GENERAL AGREEMENT ON

TARIFFS AND TRADE

RESTRICTED

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COUNCIL
12 March 1991

MINUTES OF MEETING

Held in the Centre William Rappard
on 12 March 1991

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

1. Committee on Budget, Finance and Administration

(a) Report of the Committee (L/6818)

Mr. Broadbridge (Hong Kong), Chairman of the Committee, introduced the Committee's report (L/6818) which contained recommendations on the rescheduling of the deadline for presentation of the final 1991 budget, and the contributions to be assessed on Costa Rica and Macau following their respective accession and succession to GATT. He recalled that in July 1990, the Council had agreed that the Committee defer presentation of the 1991 budget proposals until 31 March 1991. However, as it was still unclear how GATT might look in the future, the Committee recommended that this date be extended to 28 June 1991. On a related issue, the Committee had agreed to extend the contracts of staff engaged for the Uruguay Round to 31 July 1992.

Following Costa Rica's accession on 24 November 1990, the Committee had recommended that a contribution to the 1990 budget amounting to SwF 4,476, and an advance to the Working Capital Fund amounting to SwF 21,121, be assessed on that Government. Following Macau's succession on 11 January 1991, the Committee had also recommended that a contribution to the 1991 budget amounting to SwF 35,691, and an advance to the Working Capital Fund amounting to SwF 22,949, be assessed on that Government.

The Council took note of the statement, approved the Committee's specific recommendations in paragraphs 5, 18 and 19 of the report, and adopted the report in L/6818.

The representative of Tanzania stated that his country had made every effort to meet its obligations resulting from the Committee's 1988 review (L/6384) of the basis on which contributions from least-developed contracting parties were to be assessed. He noted, however, that these countries had encountered difficulties in reconciling themselves with the Committee's decision at that review requiring them to repay their accumulated arrears, albeit in instalments. While Tanzania continued to meet the instalment payments on its arrears, as well as its current obligations based on its trade share, it reiterated its request to the Director-General that a limit be placed on the period for which arrears had to be met, and that an appropriate mechanism be found to assist the countries in question. He recalled that the Director-General had been mandated to report to the Committee on the operation of the arrears repayment schemes, on the basis of which the Committee would undertake a review with a view to making appropriate recommendations to the Council.

Tanzania requested that such a review be conducted at an early date; this would be appropriate and fair for the least-developed contracting parties.

The Council took note of the statement.

(b) Membership (L/6814, L/6817)

The Chairman recalled that Belgium and the Netherlands regularly alternated as members of the Committee. Accordingly, and on the basis of the communications from these Governments in documents L/6814 and L/6817 respectively, he suggested that the Council take note of Belgium's intention to withdraw from membership of the Committee and invite the Netherlands to be represented thereon.

The Council so agreed.

2. Uruguay - Renegotiation of Schedule XXXI
- Extension of waiver (L/6783, C/W/666, L/6819)

The Chairman recalled that by their decision of 7 December 1990 (L/6783), the CONTRACTING PARTIES had waived until 31 March 1991 the application of the provisions of Article II to enable Uruguay to adjust its schedule of tariff concessions. He drew attention to Uruguay's request for a further extension of the waiver (L/6783) and to a draft decision on this matter (C/W/666).

The representative of Uruguay said that his Government had been continuing the relevant consultations with interested contracting parties in order to conclude the negotiations regarding its Schedule of tariff concessions. However, this task had turned out to be more complex than previously foreseen, and Uruguay therefore requested an extension of its waiver until 31 December 1991 so as to conclude this process.

The representative of the European Communities recalled that the Community had on several occasions clearly stated its position as to conditions under which a waiver under Article XXV should be granted, both in general and in the particular case of Uruguay's import surcharges. The Community was not willing to compromise its position on the matter. Uruguay's current request presented contracting parties with a "fait accompli" and tested the Community's position to the limit. If the Community was willing, or rather obliged, to agree to the extension at the present meeting, this was purely for procedural reasons in order to provide the opportunity to resolve finally and definitively by the end of 1991 the very unsatisfactory situation as regards Uruguay's tariff schedule.

The Council took note of the statements, approved the text of the draft decision in C/W/666, and recommended that it be adopted by the CONTRACTING PARTIES by postal ballot.

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

The Chairman recalled that at their Forty-Sixth Session, the CONTRACTING PARTIES had referred this matter back to the Council for further consideration, and that at its meeting in February, the Council had agreed to revert to it at the present meeting.

The representative of Canada said that his delegation's position on this matter had been clearly stated at the February Council meeting and that it was unnecessary to go into its details again. He called on the Council to adopt the Panel report at the present meeting.

The representative of the United States recalled that at the February Council meeting, his delegation had requested deferral of discussion on this report because the determination of both subsidization and of threat of material injury in this case were then under challenge pursuant to the dispute settlement mechanism established between the United States and Canada under their Free-Trade Agreement (FTA). Since then, the administering authority responsible for the determination of injury had reversed its earlier determination and had concluded that there had been no injury to the domestic US industry in the case of Canadian pork. Without an affirmative determination of injury, the countervailing duty case would be terminated.

He recalled that the GATT Panel had recommended that the CONTRACTING PARTIES request the United States either to reimburse the duties levied to offset subsidies for the production of live swine, or make a new subsidy determination consistent with the requirements of Article VI:3 and reimburse duties found to have been improperly levied. If the US countervailing duty action against pork was terminated, it would be unnecessary to consider either of those recommendations, as they would in fact have been fulfilled. He underlined that no duties had actually been collected by the United States on Canadian pork imports and that if the determination that there was no injury stood, all cash deposits of estimated duties would be returned with interest. He noted that there was one remaining avenue of challenge available to the US industry in this case. However, that procedure was not a routine appeal, and it was not known as yet whether it would be invoked. If it was, the process of challenge would be completed within a short period of time, and the United States would then be in a position to address fully the substance of the GATT Panel report.

The representative of Canada reiterated his delegation's view that the GATT Panel and the two panels under the FTA dealt with different issues. In any event, while the two latter panels might be of interest to the Council, they were not part of the GATT framework. His delegation believed that regardless of the outcome of the bilateral avenues being pursued between his Government and the United States, it would be important for the Council to adopt the report at hand. The issues established therein by the Panel were important in terms of the future calculation of countervailing duties by contracting parties and could usefully form part of the GATT

jurisprudence. He called on the United States to follow the same practice at the present meeting that it was arguing should be made the rule in the Uruguay Round negotiations.

The representative of Japan supported adoption of the report at the present meeting because this would place a multilateral discipline on the use, or abuse, of countervailing measures. This was the fourth time that the report was being considered by contracting parties, and his delegation was concerned that this might give rise to serious doubts as to the credibility of the GATT dispute settlement process. The bilateral arrangements and procedures between the United States and Canada were not necessarily relevant to the case at hand and could not justify further delays because multilateral discipline and the GATT Panel report stood on their own. He strongly urged the United States to agree to adoption at the present meeting.

The representative of the European Communities said that the Community had continuously supported adoption of the report for reasons of both substance and principle. He reiterated the Community's view, expressed at the February Council meeting, that a bilateral dispute settlement procedure turning on a different legal basis could not be invoked as a justification for delaying operation of the GATT's multilateral dispute settlement process. The Community, therefore, continued to support adoption. It was watching with great interest to see what procedural precedent the United States was trying to establish.

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

4. Japan - Restrictions on imports of certain agricultural products - Follow-up on the Panel report (BISD 35S/163, L/6370, L/6389, L/6810)

The Chairman recalled that the Council had considered this matter at its February meeting. It was on the Agenda of the present meeting at the request of the United States.

The representative of the United States recalled that at the February Council meeting, his delegation had expressed interest in action taken by Japan to bring the policies addressed by the 1988 Panel report (BISD 35S/163) into compliance with its GATT obligations. The United States remained concerned about Japan's indication that it did not intend to terminate the import restrictions as of 1 April 1991. Japan's view appeared to be that it could avoid its GATT obligations because when the report had been adopted, Japan had expressed disagreement with the Panel's findings concerning certain dairy products and starch, and because the question of agricultural trade barriers was being addressed in the Uruguay Round. The United States did not find either of these to be valid reasons for Japan to continue to ignore its GATT obligations. The Uruguay Round negotiations were aimed at substantial progressive reductions of protection and of trade-distorting subsidies. Institutionalizing quotas found to be inconsistent with current GATT rules was inconsistent with the objectives that contracting parties had set for the Round.

