GENERAL AGREEMENT ON

TARIFFS AND TRADE

RESTRICTED

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COUNCIL
4-5 November 1992

MINUTES OF MEETING

Held in the Centre William Rappard
on 4-5 November 1992

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

1. Accession of Chinese Taipei

The Chairman recalled that at its meeting in September, the Council had established a Working Party on the Accession of the Separate Customs Territory of Taiwan, Penghu, Kinmen and Matsu (commonly referred to as "Chinese Taipei"), and had invited the authorities of Chinese Taipei to attend Council meetings as observers from the present meeting onwards. On behalf of the Council, he welcomed the delegation of Chinese Taipei.

The representative of Chinese Taipei, speaking as an observer, extended his authorities' appreciation to the Council Chairman and to all contracting parties for their efforts in building a consensus for the establishment of a working party to examine the accession request of Chinese Taipei. He reiterated his Government's willingness to pursue the free and open trade policies advocated by the GATT, and to support a strong multilateral trading system. These commitments would be further fulfilled through the increasingly liberal formulation of Chinese Taipei's trade policies and, more specifically, through a number of trade measures it had taken since 1 January 1990. He expressed satisfaction that the first meeting of the Working Party would be held on 6 November. His authorities were ready to co-operate with all the contracting parties concerned, and hoped to see an early completion of the examination process by the Working Party, thus enabling Chinese Taipei to play a constructive rôle in the multilateral trading system.

The Council took note of the statement.

2. Training activities
- Report by the Director-General (L/7031)

The Director-General introduced his annual report on the trade policy courses organized by GATT (L/7031). He said that during 1992, in addition to the two regular trade policy courses, a second special course for Eastern and Central European countries had been organized with financial support from Switzerland. The progressive increase in the number of developing countries that had acceded to GATT in recent years, and of others that had applied for observer status with a view to eventual accession, the increasing number of developing countries embarking on the process of trade policy reforms and trade liberalization, and the greater awareness of trade policy issues engendered by the Uruguay Round negotiations, had further underscored the utility and importance of these courses, and had generated greater demand for participation therein.

The far-reaching changes in the political map of Central and Eastern Europe in 1991 had highlighted the needs of these countries, especially of the newly-independent among them, for assistance and support towards a proper understanding of the functioning of the multilateral trading system and the working of the GATT as an institution. The decision of the Swiss Government to finance a second special course for Eastern and Central European countries had been therefore entirely appropriate and opportune. In addition to the countries that had participated in the special course in 1991, the Russian Federation, Albania and the newly-independent countries of Eastern and Central Europe -- Belarus, Estonia, Latvia, Lithuania and Ukraine -- had participated in the 1992 course. In planning these courses, every effort had been made to keep them abreast of the latest developments in the GATT and the multilateral trading system and to deal with issues of topical interest. Accordingly, the courses conducted in 1992 had focused particularly on the leading issues in the Uruguay Round negotiations -- including sectoral issues such as agriculture and textiles and the new subjects -- and on others that had assumed importance in international trade relations, such as global and regional approaches in international trade, and the interaction between trade and environmental policies. A dispute settlement simulation exercise had been added as an important new element in the 1992 course programme. The programme of the Special Course had been suitably adapted to take account of and respond to the particular concerns and needs of the economies in transition. The Secretariat was conscious of the needs of the newly-independent countries of the Caucasus and Central Asia for technical support in their endeavours to restructure their economies and to join the mainstream of the multilateral trading system, and hoped to be able to respond to these needs positively.

He expressed gratitude to the Swiss Government for having financed the second special trade policy course for Eastern and Central European countries and for its continued financing of the costs of a workshop on negotiating techniques included in the regular course programme. He also expressed his gratitude to the Governments of Germany, Austria and Spain for their cooperation in organizing and hosting the study tours for the participants of the regular courses in 1992. He also expressed gratitude to members of the permanent delegations and representatives of other international organizations for their co-operation and valuable contributions to the GATT's training activities.

The Chairman, on behalf of Council members, expressed appreciation for the trade policy courses organized by GATT and stressed the importance thereof in preparing government officials from developing as well as other countries for the future conduct of trade policy and international trade relations.

