United States requested that the matter of Canadian provincial beer practices be inscribed on the Agenda of the next Council meeting. If there were no resolution of these issues through an agreement to remove the discriminatory and trade-restrictive measures by Ontario and other Canadian provinces, the United States might seek the Council's authority for the withdrawal of concessions.

The representative of the European Communities said that the Community shared the United States' concerns on the difficulty of determining with any clarity the system to be applied in future by individual Canadian provinces in order to implement the Panel's recommendations. While lengthy bilateral consultations with Canada had thrown some light on some provinces' intentions, the details provided in the case of the two most important provinces -- Ontario and Quebec -- had been totally inadequate. The Community continued to be concerned about Canada's proposals to implement this Panel report. It was not clear that truly equal opportunities were being offered to importers in terms of distribution of beer. The Community was also preoccupied by the difficulty of obtaining full information on the costs of services charged by the provinces, in order to assess whether they fulfilled the requirements laid down by the Panel. Also, the Community had requested Canada to inform it soon of its planned timetable for correcting the costs of services charged to imported wines and spirits, since the Panel had set limits on those costs.

The representative of Canada said that his Government approached the issue of implementation on the basis of good-faith, and rejected any claims to the contrary. Canada was committed to meeting its GATT obligations consistent with the operation of an import monopoly as provided for under Article XVII. It had agreed to adoption of the Panel report at the February Council meeting and, as required by the Panel, had reported to CONTRACTING PARTIES by the end of March on its implementation plans, which had indicated its intention to put in GATT-consistent measures by no later than 31 March 1995. Canada had entered into consultations with interested parties -- the United States and the Community -- and these consultations were continuing. In Canada's view, the consultations with the United States, the complainant in the case at hand, had made considerable progress. As the United States had indicated, on 25 April, an agreement in principle had been reached, which called for changes in pricing and listing practices by 30 June 1992 and for access to points of sale and delivery by 30 September 1993. This was a full eighteen months in advance of the initial plan announced by Canada, and provided significant benefits to foreign brewers in the coming summer. These advances illustrated that Canada was continuing to work towards a mutually satisfactory resolution in good-faith. It was important to note, however, that the changes being made in the Canadian provinces were complex and in many cases would require legislative changes. As a result, the details of a final agreement with the United States had not yet been worked out. Canada's federal authorities were working closely with the provinces, and it was their intention to reach a final agreement to meet Canada's GATT obligations. Any such agreement with the United States would be applied on an m.f.n. basis. As to the contention that the United States was now worse off than before the agreement in principle, it was Canada's intention that measures

affecting beer be applied equally to both imported and domestic products consistent with the national treatment principle.

With regard to Ontario's environmental levy, this was applied to all non-refillable alcoholic beverage containers regardless of national origin. It was designed to encourage the use of refillable containers for environmental purposes and was part of an overall environmental strategy being implemented by that province. The latter had offered expedited procedures to its suppliers to obtain listings for beer in refillable containers. It was Canada's understanding that while the US industry used refillable containers, no company had yet taken up Ontario's offer.

The representative of Chile said that his country increasingly exported wines to Canada, where they encountered a number of restrictive measures such as discriminatory packaging requirements, prohibition on distribution of products by private firms, the provincial governments' monopoly in the distribution of wines, and price fixing. These measures were contrary to the GATT. For this reason, Chile supported the United States in this dispute and requested Canada to implement the Panel's recommendations as soon as possible.

The representative of Australia said that his Government shared the United States' concerns about Ontario's environmental levy in connection with the distribution of canned beer. Australia might wish to revert to this issue in due course. Australia also had a trading interest in the case at hand, and shared the Community's general concern about implementation of the Panel's recommendations. It had taken note of Canada's proposed implementation timetable for the immediate future, and hoped that the Council would be provided ample opportunity, in the longer term, to monitor all aspects of implementation in accordance with Part I:3 of the April 1989 Decision on improvements to the GATT dispute settlement rules and procedures (BISD 36S/61).

The representative of New Zealand said that his country, which exported beer to Canada, shared both the United States' and the Community's concerns on this matter. New Zealand looked forward to further discussion thereon at the next Council meeting.

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

8. United States - Restrictions on imports of tuna
- Recourse to Article XXIII:2 by the European Communities (DS29/2)

The Chairman drew attention to the communication from the European Communities in document DS29/2.

The representative of the European Communities recalled that at the April Council meeting, his delegation had indicated⁶ that failing any new developments in the Mexico/United States dispute⁶ on the same matter, the

⁶United States - Restrictions on imports of tuna (DS21/R).

Community would raise the question of its own problems with the US embargo on tuna. He asked whether United States had any relevant developments to report on, particularly in light of the recent Conference on responsible fishing in Mexico, which had a bearing on the US Marine Mammal Protection Act.

The representative of the United States said that while the United States would not be prepared to accept the establishment of a panel requested by the Community at the present meeting, it was actively working on a solution to the problem underlying that complaint, and approached this matter with the utmost seriousness. Just two days earlier, legislation had been introduced in Congress which provided for improved dolphin protection efforts and, at the same time, for a mechanism that would allow lifting the tuna import restrictions under the Marine Mammal Protection Act, including those that were the subject of the Community's complaint. The proposed legislation had been developed through extensive consultations among interested groups in the United States, enjoyed broad support from environmental groups and the Administration, and appeared likely to move quickly through Congress -- there would be a Committee vote on it the following week. It would provide for an international agreement on a global moratorium on tuna fishing with purse-seine nets deployed on or to circle dolphins or other marine mammals. The legislation would also lift the US restrictions on tuna imports from countries under primary embargoes if they committed themselves to certain dolphin protection practices. This measure would also result in the lifting of the associated restrictions on intermediary nations. It was the United States' understanding that there was a significant degree of receptiveness on the part of the affected countries to enter into such an agreement. Accordingly, the United States hoped that this legislation and the resulting agreement would resolve the matter at hand in the GATT. His delegation would report to the Council at its next meeting on any further relevant developments.