The United States agreed with Japan's statement at the February Council meeting that it would be useful to consult further on these matters. It noted, however, that a number of other contracting parties had expressed an interest in this issue at that meeting, and therefore suggested that the proposed consultations be held under the provisions of Article XXII to allow these governments also to participate. His Government would welcome Japan's positive response to this suggestion, and hoped that such consultations would be successful in resolving the matter under consideration and obviate the pursuit of other courses of action.

The representative of New Zealand noted that three years had passed since adoption of this report and that it had not yet been implemented fully. His delegation supported the US request for Article XXII consultations to consider implementation; plurilateral consultations were entirely appropriate given the range of contracting party interests involved. In the light of its own substantial trade interests in this matter, and taking into account the 1958 procedures for Article XXII consultations on questions affecting a number of contracting parties' interests (BISD 7S/24), New Zealand wished to join in the consultations, which would facilitate a clearer understanding of the specific steps Japan had already taken to implement the Panel findings and allow contracting parties a better appreciation of Japan's intentions with respect to the outstanding items. They would also provide Japan with the opportunity to gauge the intentions and requirements of all interested contracting parties on these matters. New Zealand did not see such consultations as focusing on any of the underlying legal issues, since those had already been settled in a definitive way by the Council's adoption of the original Panel recommendations.

The representative of Thailand said that his authorities had been following this matter closely and had noted Japan's intention, announced at the February Council meeting, to consult with the United States. He agreed with the US suggestion that it would be more appropriate to hold plurilateral consultations. Given Thailand's trade interests in the matter, it wished to be associated with such consultations.

The representative of Australia said that his country had a substantial interest in the elimination of Japan's quantitative restrictions on dairy and starch products and that it had raised the issue of full implementation of this Panel report on several occasions. While Japan had taken steps to bring some of the measures involved into GATT-conformity, it had not indicated any intent to phase out the remaining measures on a permanent basis. GATT obligations, however, were not "à la carte" and Australia strongly believed that Japan should stand ready to begin consultations on a realistic timetable to remove the GATT-inconsistent measures on the two product categories concerned. Given its substantial trade interests in the matter, Australia supported the US request for Article XXII consultations and wished to join those consultations in accordance with the 1958 procedures as reaffirmed by the 1989 Decision[1].

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[1]Improvements to the GATT dispute settlement rules and procedures (BISD 36S/61).

The representative of Chile said that the matter at hand was one of importance to his Government also. The partial implementation of the Panel's recommendations by Japan risked undermining the GATT dispute settlement system. Chile was concerned that this situation could continue indefinitely. It therefore supported suggestions that consultations should be held to resolve this matter under the provisions of Article XXII, which would give them a multilateral character.

The representative of Uruguay said that his country also had an interest in this matter and had followed it closely for some time. His delegation agreed with others that consultations of a multilateral nature should be held to allow all contracting parties with an interest in the matter to participate.

The representative of Canada indicated his delegation's interest in participating in such consultations.

The representative of Argentina recalled that his delegation had on several occasions addressed the matter of non-implementation of panel reports that had been adopted by the Council. Argentina believed that the most appropriate way to resolve the matter at hand would be for Japan to indicate to the Council its intention to comply with the Panel's recommendations. However, if some contracting parties believed it appropriate to hold consultations in order to ensure that Japan fully implemented the recommendations, Argentina could agree with this and would be interested in participating in such consultations.

The representative of Japan, referred to his delegation's statement at the February Council meeting indicating Japan's preparedness to enter into consultations on this matter with the United States. These consultations would be held shortly, and Japan hoped they would result in a mutually satisfactory solution. He indicated that the US suggestion at the present meeting for plurilateral consultations under Article XXII, as well as the comments by other representatives, would be transmitted to his authorities for their consideration.

The representative of the European Communities noted that at the February meeting, Japan had stated that given that the question of interpretation of Article XI:2 was being discussed in the Uruguay Round negotiations on agriculture, it hoped that a clear agreement would be reached on this issue amongst the participants therein. The Community wished to remind Council members that in respect of the Panel report on its own legislation concerning circumvention of anti-dumping duties[2], a matter also presently under discussion in the Uruguay Round, the Community had clearly stated the manner and the conditions in which it intended to implement that report.

The Chairman noted that many representatives had expressed a strong wish that plurilateral consultations regarding this matter be held under the provisions of Article XXII, and that Japan's representative would

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[2]EEC - Regulation on imports of parts and components (L/6657).

convey this sentiment to his authorities. He hoped that at its next meeting the Council would be able to agree on the consultations that had been proposed.

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

5. United States - Customs user fee
- Follow-up on the Panel report (BISD 35S/245, L/6741, L/6822)

The representative of the European Communities recalled that in October 1990, the United States had informed the Council of recently enacted legislation which had revised its customs user fee in response to the Panel report on this matter adopted in February 1988 (BISD 35S/245). At that meeting, the Community had welcomed certain positive results but had also raised some concerns, which were spelt out in greater detail in its recent communication (L/6822). The Community recognized that there had been progress in this matter, but continued to believe that the result was not satisfactory in GATT terms. The extent to which Community trade would be negatively affected remained to be seen in the light of more precise information on the manner in which the new legislation was actually applied; in this respect, L/6822 was to be seen as a form of "early warning". The Community would look carefully at the implementation of this legislation and fully reserved its GATT rights in respect thereof.

The representative of the United States recalled that in its October 1990 communication (L/6741), the United States had noted that its customs user fee had been revised to address the Panel's findings and recommendations. By restricting the use of fee revenues to customs services on merchandise trade actually subject to the fee, instituting minimum and maximum fees and additional fees for manual entries, and excluding certain customs services from being funded by the fee, the new legislation directly addressed the issues raised by the Panel. Particular attention had been paid to the problem of excess revenue collection, particularly for high-value items, and to ensuring that the fee revenues collected at the time of importation approximated the general cost of processing the imported good, no matter how small its value. Great care had also been taken to develop a fee structure and a collection practice that were simple and did not themselves become trade barriers. The United States had no doubt that the new fee addressed the Panel's recommendations and met the criteria of Article VIII. His delegation believed it would be appropriate for the two parties to hold bilateral consultations so as to identify areas of concern and of possible confusion. The United States also hoped that other contracting parties currently applying customs fees substantially identical to the US fee, as it had been prior to the changes mentioned, would also alter their own fees to bring them into conformity with Article VIII.

The representative of Japan said that his country had participated in the Panel proceedings as an interested party and shared many of the

Community's concerns. Japan would continue to follow up on the implementation of this report and reserved its rights to revert to the matter at an appropriate time.

The Council took note of the statements.

6. United States - Denial of MFN treatment as to imports of non-rubber footwear from Brazil
- Recourse to Article XXIII:2 by Brazil (DS18/2)

The representative of Brazil said his Government considered that, in the case at hand, the United States had violated Article I by implementing its Article VI obligations toward Brazil in a discriminatory manner. The United States and Brazil had held consultations under Article XXIII:1 on 30 October 1990 to resolve this matter, but no mutually satisfactory solution had resulted.

As outlined in DS18/2, the case at hand involved the interpretation of the general rule that when an obligation became effective, it should be implemented in a consistent manner. By implementing its Article VI obligations in one way in relation to non-rubber footwear from Brazil and in a totally different way in relation to products from other countries -- industrial fasteners from India, wire rods from Trinidad and Tobago and lime and certain textile products from Mexico -- the United States had violated Article I. While this dispute arose in the context of the Protocol of Provisional Application and Article VI, the issue of discrimination could have arisen in the context of the implementation of any GATT obligation. There was therefore no basis for denying Brazil the right to pursue this matter on the grounds that its Article XXIII action was an appeal of the report of the Panel (SCM/94) established under the Subsidies Code.[3] Brazil had no intention of raising the issues that had been the subject of those earlier proceedings; those issues had arisen out of the interpretation of Article VI and the Subsidies Code, and Article I had not been part of the Panel's terms of reference. While Brazil had raised the MFN argument in those proceedings, this had been done to support its position that the United States had acted illegally under the Subsidies Code.