The representatives of Poland, Romania, Hungary and the Czech and Slovak Federal Republic expressed their respective Governments' deep appreciation to Switzerland for its financial support of the second special trade policy course for Central and Eastern European countries. They underlined the importance of these courses for their respective countries' trade officials, and expressed the hope that Switzerland would continue to make a financial contribution for the organization of further such courses.

The representative of Switzerland said that, like many other countries, his authorities were faced with serious budgetary constraints as a result of the present economic situation. However, his delegation had noted the words of appreciation expressed by the Central and Eastern European countries for Switzerland's financial contribution towards the organization of the special training courses, and of the clear desire on their part that this contribution be continued. These messages would be transmitted to his authorities so that they could take the necessary decisions for the next year.

The Council took note of the statements and of the report (L/7031).

3. Committee on Budget, Finance and Administration
- Report of the Committee (L/7105)

Mr. Szepesi (Hungary), Chairman of the Committee, introduced the report in L/7105 on matters considered by the Committee at its meeting on 1, 9 and 16 October.

With regard to the budget estimates, the Committee had examined the Secretariat's initial proposals for 1993 amounting to SwF 90,794,000 which had later been revised to SwF 89,040,000 and had thus met the concerns of a number of delegations for a zero real growth budget. The Committee was submitting to the CONTRACTING PARTIES for consideration and approval a draft resolution on the expenditure of the CONTRACTING PARTIES for 1993 and the ways and means to meet such expenditure (paragraph 14 of L/7105). He noted that Germany had reiterated its previous reservation with regard to the percentage applied to it in the Scale of Contributions, and that Bangladesh and Tanzania had raised points dealing with their contributions to the GATT budget.

With regard to the International Trade Centre UNCTAD/GATT (ITC), the Committee had been addressed by the Officer in Charge of the ITC and had examined the second performance report for the biennium 1990-91 and the financial report of the Board of Auditors. The Committee had been informed that two complementary UN reports, one from the Advisory Committee on Administrative and Budgetary Questions (ACABQ) and another from the

Secretary General had been received in English and would be distributed to the Committee when the French and Spanish versions were available. Given the issues raised in the Board of Auditors' Report, the Committee had agreed to have a further discussion at a meeting to be held before the end of 1992, when the two reports mentioned above would be available to the Committee.

With regard to the other business items considered by the Committee, several merited the Council's attention and called for decisions. The first related to the Final Position of the 1991 GATT Budget (L/7077). The Committee had noted that the accumulated deficit of SwF 5,035,336 at the end of 1991 had been mainly due to the level of contributions in arrears, and had made two relevant recommendations for consideration by the Council. The other items related to the recommendations in the report concerning the assessments on Mozambique and Namibia as a result of their accession to the General Agreement.

The Council took note of the statement, approved the Budget Committee's specific recommendations in Paragraphs 28, 29, 44 and 45 of its report in L/7105, agreed to submit the draft resolution referred to in Paragraph 14 to the CONTRACTING PARTIES for consideration and approval at their Forty-Eighth Session, approved the Budget Committee's report in L/7105 and recommended that the CONTRACTING PARTIES adopt it at their Forty-Eighth Session, including the recommendations contained therein and the Resolution on expenditure of the CONTRACTING PARTIES in 1993 and the ways and means to meet that expenditure.

4. Accession of Bolivia
- Acceptance of certain MTN Agreements

The Chairman recalled that during the Working Party's examination of its request for accession to the GATT, Bolivia had indicated that it would seek observer status and study the possibility of acceding to the Agreements on Customs Valuation and Import Licensing Procedures[1], and that it would announce its intention in this latter regard within eighteen months (BISD 36S/9, paragraph 37).

The representative of Bolivia expressed his Government's confidence in the multilateral trading system and reiterated its support for the conclusion of the Uruguay Round negotiations that would establish more adequate and specific multilateral rules for international trade. During its accession process, Bolivia had examined the possibility of acceding to the Agreements on Customs Valuation and on Import Licensing Procedures, and announced its intention now to accede to these agreements at the beginning of 1993. He pointed out that all agreements entered into by his Government

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[1] Respectively, the Agreement on Implementation of Article VII (BISD 26S/116), and the Agreement on Import Licensing Procedures (BISD 26S/154).

had necessarily to be submitted for legislative approval, and said that once this process had been successfully concluded, Bolivia would be able to be considered as a member of the above Agreements.