The representative of the European Communities said that the issue at stake was not dolphin protection but unilateral import restrictions, and it was in respect of these that the Community was requesting a panel. The Community shared the United States' environmental concerns; it was not involved in fishing methods contested by the latter in the area concerned and which had led to the measures under dispute. The Community, however, was being affected by the protectionist measures that had been unilaterally imposed by the United States. Accordingly, the Community wished to formally request the establishment of a panel to examine its complaint, although it noted the United States had anticipated this request and had indicated its inability to agree thereto at the present meeting.

The representative of Brazil said that the issue at hand could also be seen in light of principle 12 of the Declaration adopted at the UN Conference on Environment and Development on 13 June 1992, which stated, in essence, that trade policy measures for environmental purposes should not constitute means of arbitrary or unjustifiable discrimination or disguised restrictions on international trade. Accordingly, unilateral actions to deal with environmental challenges outside the jurisdiction of the importing countries should be avoided.

The representative of Canada said that, as had been indicated at previous Council meetings, Canada continued to believe that there was great merit in the adoption of the Panel report on the complaint brought by Mexico on this matter (DS21/R). If a panel were to be established in response to the Community's request, Canada reserved the right to make a third-party submission to it.

The representative of Argentina recalled that his delegation had stressed on several earlier occasions the importance of the recommendations of the Panel established to examine Mexico's complaint (DS21/R). Argentina had repeatedly sought adoption of that report. As to the Community's request in DS29/2, Argentina supported it, bearing in mind also the United States' statement of intention to take that request into account and to amend its domestic legislation that gave rise to this complaint.

The representative of the European Communities informed the Council that the Netherlands, a member State, wished to express a concern on behalf of the Netherlands Antilles.

The representative of the Netherlands drew attention to the problems faced in the case at hand by the Netherlands Antilles. The Netherlands, and in particular the Netherlands Antilles, was among the sixteen contracting parties faced with the US secondary embargoes on imports of yellowfin tuna and tuna products. Following a US court ruling, exports of yellowfin tuna from the Netherlands Antilles to the United States had been banned even though the tuna in question had been caught in the Caribbean by the long-line fishing method and not by the disputed purse-seine techniques. These restrictions were linked to the direct embargoes being applied to the same products originating from Mexico and Venezuela. In her understanding, a ban by the Netherlands Antilles on tuna originating from these countries would exonerate its tuna exports from the US embargo. The Netherlands found such unilateral trade measures of an extra-territorial nature harmful to its export industry and therefore unacceptable. The Netherlands, and thus also the Netherlands Antilles, fully shared the objective of reducing incidental dolphin mortality in tuna fishing, and were willing to join in any international undertaking to tackle this and other environmental issues arising from the use of certain fishing techniques. They could not, however, be expected to violate GATT obligations towards third contracting parties -- especially Venezuela with which the Netherlands Antilles had close economic ties in view of its geographical proximity -- in order to attain that goal. The Netherlands, therefore, intended to request Article XXIII:1 consultations with the United States on this matter. With regard to the Community's request for a panel on the US intermediary embargo, the Netherlands, on behalf of the Netherlands Antilles, reserved its right to join the Community as a co-complainant. Alternatively, the Netherlands might decide to present a third-party submission during the deliberations of the panel requested by the Community.

The representative of Japan said that his Government had believed the tuna dispute to be close to a solution following the report of the Panel on Mexico's complaint (DS21/R) and was, therefore, disappointed that the latter had not been adopted. Japan looked forward to the rapid adoption of that report. As to the Community's request for a new panel regarding the

US secondary embargoes, Japan was one of the affected countries and as such supported the request and anticipated the establishment of the panel at the next Council meeting. Japan reserved its rights to participate as a third-party in the panel proceedings.

The representative of Venezuela said that the Council had once again on its Agenda an item related to the US embargo on tuna imports. In the ten months since the issuance of the Panel report on Mexico's complaint regarding this matter, several contracting parties had expressed their concern on the way this dispute had developed and on the possible consequences of the non-adoption of that Panel report. Venezuela's position on this dispute was well-known. Venezuela's tuna industry had suffered dramatically from the embargo imposed on its exports. Venezuela had undertaken intensive, and frustrating, efforts to search for a multilaterally acceptable solution to the problem of dolphin protection, and for the prompt lifting of the embargo against its tuna exports. The US embargo had had important trade effects on a number of countries, including Venezuela, and had been clearly found to be GATT inconsistent by the Panel he had referred to earlier. For all these reasons, Venezuela was interested in participating in the panel being requested by the Community, and also any other which might be requested by the Netherlands, as a third-party. Venezuela hoped that the United States would be in a position to allow adoption of the initial Panel report (DS21/R) on this matter at the next Council meeting.

The representative of Peru said that ten months had elapsed since the Panel report on Mexico's complaint on this matter had been submitted and yet its adoption was still pending. Peru reiterated its support for adoption of that report. At the present juncture, one was considering a request to establish a new panel to examine the same matter once again, but from the point of the view of the impairment of the rights of the so-called intermediary nations. Peru had no doubt that the conclusions reached by any new panel would not differ from those reached by the earlier Panel. Peru therefore had no objections to its establishment, but would add that an accumulation of similar conclusions was not the best way to resolve this matter, which had both trade and environmental aspects. It would be more constructive for the multilateral trading system if the parties concerned were to accept the earlier Panel's conclusions and, on the basis thereof, to seek constructive alternatives that would obviate the need to have recourse to such import restrictions in the future.

The Chairman reminded Council members that the adoption of the Panel report on Mexico's complaint (DS21/R) was not the subject of discussion under this Agenda item. That report had been discussed at earlier Council meetings and it was clear that as long as the two parties concerned did not want that report to be adopted, it could not be so done. Discussion under the present item related only to the Community's request for a panel to examine its dispute with the United States. The United States had already responded that it was not in a position to agree to that request at the present meeting. He therefore requested that representatives make their interventions on this issue in that light.

The representative of Colombia reserved his country's right to participate in any new panels to be established on this matter, and to take part in any consultations related thereto.