In the consultations, the United States had indicated its view that the MFN issue had been considered fully by the Panel as had been stated by its Chairman. In Brazil's view, a mention of the MFN issue in the Panel report as part of its position could hardly be "full consideration". As for the Panel Chairman's statement, this had been a subjective statement of a generic nature -- the Panel's findings and conclusions did not support the statement if it indeed referred to the MFN issue. The US position appeared to be that by raising the Article I issue in the Code proceedings, Brazil was somehow precluded from pursuing this matter before the Council,

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

even though Article I had not been part of the terms of reference in that proceeding and the panelists had not resolved the questions raised by Brazil. Brazil did not agree with this interpretation. Article I was an absolute principle of the GATT and was therefore a proper subject for adjudication by the Council under Article XXIII provisions. This was especially true when the issue involved discriminatory treatment between signatories and non-signatories of the Code, and a GATT obligation. His delegation believed that the Code Committee could not deprive the Council of jurisdiction in such a case. Brazil therefore requested the establishment of a panel to resolve this long-standing dispute and hoped that the United States, which had always stood for the broadest and unimpeded access to a panel, would recognize Brazil's right to a panel in this matter.

The representative of the United States stated his Government's firm position that this matter had already been adjudicated. Re-adjudication would violate the fundamental jurisprudential principle of res judicata -- a final decision on a matter constituted an absolute bar to subsequent action thereon. In terms of the improved dispute settlement rules and procedures agreed to at the Uruguay Round Mid-Term Review[4], having two panels review the same matter would defeat the objectives of "providing security and predictability to the multilateral trading system."

He recalled that a panel had been established under the Subsidies Code in October 1988, at Brazil's request, to consider whether the US countervailing duty on non-rubber footwear from Brazil was consistent with its GATT obligations, and that among the arguments which Brazil had presented to the Panel, was the MFN argument that was the basis of its present request. The Panel had submitted a report to the Code Committee in October 1989 ruling against Brazil. Adoption had thereafter been blocked by Brazil on the three occasions that the Committee had considered it. Such actions defeated the efficacy of the dispute settlement process. To permit a panel to be established in the present instance would set a bad precedent, namely that if a contracting party lost a panel case, all it needed to do was block adoption and seek a second panel in another forum. He reiterated his Government's position that the earlier Panel had taken all of Brazil's arguments into account in reaching its decision, as had been made clear by its Chairman (SCM/M/44).

Referring to the individual cases cited by Brazil to support the argument that the United States had accorded more favourable treatment in certain instances, he said that the products involved in those cases had been duty free while the imports in question from Brazil had been dutiable. There was thus no question of discrimination in comparable situations. For these reasons, the United States could not agree to the establishment of a panel at the present meeting.

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[4] Improvements to the GATT dispute settlement rules and procedures (BISD 36S/61).

The representatives of Colombia, Peru, India, Mexico, Singapore on behalf of the ASEAN contracting parties, Chile, Hong Kong, Poland, the European Communities, Argentina, Yugoslavia, Venezuela, Australia, Uruguay, Cuba, Romania, Pakistan, Korea and Costa Rica supported Brazil's request for a panel.

The representative of Colombia said that his authorities had never failed to be surprised by the United States' application of the Subsidies Code, in particular of its discriminatory application and the relationship thereof with the GATT's MFN principle. His delegation had studied Brazil's communication in DS18/2 with great interest and fully supported the request. He hoped that the United States would be able to accept the establishment of a panel as soon as possible, and reserved his delegation's right to intervene in its proceedings.

The representative of Peru said that non-application of the MFN principle in Article I was of serious concern. Her delegation had noted from Brazil's statement that the earlier Panel had not considered the MFN issue since this had been outside its terms of reference, and also that Brazil did not question the Panel's conclusions. It also noted with satisfaction that Brazil stood ready to hold further consultations with the United States to try to reach a mutually satisfactory solution. Peru believed that Brazil's request for a panel was fully justified under the improved dispute settlement rules and procedures.

The representative of India said that there was considerable merit in Brazil's contention that it had been denied MFN treatment by the United States in the case at hand. MFN being the main pillar of the GATT, any complaint alleging its violation had to be addressed by the CONTRACTING PARTIES, and the GATT dispute settlement mechanism was the most appropriate forum in which to do so. India recognized that Brazil had raised the MFN issue during the proceedings of the Code Panel; however, as was evident from its report, the Panel had neither addressed it nor pronounced on it. His delegation disagreed with the United States' contention that Brazil could not have this issue examined now simply because the Panel Chairman had stated that all issues raised by Brazil had been considered. Whether or not an issue had been considered had to be reflected in a panel report. India considered that Brazil was fully within its right to seek the establishment of a panel and reserved its rights to intervene during the panel proceedings.

The representative of Mexico noted that Brazil was not appealing the results of the Code Panel. While Mexico considered that the MFN issue had not been addressed by the earlier Panel, it also considered that the United States had put forward serious arguments. It was not for his delegation to judge these arguments pertinent or otherwise. The Council should establish the panel requested by Brazil pursuant to the improved dispute settlement rules and procedures, and the panel should determine which of the two parties was correct in its arguments. To do otherwise would create a precedent running counter to the main elements included in the improved rules. Mexico hoped that these rules would further be improved at the end of the Uruguay Round in order to avoid some of the difficulties mentioned by the United States.

The representative of Singapore, on behalf of the ASEAN contracting parties, said they believed that every contracting party had the right under Article XXIII:2 to seek redress for a trade complaint. While the Code Committee had addressed the matter at hand, it appeared that the issue remained unresolved, especially as the Panel report had not yet been adopted. He noted that Brazil had held consultations with the United States pursuant to Article XXIII:1. As these consultations had failed to lead to a mutually acceptable solution, it was appropriate for Brazil to seek resolution of the matter under Article XXIII:2.

The representative of Chile said that Brazil's statement had raised very valuable legal considerations and had given contracting parties the possibility of defining even better the respective fields of action for the different dispute settlement mechanisms co-existing in the GATT. The best course would be to submit the controversy to the multilateral GATT dispute settlement process.

The representative of Hong Kong reiterated his Government's position that the right of a contracting party to a panel should not be denied if the relevant procedural requirements had been met, noting that such a right had been reaffirmed in the improvements to the dispute settlement rules and procedures agreed at the Uruguay Round Mid-Term Review. Hong Kong's support for Brazil's request was without prejudice to its position on the substance of the dispute. His delegation was aware that this dispute, or certain aspects of it, had been examined by a panel under the Subsidies Code, that the Panel report had not been adopted, and that no mutually satisfactory settlement had been reached between the disputing parties. However, his delegation considered that any contracting party should be able to bring any matter to the attention of the CONTRACTING PARTIES or to the Council under Article XXIII:2, and that these procedures applied to all GATT provisions. He noted in this context that Brazil was taking recourse to Article XXIII:2 after inconclusive consultations under Article XXIII:1. As to the US concern regarding two panels being established to consider the same matter, this was perhaps something for consideration in the broader context of any future improvements to GATT dispute settlement procedures. The question here was whether one was being asked to consider the same issues again; Brazil had clearly stated that this was not the case. Hong Kong believed that it was best to leave this to a panel to judge, and therefore supported its establishment.

The representative of Poland supported Brazil's request on the basis that every contracting party had the right to recourse to the dispute settlement procedures on matters it believed fell within GATT's jurisdiction.

The representative of the European Communities said this issue was yet another example of the unfortunate consequences of the legal fragmentation of the GATT system as a result of the Tokyo Round and, in particular, of the fragmentation of the dispute settlement mechanism which allowed for "forum shopping" and which caused difficulties with respect to finding a satisfactory solution to a trade dispute in the light of all the multilateral trade agreements under the GATT system. The Community had very

strongly supported efforts to overcome this fragmentation in the context of the Uruguay Round negotiations on dispute settlement. It also supported finding ad hoc solutions in particular disputes which extended over different agreements by appropriate terms of reference and procedures for establishment of panels and for adoption of the reports thereof.

In the case at hand there could well be GATT aspects which the earlier Panel had not reviewed, or could not review. The Community recognized that a contracting party had a right to have all GATT aspects of a case reviewed by a panel. It called on the United States to allow a panel to examine whether in fact there were new issues which had not been raised in, or addressed by, the earlier panel proceeding, and to allow the panel to review these issues in the light of the provisions raised by the complaining party. The Community believed that this would not -- indeed could not -- be an appeal procedure.