He added that Bolivia had decided autonomously to abolish the prior licensing requirement for all products but one, namely sugar. This measure had been taken in accordance with the Uruguay Round's objectives of dismantling trade barriers, and constituted yet another autonomous effort by Bolivia to liberalize its import régime. He noted that legislation in effect in Bolivia guaranteed the freedom to import and export all goods with the exception of those which affected public health or national security. He added that the recent measures that many developing countries had announced with a view to liberalizing their trade and permitting the operation of market forces and free competition under conditions of equality, merited special consideration from their larger trading partners.

The Council took note of the statement.

5. Switzerland - Eighth triennial review under paragraph 4 of the Protocol of Accession
- Working Party report (L/7078)

The Chairman drew attention to document L/7078 containing the report of the Working Party established to conduct the eighth triennial review under paragraph 4 of the Protocol of Accession of Switzerland.

Mr. Kaczurba (Poland), Chairman of the Working Party, said that the Working Party had held four formal meetings and a number of informal sessions from May 1991 to July 1992. It had conducted the eighth triennial review of the application of the provisions of paragraph 4 of the Protocol for the Accession of Switzerland in the light of the annual reports submitted by the Swiss Government for the years 1987, 1988 and 1989 (documents L/6454, L/6632 and L/6802). The Working Party's report included a number of specific questions posed to the Swiss authorities, and their responses, as well as supplementary information provided by Switzerland. The report recorded the differing views on a number of points concerning both the observance of the terms of paragraph 4 of the Protocol and broader questions in the context of the Uruguay Round negotiations. In this connection, he drew the Council's attention to paragraph 37, and noted that the report ended with a unanimous reaffirmation of the agreed aims for the Round's agricultural negotiations.

The representatives of New Zealand expressed his delegation's satisfaction that the Working Party had been able to conclude the eighth triennial review. Switzerland's responses, however, had not been sufficient to allow the Working Party to conclude that Switzerland had applied measures under its Protocol in a manner as to cause minimum harm to the trade of other contracting parties, or that it had provided acceptable conditions of access or a steadily expanding market. In New Zealand's view, it could not therefore be concluded that Switzerland had fulfilled either of these criteria. Switzerland had not refuted in the Working Party the fact that its food self-sufficiency had increased steadily, and that

imports of several important products such as grains, bovine meat, dairy products and apples had declined since 1966. He wished to place on record New Zealand's view that in accepting a final Uruguay Round package, Switzerland could not seek to use the partial reservation in its Protocol to avoid implementing in full the results of the negotiations. New Zealand believed that the Working Party's terms of reference did not preclude consideration of the linkage to that Round: this link was clear from the Preamble to the Protocol of Accession and Switzerland had itself acknowledged that it was understandable that it be raised in the Working Party.

The representative of Australia welcomed the report and supported its adoption. However, Australia regretted that, as with the outcomes of previous working parties on this matter, this latest review had not been able to conclude that measures implemented by Switzerland under its partial reservation met the requirements of the Protocol, and particularly the criterion of minimum harm to the interests of other contracting parties. It was also important to recall that a significant amount of the Working Party's time had been devoted to examining the future of Switzerland's partial reservation, particularly against the background of the Uruguay Round. This remained a critical and legitimate concern of Switzerland's GATT trading partners. It was therefore most disturbing that Switzerland had been unable to confirm that it would fully implement commitments arising from a Uruguay Round outcome. Australia could not accept a scenario where Switzerland attempted to use its Protocol to deviate from, or qualify its acceptance of, multilateral GATT rules and disciplines agreed more than 25 years after Switzerland had become a contracting party. Australia could only hope that these concerns were unfounded, and that a successful conclusion of the Round would remove the need for this item to appear on the Council's agenda again.