The representative of Thailand said that his delegation supported the establishment of the panel requested by the Community, and reserved Thailand's rights to participate in its proceedings as a third-party.

The representative of Morocco said that his delegation, too, supported the setting up of the requested panel, as a matter of principle, and reserved Morocco's GATT rights in the matter in view of the difficulties that its tuna export trade encountered following the US measure thereon.

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

9. Status of work in panels and implementation of panel reports
- Report by the Director-General (C/181 and Corr.1)

The Chairman proposed that in view of the importance of this item and the limited time available at the present meeting, the Council agree to defer consideration thereof until its next meeting.

The representative of Australia said that his delegation concurred with the Chairman's proposal, but wished to foreshadow addressing particular cases of trade interest to Australia at the next Council meeting. His delegation would also raise its concerns at that meeting regarding the Council's capacity to monitor the implementation of panel reports pursuant to the April 1989 Decision on improvements to the GATT dispute settlement rules and procedures (BISD 36S/61).

The Council took note of the statements and agreed to defer consideration of this item until its next meeting.

10. Egypt - Renegotiation of Schedule LXIII
- Request for a waiver under Article XXV:5 (C/W/697, L/6986 and Add.1 and 2)

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

The representative of Egypt expressed his Government's disappointment that the Council had had to devote three meetings to decide upon this waiver request.⁷ Further delay on this matter would impair Egypt's GATT rights and jeopardize the implementation of its economic reform and

⁷ Following the meeting, the text of the statement was circulated as L/6986/Add.3.

structural adjustment programme, including its trade liberalization policies. Egypt believed there was no contradiction between its economic policies designed in conjunction with the World Bank and the International Monetary Fund (IMF) on the one hand, and the spirit of its GATT obligations on the other. It had provided clarification on its trade liberalization efforts in recent consultations with interested contracting parties. He went on to describe the trade policy measures that his Government had taken recently, such as the termination of import licensing schemes and all import quotas, the consistent removal of non-tariff barriers included in a "negative list", the simplification of foreign trade procedures, the removal of import surcharges, and the establishment of a free foreign exchange market where rates were determined by market forces. As a consequence of these measures, and in conformity with its trade and financial needs, Egypt was seeking to adjust its tariffs on a limited number of tariff lines in order to secure a better balance. It hoped that a decision could be taken on its waiver request without any further delay.

The representative of the United States thanked Egypt for its statement on the trade reforms being implemented, and their relationship to its pending waiver request. The United States welcomed this step toward fuller transparency in Egypt's trade régime. It would carefully examine the new information and continue its consultations with Egypt with a view to reaching a satisfactory resolution of this matter in the very near future. The United States hoped to be in a position to act favourably on Egypt's request at the next Council meeting.

The representative of the European Communities said that Egypt's statement had been extremely helpful. The Community had been among those that had participated in intensive bilateral and plurilateral consultations with Egypt in an endeavour to reach a satisfactory conclusion on the latter's waiver request in time for the present Council meeting. While that had not proved possible, Egypt's statement at the present meeting had helped move the process forward. The Community would study the statement, and intended, if at all possible, to resolve this matter in time for the next Council meeting.

The representative of Australia said his Government sympathized with Egypt's position and applauded its overall economic reform objectives. In seeking a waiver, Egypt was attempting to follow GATT procedures and was caught between its GATT obligations on the one hand and the requirements of the IMF/World Bank reform programme on the other. While Egypt's statement had been helpful, Australia sought confirmation of its understanding that the waiver being requested would be applied only for the initial tranche of tariff increases under the reform programme, i.e., the tranche that affected tariff bindings on the items listed in L/6986/Add.1. Australia had noted that Egypt was prepared to enter into Article XXVIII negotiations at an early stage on these proposed tariff increases. Australia also sought confirmation that Egypt would not request a further waiver for a second tranche of tariff increases, and that Article XXVIII procedures would be followed for any such increases prior to their implementation.

The representative of Canada said that in his understanding, too, the waiver would apply to the first tranche of Egypt's tariff changes, and that

the Article XXVIII negotiations to follow immediately after the granting of the waiver would relate thereto. He also understood that any subsequent tariff increases that occurred would be preceded by Article XXVIII negotiations. Canada believed it would be helpful for these understandings to be confirmed in writing by Egypt. On a more general note, Canada recognized that one was dealing, in the case at hand, with a conflict between a country's GATT obligations and those negotiated with international financial institutions as part of the terms of a loan agreement. The CONTRACTING PARTIES owed it to themselves to avoid the recurrence of such situations in future by working with these institutions and trying to find some way of having an early warning on such cases.

The representative of New Zealand said that his country had also been involved in recent bilateral and plurilateral consultations with Egypt, and shared the understandings expressed by Australia and Canada. New Zealand hoped to be in a position to support the waiver request at the next Council meeting.

The representative of Egypt said that his Government was only seeking one waiver from its GATT obligations. He hoped that if there were any further consultations in the future between a contracting party and the IMF and the World Bank relating to trade policy matters, the GATT would be involved in such consultations in order to avoid any misunderstandings.

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

11. Harmonized System - Requests for extensions of waivers under Article XXV:5

- (a) Bangladesh (C/W/713, L/7020)
- (b) Brazil (C/W/708, L/7014)
- (c) Chile (C/W/704, L/7006)
- (d) Colombia (C/W/703, L/7005)
- (e) Hungary (C/W/714, L/7021)
- (f) Israel (C/W/707, L/7012)
- (g) Malaysia (C/W/709, L/7015)
- (h) Mexico (C/W/706, L/7011)
- (i) Pakistan (C/W/710, L/7016)
- (j) Philippines (C/W/701, L/7003)
- (k) Senegal (C/W/712, L/7019)
- (l) Sri Lanka (C/W/705, L/7010)
- (m) Turkey (C/W/711, L/7018)
- (n) Uruguay (C/W/702, L/7004)

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

The representative of the United States said that while the requests for waiver extensions were in most cases justified, his authorities were

concerned at the proliferation of such requests and, in some cases, at the extended duration for which some of the extensions had been approved. This was leading to expectations that requests for waivers and their extensions were to be approved automatically. The United States pledged its best efforts to complete the negotiations required for the establishment of new schedules of concessions implementing the HS, and urged other contracting parties, including those seeking establishment of new schedules, to do the same. He noted that amongst those contracting parties requesting extensions of their waivers, one had delayed providing the information necessary to complete the negotiations and terminate its waiver. This contracting party had had a waiver of some sort from its tariff obligations for the past fifteen years and had requested an initial one-year waiver to implement the HS in 1989. His authorities hoped that this situation would soon be rectified.