The representative of Argentina said that it was the right of every contracting party to request a panel when it considered its GATT rights had been affected. His delegation also believed that the General Agreement was pre-eminent within the GATT system. He recalled that by their Decision of 28 November 1979 (BISD 26S/201), the CONTRACTING PARTIES had reaffirmed their intention to ensure the unity and consistency of that system, to which end they had undertaken to oversee its operation as a whole and to take appropriate action. They also had noted that existing GATT rights and obligations of contracting parties not signatory to the Tokyo Round Agreements, including those derived from Article I, would not be affected by the Agreements. Obviously this held true also in respect of contracting parties that were signatories to those Agreements. Turning to the Subsidies Code, he noted that its Preamble clearly stated that it interpreted Articles VI, XVI and XIII "only with respect to subsidies and countervailing measures". Article 19:1 thereof stated that no specific action against a subsidy of another signatory could be taken except in accordance with the GATT provisions interpreted by the Code, and a footnote to this Article indicated that it was not intended to preclude action under other relevant GATT provisions where appropriate. All of these elements gave legal validity to Brazil's request for a panel. He noted in this regard that the United States had not objected to Brazil's right to a panel.

The representative of Yugoslavia concurred with Brazil's right to request a panel in accordance with the improved GATT dispute settlement rules and procedures. His delegation hoped that this longstanding matter which had broader implications would be resolved in a satisfactory way.

The representative of Venezuela said that his delegation considered Brazil's request for a panel to examine this matter under Article XXIII:2 to be just.

The representative of Australia said that the Subsidies Code Panel appeared not to have addressed the MFN claims that Brazil was presently seeking to pursue. His delegation believed that dispute settlement processes under the Codes could not abrogate contracting parties' rights to seek interpretation of their GATT rights under the dispute settlement

provisions of the General Agreement. This was particularly so in respect of Article I, which was the foundation of the GATT and which was not replicated directly in the Codes; indeed, the Subsidies Code did not purport to be an agreement which interpreted Article I. Under these circumstances, Australia did not consider that Brazil was seeking to relitigate the matter or that it could be accused of "forum shopping". His delegation noted also that Article XXIII:1 consultations had already been held and hoped that the panel would be established at the next Council meeting.

The representative of Uruguay supported Brazil's request on the grounds that every contracting party had the right to a panel -- a fundamental point in the GATT dispute settlement system -- and because the MFN clause was the cornerstone of the GATT.

The representative of Cuba said that violation of the MFN principle in Article I was a serious matter. Her delegation believed in the primacy of the General Agreement in the GATT system and considered that Brazil's request was justified.

The representative of Romania said that his delegation supported Brazil's request in view of the important legal principles involved, and hoped that the Council could take a favourable decision on this matter as soon as possible.

The representative of Pakistan said that this issue raised some fundamental questions. First, did the fact that Brazil had chosen to have recourse to the dispute settlement mechanism under the Subsidies Code imply that it had ceded its rights under the General Agreement and the dispute settlement mechanism thereof? Second, since the mandate of the Code Panel had been limited in scope, was it not appropriate that Brazil be given the opportunity to seek full and complete redress of its grievance? Third, and most importantly, Brazil's request related to the operation and full implementation of a very basic GATT principle. For these reasons, and without prejudice to the positions of the disputing parties, his delegation supported the request for a panel so that the CONTRACTING PARTIES would have the benefit of a comprehensive examination in order to arrive at a correct and complete view of the matter.

The representative of Korea said that the MFN principle was the cornerstone of GATT. If that principle had not been dealt with adequately by the Subsidies Code Panel or through bilateral consultations under Article XXIII:1, the panel process was the right way for this issue to be tackled.

The representative of Costa Rica agreed with the basic right of every contracting party to have recourse to the GATT dispute settlement procedures when it believed its rights had been affected. A panel should decide which contracting party was right in the matter at hand.

The representative of the United States noted that several representatives had referred to a contracting party's right to request a panel to review complaints involving GATT Articles and wondered whether it was their view that the improved GATT dispute settlement rules and

procedures gave a contracting party an absolute right to the establishment of a panel, or merely a right to a decision thereon. He asked for Brazil's view on this question.

The representative of Brazil said that there was clear, prima facie evidence to support Brazil's case and there was no reason to delay granting its request. Although the Chairman of the earlier Panel had indeed stated that all issues had been considered by it, there was nothing in that Panel's findings and conclusions to indicate that he was referring to the MFN clause. As to Brazil's not agreeing to adoption of that report, he pointed out that Brazil had not been alone in questioning the correctness of the Panel's recommendations; four other delegations had expressed reservations or had asked for additional time for consideration thereof. Brazil had made clear that it would be in a position to complete and finalize consideration of that Panel report once the matter before the Council had been concluded.

Referring to the argument that Brazil had already sought adjudication on this matter under the Code, he reiterated his Government's position that the matter presently before the Council involved a different complaint, which concerned Article I and the inconsistent application of the United States' Article VI obligations. There was no logical or legal basis to place the Tokyo Round Agreements above the General Agreement itself when a contracting party believed that a fundamental GATT principle had been violated. A contracting party could not be prevented from seeking a remedy before the GATT Council because it had also sought protection of its interests under a particular Code. To accept this would mean accepting that the Code Committees somehow bound the Council and the contracting parties, many of which were not signatories to the Codes.

To lend further support to his arguments, he quoted from a letter of 11 April 1979 sent by the Chairman of the Tokyo Round sub-group on subsidies and countervailing measures to a certain number of negotiators, as follows: "The provisions of the Agreement on Subsidies and Countervailing Measures interpret and apply the provisions of the GATT in Article XXIII as among signatories to the Agreement with respect to disputes concerning subsidies and countervailing measures under the GATT and in this connection will be used by these signatories to resolve any such dispute. However, delegations pointed out that in their view rights and obligations of the contracting parties under Article XXIII of the GATT are not limited thereby." He recalled that several other Tokyo Round Codes contained similar provisions under which parties were to complete the dispute settlement procedure under the respective Codes before availing themselves of any rights under the General Agreement.

Finally, in response to the United States' specific question, he said that every contracting party had the right to seek the establishment of a panel in accordance with GATT procedures; whether or not that right was absolute would depend on that contracting party's having a well-founded case. He hoped that at the next Council meeting the United States, having carefully considered arguments put forward at the present meeting, would agree to the establishment of a panel in accordance with the improved dispute settlement rules and procedures.

The representative of the United States said he was not satisfied with Brazil's interpretation of the improved dispute settlement rules.

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

7. United States - Caribbean Basin Economic Recovery Act (CBERA) - Biennial review (L/6773)

The Chairman recalled that under paragraph 7 of the CONTRACTING PARTIES' Decision of 15 February 1985 (BISD 31S/20), the United States was required to submit an annual report on the implementation of the provisions of the Caribbean Basin Economic Recovery Act (CBERA), and the CONTRACTING PARTIES were, two years from the Waiver's entry into force and biennially there- after, to review its operation and consider if in the circumstances then prevailing any modification to or termination of its provisions was required.

The representative of the United States said that his Government had submitted its report on the trade-related provisions of the Caribbean Basin Economic Recovery Act on 11 December 1990 (L/6773). As indicated therein, the main change made by recent legislation was to make the programme permanent. The new law expanded only modestly the tariff concessions offered by the programme and, in doing so, fully complied with the terms of the Waiver. The United States recognized that the Waiver was to expire in September 1995 and intended to seek an extension at an appropriate time. He expressed the readiness of his authorities to answer any questions contracting parties might have concerning the programme which, he noted, provided duty-free access to the US market for a large number of developing countries.

The representative of the European Communities said that an annual report on the Caribbean Basin Initiative (CBI) had not been submitted since 1987, and that the Council now had before it a report under a different Act. This implied that there would not be any further reports on the CBI, which had been the subject of the 1985 Waiver. The Community had noted the developments in trade between the United States and some twenty countries of the Caribbean region. He recalled that the Community had agreed to grant the Waiver for a period of ten years, and that its position on the clear necessity to limit the duration of any waiver was well-known and documented. The question of whether the submission of information under a new Act prejudiced the position of contracting parties with regard to the Waiver which had been granted for ten years had to be considered.

The Council took note of the statements and of the information in L/6773.

8. Trade and environment (L/6809, Spec(91)13)

The Chairman recalled that at the Council meeting in February, a wide-ranging discussion had taken place on this matter on the basis of a communication submitted by Austria on behalf of the EFTA countries (L/6809). The Council had agreed then that the Chairman of the CONTRACTING PARTIES should conduct informal consultations on the matter and report back on the results thereof at a future meeting. On behalf of the Chairman of the CONTRACTING PARTIES, he said that the consultation process had begun and that there was a need for it to continue for at least a few more weeks.