The representative of Brazil said that his Government shared others' concerns as regards Switzerland's compliance with its requirements under its Protocol of Accession. Brazil had special concerns with regard to the existing restrictions on the access of agricultural products to the Swiss market, and hoped that Switzerland could improve its market access conditions, especially with respect to the meat sector.

The representative of Argentina expressed his delegation's support for the adoption of the Working Party's report which adequately reflected contracting parties' views concerning the effects of the Protocol for the Accession of Switzerland and, in particular, with reference to the agricultural trade restrictions it applied. Argentina believed that Switzerland had not complied with the criteria of minimum harm in the application of its restrictions under Paragraph 4 of the Protocol. Argentina was also concerned at the repercussion of the partial reservation on Switzerland's compliance with the agricultural rules which might emerge from the Uruguay Round negotiations. He recalled that participants in the Round had agreed, as stated in the Draft Final Act (MTN.TNC/W/FA), on the desirability of the acceptance of the instruments by all parties without exception.

The representative of Chile said that his delegation joined others in the hope that Switzerland would open its market, particularly in respect of agricultural products.

The representative of Uruguay associated his delegation with the statements by Brazil, Argentina and Chile.

The representative of Switzerland said his delegation had noted the previous statements. Switzerland considered that the Uruguay Round negotiations and the work of the Working Party were distinct matters and should not be linked. In the context of the Round, Switzerland had made a precise and specific offer regarding market access, including on agricultural products, and this did not need to be discussed in the Council. As to the issues discussed in the Working Party, its report had adequately reflected all the arguments. He added that more than 80 per cent of Switzerland's agricultural imports were free of quantitative restrictions, and that Switzerland was one of the major per capita importers of agricultural products. Moreover, it had committed itself to a vast economic reform programme, which was probably the most important reform undertaken to amend the underlying rules of its agricultural policy, by introducing support through the extension of direct payments to farmers.

The Council took note of the statements and adopted the Working Party's report in L/7078.

6. Committee on Tariff Concessions
- Report of the Committee (TAR/223)

Mr. de la Peña (Mexico), Chairman of the Committee, introduced the report on the Committee's activities in 1992 (TAR/223). He said that because of the work carried out in the context of the Uruguay Round negotiations, the activities of the Committee had been rather limited. The Committee had met on 21 October 1992, and had pursued its examination of the status of implementation of the Harmonized System (HS) by various contracting parties, including the submission of the appropriate HS documentation. The Committee had noted that since the formal introduction of the HS on 1 January 1988, eighty-nine contracting parties out of a total of 105 had adopted it. However, it was disappointing to note that some countries had introduced the HS without having followed the approved GATT procedures. With regard to the transposition of their schedules, fifteen countries had been granted a waiver under Article XXV:5 to carry out the necessary consultations and negotiations. At present, nineteen countries plus the European Communities had a certified HS-based Schedule.

Since the Committee would be expected to play an important rôle after the Round, particularly in respect of the implementation of the tariff reductions agreed to in the market access negotiations, it would therefore need to organize a comprehensive work programme for the future to deal with the Schedules of Concessions as well as with the remaining conversions into the HS.

The representative of Venezuela said that his Government had implemented the HS a few months before its accession to the General Agreement, and that it would shortly provide further information to the Secretariat as required for the transposition of its Schedule of Concessions.

The Council took note of the statements and adopted the report in TAR/223.

7. Bolivia - Establishment of a new Schedule LXXXIV - Request for a waiver under Article XXV:5 (C/W/721, L/7103)

The Chairman drew attention to Bolivia's request for a waiver from the provisions of Article II (L/7103) and to the draft decision which had been circulated to facilitate consideration of this item (C/W/721).

The representative of Bolivia recalled that at the September Council meeting, his delegation had announced that Bolivia had implemented in July the Common Customs Tariff Nomenclature of the Andean Group (NANDINA) which was based on the Harmonized System (HS). Due to the transformation of Bolivia's national institutions, and the necessity of making considerable structural adjustments for the effective application of the new Tariff, Bolivia had not been able to prepare the documentation necessary to comply with the procedure established by the Council in its Decision of 12 July 1983 (BISD 30S/17), and to hold the required Article XXVIII consultations. Bolivia was requesting a temporary waiver, until 31 December 1993, from its obligations under Article II and committed itself to presenting the relevant documentation as soon as possible. Bolivia did not intend to modify any commitments vis-à-vis other contracting parties in the transposition process.