The representative of New Zealand expressed concern about the number of countries requesting waiver extensions. The obligations which were waived were of importance to his Government, and it expected that the deadlines set out in the waivers would be adhered to. New Zealand appreciated that a number of contracting parties were in a difficult position because the Uruguay Round had not been completed, and that this was not exclusively their fault. Nevertheless, it was important that extensions of waivers should be limited and negotiations pursuant to waivers be conducted expeditiously. In this respect, he noted that his delegation had been unable to secure Article XXVIII consultations with one of the contracting parties concerned.

The representative of the European Communities said his authorities had concerns similar to those expressed by previous speakers, and that their position had already been stated at earlier Council meetings.

The representative of Sweden, on behalf of the Nordic countries, noted that they had also expressed in earlier Council meetings concerns similar to those stated by the previous speakers. The present situation in regard to requests for waiver extensions was not any different as compared to the past year. The Nordic countries hoped that waiver extensions would be limited and that work would be pursued to terminate the waivers.

The representative of Brazil said that the requests for waiver extensions should be supported by those contracting parties that were in the process of negotiating the new schedules and which had not thus far replied to proposals submitted to them by those requesting the extensions.

The Chairman drew attention to the draft decisions contained in the documents: C/W/713, Bangladesh; C/W/708, Brazil; C/W/704, Chile; C/W/703, Colombia; C/W/714, Hungary, C/W/707, Israel, C/W/709, Malaysia; C/W/706, Mexico; C/W/710, Pakistan; C/W/701, Philippines; C/W/712, Senegal; C/W/705, Sri Lanka, C/W/711, Turkey; and C/W/702, Uruguay. He then stated that the documentation still to be submitted and any negotiations or consultations that might be required should follow the special procedures relating to the transposition of the current GATT concessions into the Harmonized System, adopted by the Council on 12 July 1983 (L/5470/Rev.1).

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

12. Peru - Establishment of a new Schedule XXXV
- Request for a waiver under Article XXV:5 (C/W/699, L/6997)

The Chairman recalled that at its meeting in April, the Council had been informed of Peru's intention to request a waiver from the provisions of Article II. He drew attention to Peru's request (L/6997), and to the draft decision which had been circulated to facilitate consideration of this item (C/W/699).

The representative of Peru recalled that his delegation had informed the Council in April of the adoption by his country of the common tariff nomenclature of the Andean Group member countries (NANDINA), which was based on the Harmonized System and which replaced the earlier tariff based on the Customs Cooperation Council nomenclature (CCCN). Due to time constraints, his authorities had not been able to prepare the documentation required or to conduct Article XXVIII consultations prior to the entry into force of the NANDINA. His Government therefore requested a temporary waiver from its obligations under Article II until 31 May 1993, in order to enable it to implement the new tariff. Peru undertook to circulate the necessary documentation as quickly as possible and to carry out the required consultations, and did not intend to modify through that procedure its obligations towards other contracting parties.

The Council took note of the statement, approved the text of the draft decision in C/W/699 and recommended its adoption by the CONTRACTING PARTIES by postal ballot.

13. Morocco - Establishment of a new Schedule LXXXI
- Request for a waiver under Article XXV:5 (C/W/715, L/7025)

The Chairman drew attention to the request by Morocco (L/7022) for a waiver from the provisions of Article II, and to the draft decision which had been circulated to facilitate consideration of this item (C/W/715).

The representative of Morocco said that his Governments's implementation of the Harmonized System tariff nomenclature as from 1 July 1992 had left little time for conducting Article XXVIII consultations prior to that date. Morocco wished to assure other contracting parties that all obligations under Article XXVIII would be respected. The documentation required would be circulated as soon as possible and consultations would be conducted with all contracting parties concerned. The process of tariff conversion would not lead to modifications in bound tariff rates.

The Council took note of the statement, approved the text of the draft decision in C/W/715 and recommended its adoption by the CONTRACTING PARTIES by postal ballot.

14. Trade Policy Review Mechanism - Programme of reviews for 1993

The Chairman recalled that the Trade Policy Review Mechanism (TPRM) was now in its third full year of existence. Until the present, twenty-five reviews had been carried out, including second reviews of the United States and Canada. The continuing support for the TPRM reflected recognition of the usefulness of the process as an important element of GATT activities. In line with the procedures required by the Decision establishing the TPRM (BISD 36S/405), and after consultations with delegations, he proposed the following programme of reviews for 1993:

- Two-year cycle: United States (third review).
- Four-year cycle: Australia (second review), Czech and Slovak Federal Republic, India, Malaysia, Mexico.
- Six-year cycle: Kenya (postponed from 1992), Iceland, Israel, Peru, Senegal, Turkey.

The Council would be informed at its next meeting of the result of ongoing discussions with the final country to be included in the programme. Thus, as for 1992, a programme of thirteen reviews was to be established for 1993. This was still not a complete programme of reviews. Fulfilment of the strict requirements of the TPRM process would imply that eighteen countries be reviewed every year. However, this would imply a major increase in the programme and in the necessary resources, which were already overstretched by the existing programme. With regard to improving the operation of the mechanism, and in particular of the Council's review meetings, he had held one informal consultation thus far, and believed that further consultations were necessary.

Finally, he recalled the proposed dates for the remaining review meetings envisaged for the current year's programme -- which would in fact, spill over into early 1993:

- 6-9 July 1992: Uruguay and Republic of Korea;
- 12-16 October 1992: Brazil, Egypt, and Japan (second review);
- 14-18 December 1992: Philippines, Poland and Romania;
- 19-23 January 1993: Bolivia and South Africa;
- February/March 1993: European Communities (second review).