The representative of Austria, on behalf of the EFTA countries, said they welcomed the consultation process. The large attendance at these consultations confirmed that the inter-relationship between international trade and the environment was a topic which moved and motivated everyone. This had renewed the EFTA countries' determination to continue working energetically towards the inclusion of the environment issue in the regular GATT work. While the consultations had generated further support for their initiative, he noted that some misunderstandings had also surfaced.

The EFTA countries believed that GATT was the correct forum to discuss the inter-relationship between international trade and the environment. They wished to initiate a rule-based analytical discussion process without prejudging the results. Their aim was to ensure that the GATT multilateral system would be well equipped to meet the challenge of environmental issues, to prevent trade disputes, through the results of a thorough discussion by contracting parties that might clarify, interpret, amend or change certain GATT provisions. Environmental issues should not become an obstacle to international trade. The only way to achieve this goal was to analyze and understand the implications international trade and environment policies had for each other. There was no need to await the results of the 1992 United Nations Conference on Environment and Development (UNCED) before initiating an analytical discussion within GATT. On the contrary, it was imperative to start the process as quickly as possible, inter alia, to be able to prepare a contribution by the GATT to this important Conference; a discussion within GATT could not in any way be detrimental to UNCED. The EFTA countries hoped that the ongoing consultations would allow that process to begin shortly.

In asking the Director-General to convene the existing 1971 Group on Environmental Measures and International Trade (C/M/74), the EFTA countries had made use of their right to a dialogue and hoped that the ongoing consultations would not further delay this work by procedural questions.

The representative of the European Communities said[5] that while the Community supported the EFTA initiative both on substance and on procedure, this did not mean that the Community did not have its own specific position, with differences both as to basic objectives and strategy.

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[5]Following the meeting, the text of the statement was circulated in document Spec(91)13.

The Community believed that the revival of a dormant working group was a logical step. However, to cling to this idea to such an extent as to block any discussion on substantive issues demonstrated that this approach had its limits, especially if it implied giving up the search for new terms of reference better adapted to the present-day world. The 1971 Group's original terms of reference[6] risked being seen as an attempt to screen environmental protection measures having an impact on trade and trade policy based on contractual obligations. They had been drafted for circumstances that were now outdated, above all in the way their goals had been confined to very specific subjects, and in the reference to the interests of developing countries. As to the GATT's rôle in this area, he recalled that a 1987 UN General Assembly resolution entitled "Environmental Perspectives to the Year 2000 and Beyond" had stated that GATT should develop and apply effective policies and instruments to integrate environment and development considerations in international trade. Having said this, he would prefer not to rush things as far as the procedural aspect was concerned, and hoped that the ongoing consultations would lead to the establishment of a working mechanism with appropriate terms of reference.

Turning to substance, he said that environmental policy now had been pushed to the centre of economic development. This resulted from the general public's growing concern over the dangers of uncontrolled economic growth for human safety and health. Acceptable, "clean" growth had now become both a self-evident truth and an absolute necessity which led one to wonder about the preamble to the General Agreement that advocated "the full use of the resources of the world and expanding the production and exchange of goods" without any limitation. Life depended on a balance among three elements -- natural resources, production and consumption. An excessive preoccupation with increasing standards of living had disrupted the balance and created problems. He remarked that international trade, GATT's subject-matter, represented an organic, intimate relationship between consumption and production which meant that trade could help to preserve or to destroy the balance of the environment and of the universe.

Environmental protection measures and the principles of GATT conflicted at three distinct levels: means, objectives and standards. As to means, the Community had resolved conflicts between different obligations in its own way. The European Court of Justice had established the principle that the least trade restrictive means should be used to achieve a given end. In other words, if a Member State had a choice among

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[6] "The CONTRACTING PARTIES... [d]ecide to establish a Group whose main functions would be: 1. to examine upon request any specific matters relevant to the trade policy aspects of measures to control pollution and protect human environment especially with regard to the application of the provisions of the General Agreement taking into account the particular problems of developing countries; 2. to report on its activities to the Council." (C/M/74, item no. 9).

various measures for attaining the same objective, it had to select one that caused the least hindrance to trade. This principle had been also recognized in the GATT in Article XX. Thus, it would be possible in GATT to transpose a principle that had already been accepted to the protection of the environment.

As to objectives, he said that if trade restrictions that were necessary to satisfy environmental conservation requirements were recognized and accepted in the same way as restrictions that protected national health and security, a number of questions would nevertheless need to be answered. Would contracting parties be completely free to determine such requirements? Could they use trade instruments to attain any ecological objectives? Could such objectives be determined unilaterally? Was there a principle of proportionality between the objective pursued (environmental protection) and the means selected (trade restriction), and if so, who was to be the judge? Finally, there was the question of extra-territoriality.

As regards standards, he noted that conflicts could or did exist among international standards themselves, as, for example, between GATT and the Convention on International Trade in Endangered Species (CITES). Sometimes these conventions included specific clauses to resolve conflicts. When they did not, the general principles of international law prevailed, in particular that of "lex specialis derogat generalem". However, this left many questions unanswered, such as the situation of GATT contracting parties that were not parties to a specific international convention for environment protection, the authority that would decide on the application of these principles, whether it was proper that neither the conventions nor the trade measures taken under them had been notified to GATT, or that they had not been discussed in GATT and therefore that GATT had made no contribution. Admittedly, GATT was supposed to deal with trade and trade-related contractual rights and obligations, while UNEP and other specialized agencies dealt with environmental protection issues. But a modicum of coherence among these various bodies could not be ensured if one of them, GATT, was deliberately prevented from discussing these issues.

One had to begin discussing in GATT this danger of a lack of coherence both within GATT and externally with other bodies, so as to attain the necessary coherence between trade, finance, money and environment -- he would leave out development here because it was encompassed in the environment. He wondered whether the 1992 UN Conference on the environment would be capable of dealing with this challenge of coherence. The Community considered a GATT debate to be necessary with or without the Conference. Nevertheless, if there was a debate, and especially if it was fruitful, then one could see whether there was a credible content for a contribution by GATT to the Conference.

It was obvious that any environmental policy would cause some contraction in trade volumes; it was important to ensure that this remained compatible with the present balance of GATT rights and obligations. He would reassure all that there was no intention of trying, through a GATT debate on the environment, to legitimize any abuse or exaggerated use of new trade restrictions. The Community wanted this debate to identify and forestall the impact of environmental policies on trade policy, and to

safeguard the two key concepts of protection and competition as they were reflected in the present contractual balance of GATT rights and obligations.

He asked why trade policy officials should not have a wider vision of their own Universe. Awareness of the need for such a vision was already spreading outside GATT and the Rio Conference would, whatever else, be promising in that respect. Nevertheless, because of the lack of coherence among the various components of macro-economic policies, it would probably take many more disasters, and many more human lives, to generate the necessary awareness that would prompt action to prevent deterioration of the Universe. The present procedural debate on the creation of a GATT working group was therefore trivial by comparison. In the meantime, the over-exploitation of the planet's natural resources continued, in the name of mismanaged protection and misunderstood competition, overstraining the limits of the eco-systems. This was why the Community intended to open this debate in the GATT. If a working group were not created to discuss these matters, his delegation would continue to raise them in the Council for as long as it took the GATT to come to grips with the environment problem as related to trade and trade policy.

The representative of Switzerland underlined the importance of GATT's dedicating its full attention to this subject, which was becoming an important preoccupation in trade policy. He noted that the measures initially adopted by governments in this regard had been marked by an opposition between trade on the one hand and environment on the other. Environmental protection measures had been perceived as obstacles to trade in the same manner as measures adopted to protect the consumer or human health. Environmentalists, on the other hand, had perceived free trade as an obstacle to environmental protection. However, this phase of enmity between the two sides no longer prevailed. The worsening of the environment had shown that it was absolutely vital to adopt measures in favour thereof, and environmentalists had discovered that the mechanisms of the market economy could be placed at the service of ecological objectives.

Switzerland believed that it was of utmost importance to reflect on the means that economic instruments offered for the harmonisation of international standards in this matter. This was the only approach that could reconcile free trade, growth and environmental protection. An active participation by GATT on the question of the environment and its protection was urgent. This was the best guarantee that the interests and requirements of a free and open trading system would be taken into account in the definition of ecological policies at the national and international levels. For this reason, Switzerland believed that agreement should be reached by the next Council meeting on an institutional structure which would allow GATT to carry out this work in a logical and continuous manner with the aim of examining the problems that arose and their relationship with GATT rules. Switzerland was confident that the institutional solution to emerge from the ongoing consultations would correspond to the EFTA countries' expectations.

The representative of Sweden, on behalf of the Nordic countries, said that the EFTA countries had been careful to stress that they were seeking

an open discussion on an analytical level which could provide a firm basis for later deliberations on whether GATT rules needed to be modified or updated in any way to take account of the rapid developments in environmental policy. A number of highly complex technical questions needed to be addressed, and to date the Nordic countries had no firm ideas as to whether the GATT should be modified in any way. He noted that environmental policies currently risked being implemented at the national level in a way that unnecessarily hampered international trade; they might even be introduced for clearly protectionist reasons. If this risk could be diminished through a better understanding of how environmental policies related to the GATT rules and vice versa, then this would be very satisfactory.

In seeking a free debate with no preconceived outcome, the EFTA countries had tried to be flexible on the procedural issue. The discussion at the CONTRACTING PARTIES' Forty-Sixth Session in December 1990 and thereafter in the Council had been valuable in increasing awareness of various delegations' views. However, it was obvious that a forum was also needed for discussing this issue at a more technical level among experts. That was, after all, the traditional GATT way of doing work. In order to make such a discussion possible, the EFTA countries had requested that the 1971 Group be reconvened, and he noted that no one had questioned their right to do so. They had been willing to put off convening the Group for a while in order to provide time for Council deliberation and to allow the ongoing consultations to be held. However, they believed that the procedural issues should be resolved at the latest by the April Council meeting.

Recalling statements that the terms of reference of the Group limited its field of activity to specific matters that were relevant to the application of the General Agreement, he said that the Nordic countries would indicate, at the appropriate moment, specific issues that they wished the Group to address.

The representative of Malaysia, on behalf of the ASEAN contracting parties, said that the ongoing informal consultations were valuable and should be allowed to continue. Environmental concerns were of great importance to all contracting parties, both developed and developing, and indeed to the entire international community. The ASEAN contracting parties believed it would be inappropriate at this stage to reactivate the 1971 Group before the proposal had been considered fully by the Council. At the same time, they noted that an international régime as well as norms for the global environment were yet to be agreed by the UNCED. They felt strongly that the GATT Council should not be rushed into any form of commitment regarding the relationship between trade and environment at the present stage. It was of utmost importance that GATT should not prejudge the outcome of the 1992 Conference, although it would be quite proper for GATT to contribute to the preparation therefor.

The representative of the United States said his Government strongly supported early discussion in GATT of the relationship between trade and environment issues and believed that the appropriate vehicle would be a working party or group. The United States supported the EFTA countries'

proposal in this regard. He noted that the Community had indicated that these discussions could be held in the Council if necessary; while his delegation could go along with this if all members so wished, it would be better to establish a working group which could give broad consideration to all contracting parties' interests.

There was rising concern among countries throughout the world about the interrelationship between trade and environmental policies, and the GATT could ignore this only at its peril. It had to be prepared to address fully and frankly these concerns and seek to reconcile them with the contracting parties' desire to achieve a strong and stable system of trade rules. The United States did not agree that the GATT was not the appropriate forum to address these questions. A GATT discussion of the interrelated impact of trade and environmental policies would benefit all contracting parties; the only question was whether the GATT would approach this in a constructive and comprehensive fashion or piece-meal.

The United States believed that the obstruction of requests for a GATT review of issues of interest to some contracting parties, and which were clearly related to the operation of the trading system, was contrary to the principles on which the GATT was founded. He noted that a US request to establish a working group on the relationship between internationally recognized labour standards and trade had been blocked since October 1987, despite repeated US requests for action. The two issues had a number of similarities: neither environment nor worker rights were explicitly addressed in the General Agreement, but each was relevant to GATT's objectives and could affect trade patterns; both issues had a bearing on the goal in the Preamble of the General Agreement that trade relations should raise standards of living.

In establishing a GATT rôle to address the legitimate issues that arose when considering appropriate trade and environmental policies, duplication of, or interference with constructive initiatives addressing the same problems in other multilateral fora should be avoided. Indeed, a GATT working group might draw on work in the OECD and other multilateral fora on this issue, as experience had shown in the context of the Uruguay Round and other GATT bodies. In addition, it should be recognized that the GATT was not at present the primary forum for developing environmental and health standards and that this work, for the time being, was best left to other organizations. A working group could, however, serve an important rôle in examining common themes, principles, and problems that might emerge in other fora as they related to trade. It could also usefully address issues arising from the effect on trade flows of measures taken for environmental reasons, or of the absence of environmental protection, and the effect of trade policy on efforts to protect the environment.

In conclusion, the United States believed that the EFTA countries were justified in requesting the convening of the 1971 Group, which should be convened as soon as possible. The United States had been consulting with others as to the desirability of updating the Group's terms of reference. It was fully prepared to participate in further discussion of this issue at forthcoming Council meetings.

The representative of Chile reiterated that his Government was interested in clarifying aspects covered by Article XX, taking into account that it was an exception and, as such, had to be interpreted restrictively. Article XX should not become a general rule which would legitimize trade restrictions prohibited elsewhere in the General Agreement. Chile also wanted to see a wider membership in the 1971 Group. He emphasized that in Chile's understanding, this particular subject matter had nothing to do with access to natural resources and the sovereign right of each country to protect these resources as it deemed fit without opening them to indiscriminate access, which might threaten ecological equilibrium and animal or plant life.

The representative of Romania thanked the EFTA countries for their initiative. Romania supported the establishment of a working party which would examine in greater detail the possible relationship between trade and environment in order to determine how far one could go in expanding trade on the one hand and protecting the environment on the other.

The representative of Uruguay said that his Government was particularly interested in the problem of environment. The GATT had to confront it soon but not too hastily. A preliminary study should establish how great an incidence environmental questions had on trade flows. An impact would be reflected in changes in trade flows. Uruguay would want the balance of rights and obligations of contracting parties to be maintained fully. Situations where this balance of rights and obligations could be modified would not necessarily be favourable to contracting parties. Uruguay believed that the ongoing consultations should continue, and agreed with the need to not have any preconceived ideas on the matter. He hoped that the consultations would be accelerated and would conclude that a working party had to be set up to proceed with a technical study of the question.

The representative of Mexico said that the environment had limits and had to be defended. A number of problems had been raised in the ongoing consultations which should be considered before taking any decision. One such problem was that environment had many facets: it had not yet become clear whether the issue was contamination, problems linked to industrial wastes, the conservation of animal species, or the wider problem of ecology. Each of these problems had its own characteristics which had to be treated at the appropriate level of technical expertise. Mexico was also conscious of the fact that various aspects of the problem had been discussed in different fora.

As to the 1971 Group, Mexico believed that its terms of reference were no longer satisfactory for all contracting parties, and in fact had become obsolete over the past twenty years. To say that the subject matter was complex, was one thing; to link it with trade problems was another. GATT had been set up about 43 years earlier with a very wide mandate, as almost everything could be linked to trade. Mexico did not see any reason, because of environmental considerations, to put into question GATT principles of non-discrimination or national treatment since Articles I and III were worded in such a way that they could cover ecological or environ-

mental problems without any need to amend their texts. Mexico was also concerned that environmental protection might be used as an excuse to create trade barriers, as a cover to extend national regulations across borders or even to deny access to natural resources in the territories of other contracting parties. Mexico considered it necessary to continue with the ongoing consultations without prejudice to their results, so as to understand better the problems to be dealt with and to see whether it was indeed necessary to do something in GATT. He emphasized that his delegation gave a higher priority at present to the Uruguay Round, which was dealing specifically with trade problems, than to other questions such as the environment which might distract attention from the essentials. This problem of timing could be discussed, and would perhaps become more clear at the end of the informal consultations.

The representative of Cameroon said that the environment was an important concern for countries in Africa. The subject was extremely complex, however, and his delegation welcomed the ongoing consultations, which should consider the concerns of all contracting parties, including those related to development.