He noted that Egypt's and the Philippines' reviews were associated with full consultations under Article XVIII:12(b) in the Committee on Balance-of-Payments Restrictions.

The Council took note of the statement and agreed with the programme of reviews for 1993 as proposed by the Chairman (L/7040).

15. Salaries and pensions
- Statement by the Director-General

The Chairman recalled that at their Forty-Sixth Session in December 1990, the CONTRACTING PARTIES had agreed that the Council should take up in 1991 the matter of staff salaries and pensions. In February 1991, the then Council Chairman had undertaken to consult on this matter. Following those consultations, the Council had agreed in November 1991 to invite the Director-General to formulate proposals for rectifying the salaries and pensions situation of the GATT's professional staff, and had also agreed that he should report back to the Council as early as possible in 1992, and in any event no later than the last Council meeting before the summer break.

The Director-General recalled that at the November 1991 Council meeting, the then Council Chairman had reported on consultations he had held on this matter, and had stated that serious problems existed with the salaries and pensions of professional staff in the GATT and that, if the Secretariat were to remain one of high professional competence and morale, urgent action was required. The Chairman had indicated that the main problems stemmed from the fact that the remuneration of the professional staff had declined in real terms, and also that there were problems with professional staff pensions. This situation contrasted very unfavourably with that prevailing in some other intergovernmental secretariats. The Director-General said that following the invitation addressed to him by the Council Chairman in 1991, he had been working on ways and means to rectify this situation, which continued to be a source of deep concern to himself and his colleagues. This had been carried out on two fronts: within the United Nations' Common System and also within the context of any new institutional arrangements that might emerge in the GATT. As far as the Common System was concerned, changes to the pension scheme had at least removed the immediate pressure on long-serving staff to resign in order to preserve their pension rights. Apart from this, however, the conditions of service the GATT was able to offer continued to lag far behind those of its most direct competitors. In his view, and he believed this was shared by many, the question of conditions of service was very much linked to the Uruguay Round, to the conclusion of which all had been giving the highest priority. In spite of this, the Secretariat had been actively engaged in conducting studies designed to establish the facts and to lay the ground for action. This work would continue and, in consultation with the respective Chairmen of the CONTRACTING PARTIES and of the Council, he would bring this matter before the Council again at an early and appropriate moment.

The Council took note of the statement.

16. EEC - Import régime for bananas

The representative of Costa Rica, speaking under "Other Business", recalled that on 12 June 1992, Colombia, Costa Rica, Guatemala, Nicaragua and Venezuela had formally requested Article XXII consultations with the European Communities in regard to the import régime on bananas currently

applied by several member States, as well as to the proposed future régime to be applied by all member States as from 1 January 1993⁸. The Community member States currently applied different import régimes on bananas and those applied by France, the United Kingdom, Spain, Portugal and Greece discriminated against Latin American exporters and were clearly GATT inconsistent. In an effort to unify these import régimes prior to January 1993, the European Commission had put forward a proposal for a single banana import régime for all Community member States. Unfortunately, the proposal, far from eliminating the current difficulties imposed upon Costa Rica, would aggravate the situation and extend such difficulties to all exporting countries including Latin American countries. He noted that the main beneficiaries of the present and of the proposed Community import régime were not ACP countries or producers in overseas territories of the EC member States, but rather a selected group of importers who had acquired a monopoly position and who would in fact benefit even more from such an import régime. This régime was a clear example of traditional protectionism which was always detrimental to the international community as a whole and, in particular, to directly affected parties, with the exception of a small group of selected beneficiaries. There was no doubt, therefore, that the import régimes currently applied by several Community member States, and the new régime that was being proposed to replace them, seriously jeopardized Latin American countries' efforts to accelerate development and overcome poverty. The proposed quota restrictions and their administration through licences would reduce the sales of bananas in the Community by approximately 30 per cent in 1993 and up to 70 per cent by 1997.

The preferences under the existing import régime had been examined by a GATT panel in 1973 in a complaint brought by the United States against the United Kingdom. The Panel had given a preliminary determination that had led the United Kingdom to dismantle the very type of preferences that Latin American countries were now wanting to review. Unfortunately, bananas, which had been originally included as part of the complaint, had been subsequently withdrawn because the United States was not a banana-exporting country. However, the principle that had prevailed then with respect to the other agricultural products concerned by the complaint remained valid for the case at hand. Moreover, the countries requesting the consultations in the present case were banana exporters.

The majority of Latin American banana exporters had acceded to GATT over the last few years and they were convinced of the importance of the GATT principles. They were determined to continue respecting their GATT obligations, but expected other contracting parties and the Community to do likewise. He believed that Article XXII consultations were meant to give the parties an opportunity to seek a satisfactory solution to their disputes or differences. Obviously, such a solution had to follow the GATT's rules and disciplines. In informing the Council of their request at the present meeting, Colombia, Costa Rica, Guatemala, Nicaragua and Venezuela hoped to find support for what they considered to be their legitimate rights.

⁸ The request was subsequently circulated as DS32/1.

The representatives of Costa Rica and Colombia provided detailed statistical data to illustrate the importance of their banana export trade, and that of Central and other Latin American countries, to their respective economies and to that of the region.

The representatives of Costa Rica, Nicaragua, Colombia and Venezuela all emphasized that the application to all member States of the Community's proposed restrictive import quota régime for bananas would be effected in a GATT-inconsistent and discriminatory manner and would represent a serious setback to recent trade liberalization efforts and to other such efforts being contemplated in the context of the Uruguay Round, in particular in the area of tropical products.

The same representatives and those of Mexico, Uruguay, the United States, Peru, the Philippines, El Salvador, Australia, New Zealand, and the observer from Honduras, all stressed that the Community's proposed banana import régime ran counter to the spirit and letter of the 1986 Punta del Este Declaration (BISD 33S/19), and, more specifically, to the standstill and rollback commitments therein, as also reiterated at the 1988 Montreal Mid-Term Review meeting (MTN.TNC/11). Many of these representatives further emphasized that the proposed new import régime for bananas went also against the goal of the Uruguay Round to achieve the widest degree of trade liberalization for tropical products. Most of them stressed the potential damage that could be inflicted on the outcome of the Uruguay Round and called on the Community to make every effort to work out a compromise solution that would take account of the multiple interests at stake, and, at the same time, be GATT-consistent and in line with the agreed objectives of the Uruguay Round.