As for the reactivation of the 1971 Group, his delegation was not opposed in principle but stressed the complexity of the problem. He also noted that there was a close link between the environmental issue and the export of domestically prohibited goods. One would first have to see what the Group's mandate would be and what was expected from it, bearing in mind that other international organizations, in particular UNEP, were competent in this field. This did not mean, however, that it could not be discussed in GATT. He recalled that a similar problem had arisen when the issue of export of domestically prohibited goods had been raised. He stressed that Cameroon could not dissociate the interlinked ideas of trade, environment and development, which had to be taken as a whole.

The representative of Canada said that his country wanted to see work on this issue started early in GATT. He believed that it should be designed so as to provide a better understanding of the inter-relationships between trade and environmental policy issues. Canada was eager, through the ongoing consultations, to launch work at an early date in a working party with terms of reference appropriate to an examination of the issues as they had been set out in the course of the Council discussions.

The representative of Peru said that the most important environmental problem currently facing humanity was the inequity in development possibilities between developed and developing countries. This imbalance created problems like the demographic increase in poor countries and the insufficient use of natural resources. One of the main points on the 1992 UN Conference's agenda would be development, and it would be important to clarify the inter-relationship between development and the environment in the course of that Conference so that one could then analyse the rôle which had to be played by trade, and in particular GATT. Developing countries were particularly concerned with this link between environment and trade, and should not be affected in their development efforts by trade restrictions imposed as a result of environmental concerns. Peru could

also not agree that under the guise of environmental protection one could go beyond what had been laid down in the General Agreement in terms of the use of natural resources. For all these reasons, it was necessary to wait until the end of the 1992 Conference to see what the GATT, within its mandate, could do in this particular area. In the meantime, the informal discussions should continue.

The representative of India said that the informal consultations were proceeding rather well and that a premature airing of views in the Council was not going to expedite decision-making within that process. While contracting parties had the right to raise any issue in the Council, no new arguments had been advanced in the current discussion. India continued to believe that no case existed for setting up a new working mechanism or for activating the 1971 Group for a freewheeling, across-the-board discussion on the possible relationship between trade and the environment. India recognized the right of contracting parties to convene that Group for a purpose within its terms of reference.

The overwhelming interest in the informal consultations should not surprise anyone. All were interested in the environment, whether from developed or developing countries. For this reason the international community was engaged in preparatory work for a UN conference on environment and was also considering and formulating international conventions and agreements on this issue in other fora. India believed that it was therefore inappropriate for GATT to get involved in this vast subject.

He noted the view of some that the idea behind convening the 1971 Group was to evolve international standards in regard to environment; such a task would be beyond the competence and the capacity of GATT. If some contracting parties wanted to bring any environment-related issue to the dispute settlement process, the GATT was flexible enough to address such an issue, as was evident from the tuna dispute recently before the Council in February. As to the Community's reference to a responsibility for protecting the environment, it was true that the international community had such a responsibility, but it would be immodest for GATT to claim that it had this responsibility. GATT had a responsibility for a very small part of that issue, and it should address that small part, but only when one understood better the whole -- an exercise which was currently underway in other fora.

He noted that this issue had been linked by one delegation with the general question of establishment of working parties. India believed it could be shown that everything that was related to production was also related to trade; but this did not mean that all aspects of economic relations between nations had to be addressed in GATT. He encouraged all to continue to address the issue at hand through the informal process already initiated and with which his delegation would cooperate. Finally, India would not shirk from a debate on this subject in the Council if it were so decided.

The representative of Jamaica said his delegation's understanding was that the ongoing consultations were proceeding apace and would continue.

He emphasized the importance and complexity of the subject, and referred to concerns that the reactivation of the 1971 Group could lead to a disruption of the balance of GATT rights and obligations as presently existed. He was also struck by Sweden's statement which had referred to the possibility of updating GATT rules; the implication was that multilateral approval or support within the GATT system should be sought for domestic policies in respect of environmental matters. This issue was difficult, and there was also the question of the scope and reach of GATT when it entered an area as vast and far-reaching as the environment. It would be appropriate to draw on the norms and standards already established in GATT and apply them to environmental policies, and not the other way round.

Jamaica believed that the informal consultations should continue, that there was no need to reactivate the earlier Group, that the matter could continue to be discussed in the Council, and that should the 1971 Group be reactivated, its membership and terms of reference would have to be drastically changed.

The representative of the European Communities said that while the Community was ready to discuss this matter in the Council if this were decided, it was simply asking that this item be kept on the agenda until a procedural solution was found. The Community intended to initiate a debate, and the ongoing informal consultations did not replace a debate. Noting the many suggestions to await the outcome of the 1992 Conference before initiating a GATT discussion on this matter, he reiterated that the UN Conference was quite independent of any discussion in the GATT. In the meantime, there were GATT rights and obligations to assume. As Sweden had indicated, protection of the environment, whether one liked it or not, would bring about a certain contraction in trade volume; this explained the Community's concerns. The question was whether this trade contraction would be compatible with the existing balance of negotiated, contractual GATT rights and obligations. Of course, there was a dispute settlement mechanism in GATT, but this was only a means, and there certainly would soon be bottlenecks therein. There was also the question as to what basis this mechanism would operate on -- Article XX:(b), (g), (f), or some other GATT provision. He questioned whether it was healthy for GATT to wait for measures to be adopted by contracting parties and then to challenge them, as was the case with the tuna dispute.

Referring to concerns raised by some developing countries, he said that the environment problem was one of production, consumption and trade without any limits. This was what created problems, and in this debate to single out the development process of developing countries was a step the Community did not wish to take. Certainly the problems of developing countries had to be discussed, but one could not hide behind somewhat outdated provisions in relation to the environment every time the problem of developing countries was raised.

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

9. Working Group on Export of Domestically Prohibited Goods
- Extension of mandate

The Chairman, speaking under "Other Business", recalled that the mandate of the Working Group was due to expire on 31 March 1991. Noting that the Working Group had met the previous day, he had been informed that the delegations participating in this work considered it appropriate for the mandate to be extended for a final period of three months, i.e., until 30 June 1991.

The representative of Cameroon said that his delegation had no objection to the extension of the mandate but only on the condition that the Group's work would be completed by 30 June. This issue was of utmost interest to his delegation.

The representative of Nigeria had no objection to the proposed extension. He understood that the contracting parties participating in the Group had endorsed a draft text and had supported the work, which had been conducted with utmost transparency. Unfortunately, the work could not be completed because of a reservation by one contracting party which had been associated with the Group's work from the outset. Nigeria hoped that the present call for a further three-month extension would be final and that the contracting party concerned would make its views known in the Group since, in the Working Group Chairman's words, the draft decision had been put forward on the basis of various proposals by a number of delegations. He noted that this matter was intrinsically linked to the issue of environment and trade raised by the EFTA countries, and which his country also considered important. He suggested that those countries make their proposals known to the Working Group as soon as possible so as to facilitate its work. He called on all contracting parties to show the necessary political will in order to complete the Group's work by 30 June.

The Council took note of the statements and agreed to extend the Working Group's mandate for a final period of three months to 30 June 1991.

10. United States - Restrictions on imports of tuna
- Panel composition

The Chairman, speaking under "Other Business", recalled that at its February meeting the Council had established a panel to examine Mexico's complaint regarding this matter and had authorized him, in consultation with the parties concerned, to decide on its composition. He informed the Council that agreement had been reached on the Panel's composition as follows:

Chairman:	Mr. András Szepesi
Members:	Mr. Rudolf Ramsauer
	Mr. Elbio Rosselli

The Council took note of this information.

11. EEC - Measures on imports of baler twine and other sisal processed products

The representative of Brazil, speaking under "Other Business", said that on 4 February 1991 the European Communities' Council of Ministers had adopted legislation modifying the Community's GATT schedule of concessions in respect of baler twine and other sisal processed products (Regulation 283/91). That decision resulted in a surcharge of 13 per cent on the imports of those products (CCCN 5607.21.00, 5607.29.10 and 5607.29.90). Brazil considered that the decision constituted a new barrier to products of export interest to Brazil and other developing countries. It had also been taken without affording the principal supplier an opportunity for consultations as required by Articles II and XXVIII.