The representative of Mexico recalled that his delegation had already expressed its concern with the possibility of the application of the Community's proposed measures and support for Latin American banana-exporting countries in this respect. Despite the fact that Latin American exporters had made serious goodwill efforts to find a solution to this matter, the proposed measures and their imminent application had not changed. The proposed new restrictions were clearly incompatible with Article XXXVII, as well as with other GATT provisions. They would have a serious effect on very specific interests of a large number of exporting developing countries. Many of these countries had very recently acceded to GATT under terms which involved observance of far more disciplined rules than virtually any other contracting parties. These disciplines were now being ignored by their trading partners. His delegation urged the Community to pay due attention to developing countries' interests and rights and to respond favourably to the requests made by those banana exporting countries that were threatened by the application of those measures.

The representative of Nicaragua said that his delegation supported Costa Rica's views. Latin American banana exporters had always tried to seek, through dialogue, a solution which would take into consideration the interests of all parties involved in the banana trade. He was convinced that it should be possible to find such a solution. Despite prolonged bilateral contacts and discussions on this matter, the threat remained of strengthening a restrictive system which, at the outset, was not acceptable

and in any case was in violation of GATT principles and the overall objectives of the Uruguay Round. The difficulties of achieving an understanding had therefore compelled the exporting countries to request consultations. This decision should be interpreted by the Community as a wish to formalize dialogue and initiate a constructive discussion which had thus far not been possible. His authorities wanted to solve the problem to the best interests of all concerned. He recalled that Article XVIII of the Treaty of Rome stated that all Community member States were ready to contribute to the development of international trade and the reduction of trade barriers and he hoped that the Community would act in the spirit of this Article.

The representative of Colombia said that, given the particular importance of bananas for his country's economy and exports, and the significance of the Community's market which was his country's second trading partner, his country had associated itself with the request for consultations. He noted that there was, of course, a great difference between preferences and restrictions: Colombia did not object to the former since it enjoyed such Community preferences in the context of the fight against drug trafficking; with regard to restrictions, however, it considered that any trade policy strategy should avoid any form of discrimination or restrictions which were GATT inconsistent. Over the last three years Colombia had taken unilateral measures whereby non-tariff barriers had been completely eliminated and the average of applied tariffs had been reduced to 11 per cent. This had led to an open economy which showed that Colombia was prepared to respect fully its GATT commitments. However, in Colombia's trade with and demands to the Community, certain developments had been very discouraging. Decisions were, indeed, being taken by the responsible authorities of one of the most important world trading partners on behalf of some of the twelve most prosperous countries in the world, amongst which he noted there was no unanimity concerning the existing and proposed import régime for bananas. If bananas were used as a pretext to sidestep the tariffication process which was one of the fundamental bases of agricultural negotiations in the Uruguay Round, this would have a serious negative impact on the latter's fate. Colombia believed that the Round could not be successfully wound up without solving the banana problem. Obviously, both the time and the place had to be right in order to reach a decision on this matter within the Community and subsequently in the Round. Therefore, the Community had tremendous responsibilities since its decisions would have a great impact on the final results of the Round. Colombia's request for Article XXII consultations did not reflect a negative attitude towards the EC member States with which it had had very close links of friendship for many years, but rather should be taken as a request for an opportunity of further reflection on the part of one of the major trading partners whose decision would have a tremendous influence on the world in general and on the developing one in particular.

The representative of Venezuela said that he shared the previous speakers' concerns. The proposed new régime for bananas was undoubtedly a serious threat to his country's efforts at diversifying exports and markets. Moreover, the new régime would put an end to the expectations his country had placed on a successful conclusion of the Uruguay Round. Venezuela had contributed considerably to the multilateral trade

liberalization effort, especially since its recent accession to GATT. The problem faced by a number of Latin American banana-exporting countries dated back many years. The request for Article XXII consultations had been put forward after years of unsuccessful high-level consultations -- both multilateral and bilateral -- between the Community and Latin American countries. A quota-based régime would have practical implications on countries such as Venezuela whose volume of exports to the Community was not very large. These implications would further be aggravated given Venezuela's large investment in the banana sector in which it had undoubted comparative advantages. His authorities believed that present efforts should in fact be directed to a tariff-only régime of protection. It was for this reason that his authorities had no option but to request an examination of the régimes prevailing in certain EC member States which it considered to be in violation of GATT provisions, in the hope that a favourable judgement would enable Venezuela to protect its trade interests in this particular product.

The representative of Uruguay said that his delegation shared the previous speakers' views. Uruguay was neither a banana producer, nor exporter, but the case before the Council was also a matter of principle; there was a danger that restrictive régimes would be extended to other products. If a principle was to be violated for one product this 30.6.92 could happen for other products as well. Moreover, the example set by contracting parties to infringe upon the rules could be followed by others. Therefore, the banana case affected all contracting parties whether or not they participated in the banana trade. As noted by Mexico, many of the countries involved had acceded to GATT recently, and they relied very much on their banana exports -- it represented some 40 or 50 per cent of their export earnings. If the existing import régime were to be made even more restrictive, these countries' trust in GATT would be undermined. His authorities attached the utmost importance to the request for Article XXII consultations put forward by Latin American exporting countries. Uruguay therefore intended to follow the matter very closely and supported the countries that had put this matter before the Council.

The representative of the United States said that his authorities fully shared the views of Costa Rica, Mexico, Nicaragua, Colombia, Venezuela and Uruguay with respect to reports that the EC Commission might be considering the application of a régime of quantitative restrictions for bananas throughout the Community. Seen in the context of the Uruguay Round, this would fatally undermine the Draft Final Act approach concerning the elimination of quantitative restrictions in the agriculture sector through comprehensive tariffication. The Community could not pretend to be interested in a successful conclusion to the Round and at the same time consider the extension of illegal member State measures on bananas across the Community. His authorities therefore strongly urged the Community to renounce any such protectionist approach which might be under consideration for future trade in bananas. There was no justification for considering at this stage new quantitative restrictions for bananas in the Community, particularly when any such restrictions would run counter to a successful conclusion of the Round.

The representative of Peru said that her authorities supported Uruguay's view that the proposed Community import régime for bananas -- a

sensitive product exported by various Latin American countries -- constituted a negative and harmful precedent. She also supported Costa Rica's position on the matter and expressed Peru's concern about the way in which these initiatives might have repercussions on the treatment to be afforded to tropical products in the context of the Uruguay Round.

The representative of the Philippines said that his delegation sympathized with the concerns expressed by Costa Rica and other countries over the banana import régimes maintained by EC member States and that proposed by the Community. His delegation would pay particular attention to developments in the Article XXII consultations between the Community and Costa Rica and other countries, and hoped that this process would lead to a GATT-consistent régime for bananas.

The representative of El Salvador said that, although her country did not produce nor export bananas it, too, was worried by the Community's proposal and the potentially large damage it could inflict onto Latin American exporting countries. The proposal was just as worrying for countries that were neither producers nor exporters of bananas since it was contrary to GATT rules and disciplines and to the objectives of the Uruguay Round and would have effects far beyond what was at first observed. El Salvador therefore supported the request for Article XXII consultations hoping that the contracting parties involved could arrive at a fair solution which would conform to GATT rules and disciplines.

The representative of Jamaica said that his delegation could not share and indeed opposed the opinions expressed by previous speakers. The matter at hand should be fully understood. The EC Commission's proposal with respect to the import régime for bananas, applicable as from January 1993, reflected a number of factors. He noted that [Europe's or] the Community's sources of supply for bananas were the Overseas Territories, the ACP countries, and Latin, principally Central, American countries for the so-called dollar bananas. The latter, with sixty per cent, comprised by far the largest share of the market. The ACP countries' share comprised roughly 19-20 per cent, spread between several countries. These countries were all developing countries and some of them were even among the least-developed countries. Some depended highly or almost exclusively on banana exports for their foreign exchange earnings, hence the vital importance of this trade to their economies. He noted that most of these exporters derived their produce from small producers whose income was important to their families and to the community. Banana trade had been subject to an arrangement between the Community and the ACP countries for a number of years under the various Lomé Conventions. Therefore, the Community had a long-standing legal obligation therein. The Community, it seemed, wished to respect this obligation, as did the ACP banana exporters. The new import régime -- still a proposal -- would in effect end in about ten years. It had provisions which would allow for annual growth in the so-called dollar banana exports to the Community and also allowed for a review before the end of the régime. Consequently, the proposal already envisaged the possibility of its own death. In the meantime, however, it was of vital interest to the ACP countries. Jamaica had, of course, no objection to the request for consultations -- all GATT countries had that right -- but it hoped that the above-mentioned factors would be fully taken

into account in the consultations and that other interested countries would be able to participate in them and to make their views known therein.

The representative of Argentina, speaking also on behalf of Brazil, said that he shared and supported the concerns voiced by Costa Rica and other Latin American banana exporters. In respect to the comments made by Jamaica, he noted that in the Uruguay Round agricultural negotiations participants were seeking mechanisms that would offer guarantees to all and that Jamaica had participated in this work. As to the request for consultations, his delegation hoped that the Community would respond favourably to it and that such consultations would lead to a mutually satisfactory solution. In his view, no GATT provision could justify the proposed régime of quota restrictions for the Community's banana imports; Article XI:1 forbade quantitative restrictions and nowhere provided arguments that could justify such restrictions. Argentina, together with Brazil, invited the Community to reflect upon this and to work towards a mutually satisfactory solution with Latin American exporters. Such a solution could very well take into account the legitimate preferential interest of the ACP countries, including those of Jamaica.

The representative of Australia that said his delegation had a great deal of sympathy for the concerns raised by Costa Rica and other Latin American countries concerning the operation of the Community's existing and possible future import régime for bananas. This issue had direct economic importance for a wide range of developing countries and also implications at the wider policy level. The background information provided at the present meeting underlined, firstly, the significance of developing-country trade interests at stake, secondly, the concerns which prevailed over existing import régimes and their GATT consistency and, thirdly, the extent to which those interests could possibly be further adversely affected if the Community were to introduce a kind of quota-based system which was apparently under consideration as an option. His delegation noted, as others had, that the introduction of such a quota-based system would also be directly contrary to the reform thrust and the central modalities considered in the Uruguay Round negotiations. Australia appreciated that there was a wide range of concerns involved, not only those of Latin American producers, but also those of countries enjoying preferential access to the Community's markets as outlined by Jamaica. Another factor was the Community's own domestic producers. Balancing those concerns was a complex undertaking. However, his delegation strongly believed that there was ample scope for the Community to take account of all these interests in ways which were compatible with the modalities considered in the Round negotiations on agriculture which aimed at liberalizing trade in agriculture and, at the same time, allowed for gradual adjustment.

The representative of Chile said that his delegation strongly supported Costa Rica, Colombia and other Latin American countries. Banana exports had a comparably greater significance for those countries to that of agriculture in certain developed countries, and the latter were the ones that had slowed down the Uruguay Round negotiations because of their own agriculture problems. He considered there was a lack of symmetry in approaching the various interests of countries in these two cases.

The representative of New Zealand said that his delegation supported Australia's comments. He also felt that the issue before the Council involved a number of interests and that this important matter was worthy of very careful consideration. His delegation was interested in, and concerned by, the implications of certain proposals which might be involved and urged the parties directly concerned to consult in order to seek a satisfactory solution for all. These consultations needed to be held before positions became such that they could not affect developments in regard to the Community's import régime for bananas. He urged the Community to engage in consultations with a view to finding a compromise that could remain within the framework of the Draft Final Act. This was entirely feasible and his delegation had had discussions with numerous countries on this point and had made its views known to the Community.