While distinct paragraphs in the preface to the Community decision referred to Article XXII consultations and Article XXVIII negotiations between Brazil and the Community, to the best knowledge of his delegation such negotiations had never taken place. The Community might have been alluding to informal bilateral contacts between the two parties in Brussels maintained since early 1990 with a view to clarifying misunderstandings related to a tax collected by the Brazilian state from which most of the raw sisal exports came. This tax had been in place for more than two decades. The Community's decision, intended to offset a tax assessed by a Brazilian state on exports of raw sisal, was not in conformity with GATT provisions recognizing the right of contracting parties to apply or not apply taxes on exports of raw materials or manufactures. The decision was also inconsistent with the "standstill" commitment of the Punta del Este Declaration (BISD 33S/19), the validity of which had been reaffirmed by the Uruguay Round Trade Negotiations Committee on 26 February 1991 (MTN.TNC/19). The decision, if allowed to stand, would deeply affect the economic viability of a large population concentrated in one of the poorest areas of Brazil, which lived essentially on sisal production and processing and had no other subsistence means.

Brazil considered that this decision affected its GATT rights, inter alia under Articles II and XXVIII, and that it should be brought immediately into conformity with the Community's GATT obligations. His delegation reserved the right to revert to this matter in the future should bilateral efforts towards a satisfactory resolution of this problem prove insufficient.

The representative of the European Communities said that he understood that this matter had been discussed with Brazil over many months. The Community stood ready to look into the matter further with Brazil. He assured Council members that the Community's decision regarding recourse to Article XXVIII had been taken after careful consideration of all aspects of the case and the fullest possible consultations.

The Council took note of the statements.

12. Restrictions on exports from Peru following the cholera epidemic (Spec(91)12)

The representative of Peru, speaking under "Other Business", said that certain countries were imposing restrictions on Peru's exports following the cholera epidemic in the country and that these restrictions, imposed as a result of a lack of information on the epidemic, were causing considerable prejudice to Peru's economy and external trade. These measures, allegedly adopted to avoid contamination from Peruvian exports, denoted in many cases an extremely restrictive attitude that was not in accordance with international standards for the control of this disease, nor with recommendations by world health authorities. Such trade measures would drastically reduce Peru's exports, especially of foodstuffs, and could cause losses amounting to US$400 million. In many cases Peru had not been informed of the adoption of such measures and had been faced with "faits accomplis".

He stressed that the World Health Organization (WHO) had reaffirmed that there was no evidence of cholera contamination from imported products. He drew attention also to a consensus in the Uruguay Round negotiations on sanitary and phytosanitary measures that care had to be taken to ensure that such measures were applied only if they were: (1) necessary to protect human, animal or plant life or health; (2) based on principles, techniques and assessments of scientific risk established by the competent international organizations; and (3) not applied contrary to available scientific evidence. He also expressed the hope that the guidelines to be used in the event of a trade-damaging act, adopted by the Council on 11 October 1989[7], would be implemented by all contracting parties.

He noted that a number of contracting parties, among them Australia, the United States, Japan, Mexico and Venezuela, had observerd the GATT rules and the recommendations of international health organizations. These governments had abstained from introducing restrictive measures and had simply reinforced health controls for products that could be deemed sensitive, as was appropriate in the current situation. According to information received by his delegation, however, some contracting parties from the European Economic Community, the European Free-Trade Association and the Latin American Integration Association had introduced restrictions on the import of food products from Peru which were not in accordance with the recommendations by the WHO. He hoped that these contracting parties, as well as any others, would forthwith notify the Director-General accordingly. Peru reserved the right to request consultations with those contracting parties as well as the right to raise this matter again in the Council.

The Council took note of the statement.[8]

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[7]Streamlined mechanism for reconciling the interests of contracting parties in the event of trade-damaging acts (BISD 36S/61).

[8]The full statement by Peru, along with relevant WHO Press releases, was circulated to all contracting parties in Spec(91)12.

13. United States - Section 337 of the Tariff Act of 1930 - Follow-up on the Panel report (BISD 36S/345)

The representative of Japan, speaking under "Other Business", recalled that in November 1989, the Council had adopted the Panel report on Section 337 of the US Tariff Act of 1930 (BISD 36S/345). The Panel had concluded that Section 337 was GATT-inconsistent and had recommended that the United States bring its procedures into conformity with its GATT obligations. Since then, Japan, as one of the interested parties in the matter, had requested the United States on various occasions to amend this section in accordance with the Panel's recommendation. However, the United States had not yet taken any measures in this regard. On the contrary, in February 1991, the US International Trade Commission had initiated an investigation under Section 337 on an alleged infringement of intellectual property rights by a Japanese company. This US action not only undermined the credibility of the GATT dispute settlement mechanism but also created a serious trade barrier to its partners. Japan therefore urged the United States to remove these unfavorable conditions to international trade as soon as possible and requested that it report on the action it intended to take in order to comply with the Panel's recommendation.

The representative of the United States said that he would report on Japan's statement to his authorities and would be prepared to address the matter at a future meeting.

The representative of the European Communities said that as the complainant in the original dispute, the Community was interested in the United States' reply. The Community had a continued interest in seeing Section 337 brought into conformity with the Panel's recommendation.

The representative of Japan reiterated his country's concern that the United States continued to disregard its GATT obligations in this particular case, and called on it to implement the Panel's recommendation quickly and to refrain from taking actions under Section 337 which would further aggravate the non-implementation. Japan would pursue this matter further at the next Council meeting, and reserved all its GATT rights.

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

14. Union of Soviet Socialist Republics - Report on progress in the ongoing economic reforms

The representative of the Union of Soviet Socialist Republics, speaking as an observer under "Other Business", confirmed the commitment of his country, of both its executive and legislative authorities, to the declared course aimed at the transition to an internationally open market-oriented economic system. In practice, this was reflected in a series of fundamental economic laws already in force or under consideration, in new structural features of the economy and in the development of a market infrastructure.

Over a year or so, the USSR had adopted laws on enterprises, land, property, leasing, taxation, the State Bank, banks and banking, investment activities, and currency regulation. Draft laws on customs tariff, a customs code, and on foreign investment and entrepreneurship had gone through a first reading in the Supreme Soviet. A package of equally important bills was also on the agenda, covering inter alia de-nationalization and privatization of enterprises, anti-monopoly activities, securities and stock exchange, pricing, protection of consumer rights, intellectual property rights and emigration.

In developing new national economic legislation and regulation, including those on foreign investment, external trade and foreign exchange matters, appropriate account was being taken of internationally recognized principles and rules, including those of GATT. A major thrust of this legislation was to ensure freedom of all types of economic activities, including foreign economic relations, based on equality of all forms of property, legitimacy of use of hired labour by both legal and physical persons.

The new principles of economic management implied that Government agencies would not administer production or supervise distribution. The legislation provided in most areas for equal -- and sometimes preferential -- treatment of foreign companies. Major features regarding foreign investment included new legislation providing for the leasing of land, full ownership of other property except land, tax incentives and repatriation of profits. In the area of banking, non-residents were allowed to open and operate rouble accounts with banking establishments in the USSR.

Decentralization of economic management had led to profound changes within the state ownership, which was being transferred to republican and municipal authorities. The latter nowadays accounted for 37 per cent of total output against 4.5 per cent in 1985. The non-state sector had grown from 13 to 17.3 per cent between 1985 and 1990 in terms of employment. Leasing had become widespread in all areas of the national economy, particularly in industry. In 1990, about 2,400 industrial enterprises operating under lease contracts produced 5.2 per cent of total industrial output. The total number of cooperatives had reached 260,000, employing 6.2 million persons and producing 70 billion roubles worth of goods and services (against 40 billion in 1989) and accounting for 7 per cent of GNP. As of 1 January 1991, there were 40,600 private farms cultivating 700,000 hectares of land. About 30,000 joint ventures had been established with capital amounting to 6 billion roubles. It was currently planned to privatize over 21,000 retail stores, 2,300 public catering facilities and 12,000 businesses in the service sector. About 26,000 legal entities participating in foreign economic activities had been officially registered.

Foundations were being laid down for market infrastructure: commercial organizations operating as wholesale traders were to replace the existing state distribution system. Commodity exchanges were already functioning in many cities -- three in Moscow. There were presently 1,400 commercial and cooperative banks, 25 of which possessed licences for

conducting foreign exchange operations; under the new law on currency regulation their number was expected to grow further. In Moscow, a stock exchange had been established and the foreign currency market was expected to be in operation shortly.

In conclusion, he emphasized that his Government was determined to pursue the policy of transition to a market economy, as had been repeatedly stated by his country's President.

The Council took note of the statement.