The representatives of Côte d'Ivoire, Senegal and Madagascar supported the statement made by Jamaica and emphasized that the Council should be aware of ACP countries' real difficulties and fully understand them. Any solution should involve specific provisions enabling those countries to continue exporting to their traditional markets. In examining the matter at hand, focus should not solely be placed on bananas. All relevant factors should be taken into consideration including the Community's substantial offers on other products which eroded the advantages that the ACP countries could expect from the Community's market, the Community's long-standing legal obligations vis-à-vis the ACP countries, the level of development of all parties involved and the significance of their export interest in the banana trade. They believed that the Community's attitude was only fair and correct since it was seeking a balance in the trading interests of all contracting parties.

The representative of Honduras, speaking as an observer, recalled that his country, which was currently negotiating its accession to GATT and was a member of the Banana Exporting Council, had a substantial interest in the matter at hand, and fully supported the initiative undertaken by Costa Rica, Colombia, Nicaragua and Venezuela. Honduras was in favour of finding a compromise solution with the Community which would be both lasting and transparent. In taking this position, his country had taken into consideration the need to strengthen the mechanisms and processes which regulated the GATT multilateral trading system as the most appropriate manner of promoting transparency, international competition and free trade on the basis of strict efficiency criteria in order to increase production, employment and trade amongst all the different parties, both developing and developed. His Government was convinced that the Community, in a spirit of understanding, good faith, trust and mutual respect, would have no objections to solving this matter through the requested consultations which were a result of bilateral negotiations that had not led to a satisfactory solution. It hoped that the matter could be settled rapidly, in accordance with GATT principles and provisions and in pursuance of the Dispute Settlement Procedures established at the Mid-Term Review. His Government favoured a solution based on dialogue and negotiations rather than on confrontation, in order to achieve a fair balance which, through strict compliance to GATT rules and provisions, would safeguard the interests of the contracting parties affected.

The representative of the European Communities said that points under "Other Business" were not supposed to be ones of substance but rather of information, or related to issues leading to subsequent discussions. It was therefore difficult for his delegation in the brief time that it had had available to take a position on a matter which had been put on the Agenda only at the present meeting. He had listened to a number of interesting and important statements on a matter which was recognized as a serious issue both for the Community and its trading partners. He recalled that his delegation had received a request for Article XXII consultations on 12 June 1992 and it intended to respond favourably to this request. The request was not in the nature of a complaint but rather was for information purposes. This was correct since, effectively, the Community had no new banana policy. There was a proposal for a new policy which was being widely aired, probably with more transparency than many other proposals in many other parts of the world. Hence perhaps the present discussion. The Community did not wish to discuss at the present, a proposal which at this point in time was not yet part of its statutes. It was widely known that bananas was one of the most sensitive subjects in the Community in relation to the creation of a single market and it was extremely difficult to come to an appropriate arrangement. The Community had a legacy of different régimes stemming from the history of its member States, and it had to somehow square an impossible circle since there were very strong conflicting obligations that had to be sorted out. The Community could not accept at this point in time, however, the allegation that its import régimes for bananas were not GATT-consistent. His delegation had taken very good note of the statements made, particularly those that had some direct consequence on the upcoming Article XXII consultations with five Central American countries.

The Council took note of the statements.

17. Organization for Economic Cooperation between Iran, Pakistan and Turkey

The representative of Turkey, also on behalf of Pakistan, speaking under "Other Business", informed the Council that on 17 February 1992, the three members of the Economic Cooperation Organization -- Iran, Pakistan and Turkey -- had signed a Protocol based on Article 2(c) of the Enabling Clause.⁹ Under this Protocol, the three countries undertook to provide a 10 per cent reduction in tariffs on certain of their products. The text of the Protocol, as well as the list of products, would be communicated to the Committee on Trade and Development in due course.

The Council took note of the statement.

⁹ Differential and More Favourable Treatment, Reciprocity and Fuller Participation of Developing Countries (BISD 26S/203).

18. European Economic Area Agreement

The representative of the European Communities, speaking under "Other Business", informed the Council that the Agreement on the European Economic Area, signed on 2 May 1992 by the European Communities and the members of the European Free-Trade Association, would be circulated as soon as possible, in writing, to the contracting parties.

The Council took note of the statement.

19. International Trade Centre (UNCTAD/GATT)
- Appointment of a new Executive Director

The Chairman, speaking under "Other Business", recalled that at the April Council meeting, he had been authorized to hold consultations on this matter. Since then, he had held two rounds of consultations with selected groups of contracting parties and had also been in touch with the Secretary-General of the United Nations. The latter had suggested exploring the possibility of finding a solution based on a cooperative arrangement between the two organizations, and had designated Mr. Thornburgh, his Under Secretary-General in charge of finance and administration to discuss this with the GATT. The GATT had designated its Deputy Director-General, Mr. Carlisle, to pursue this matter, and while a first contact had been established, there were no developments to report. He said that contracting parties would be informed of any further significant developments. He himself had noted the fact that several contracting parties -- and contracting parties in general -- were very keen that this issue be resolved as soon as possible.

The Council took note of this information.

20. United States - Andean Trade Preference Act
- Working Party chairmanship

The Chairman, speaking under "Other Business", recalled that at its meeting in February, the Council had established a Working Party to examine this matter. At its meeting in March, the Council had taken note of the terms of reference and modalities for the Working Party and had authorized him, in consultation with interested contracting parties, to designate its Chairman. He informed the Council that it had been agreed that Mr. Rossier (Switzerland) be designated in that capacity.

The Council took note of this information.

21. EEC - Association Agreements with the Czech and Slovak Federal Republic, Hungary and Poland
- Working Party chairmanship

The Chairman, speaking under "Other Business", recalled that at its meeting in April, the Council had established a Working Party to examine

these Agreements, and had authorized him, in consultation with the delegations principally concerned, to designate its Chairman. He informed the Council that it had been agreed to designate Mr. Park (Korea) in that capacity.

The Council took note of this information.