The Chairman said that the documentation still to be submitted and any negotiations or consultations that might be required should follow the special procedures relating to the transposition of the current GATT concessions into the HS, adopted by the Council on 12 July 1983 and contained in BISD 30S/17.

The Council took note of the statements[2], approved the text of the draft decision in C/W/721, and recommended that it be adopted by the CONTRACTING PARTIES by a vote at their Forty-Eighth Session.

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[2]Including the United States' and the European Community's under Item 9.

8. Argentina - Establishment of a new Schedule LXIV
- Request for a waiver under Article XXV:5 (C/W/723, L/7108)

The Chairman drew attention to Argentina's request for a waiver from the provisions of Article II (L/7108) and to the draft decision which had been circulated to facilitate consideration of this item (C/W/723).

The representative of Argentina said that while the transposition of Argentina's Schedule of Concessions into the Harmonized System (HS) had been effected in accordance with its GATT obligations, it was prepared to conduct Article XXVIII consultations with any interested contracting party. Argentina now requested a waiver from its obligations under Article II in order to implement the HS.

The Chairman said that the documentation still to be submitted and any negotiations or consultations that might be required should follow the special procedures relating to the transposition of the current GATT concessions into the HS, adopted by the Council on 12 July 1983 and contained in BISD 30S/17.

The Council took note of the statements[3], approved the text of the draft decision in C/W/723, and recommended that it be adopted by the CONTRACTING PARTIES by a vote at their Forty-Eighth Session.

9. Malawi - Renegotiation of Schedule LVIII
- Request for a waiver under Article XXV:5 (C/W/720, L/7102)

The Chairman drew attention to Malawi's request for a waiver from the provisions of Article II (L/7102) and to the draft decision which had been circulated to facilitate consideration of this item (C/W/720).

The Council approved the text of the draft decision in C/W/720, and recommended that it be adopted by the CONTRACTING PARTIES by a vote at their Forty-Eighth Session.

The representative of the United States said that while his country had not opposed the waiver requests of Bolivia, Argentina and Malawi, it believed that recourse to waivers from Article II in the context of Article XXVIII negotiations was becoming far too common. Contracting parties should negotiate the changes in their bound tariff rates prior to implementation, when possible. The United States was also concerned that many contracting parties with such waivers had sought extensions in the past without having circulated the necessary data for other contracting parties to respond to during the initial waiver period. It urged all contracting parties that had secured waivers from Article II in the context of Article XXVIII negotiations, to move rapidly to conduct and complete the negotiations necessary to re-establish their GATT Schedules.

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[3] Including the United States' and the European Community's under Item 9.

The representative of the European Communities noted that as of the present meeting eighteen contracting parties had been granted waivers to carry out the necessary consultations and negotiations for the implementation of the Harmonized System. The Community shared the United States' views on this matter and believed that the degree of laxity in this area should be reversed and that Article XXVIII negotiations should precede the implementation of HS schedules.

The Council took note of the statements.

10. South Africa - Import surcharges
- Communication from the United States (L/7084)

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

The representative of South Africa recalled that pursuant to the 1979 Understanding regarding Notification, Consultation, Dispute Settlement and Surveillance (BISD 26S/210), his Government had notified contracting parties in September 1986 (L/5898/Add.1) that in order to safeguard South Africa's already depleted monetary reserves from a persistent threat of a further decline, it had decided to extend the scope as well as the rate of the import surcharge. The reasons for the depletion of South Africa's reserves were well known and resulted from political actions taken outside the GATT framework. Most, if not all, of those measures had not been notified to the GATT. While some of these measures had recently been withdrawn, a substantial number of them -- taken by contracting parties or their sub-national entities for political reasons -- were still in place. In view of the fact that circumstances foreign to the GATT were involved, this matter probably fell within a grey area and it was therefore unclear whether it should be discussed in the Committee on Balance-of-Payments Restrictions. Notwithstanding the above reservation, South Africa had given due consideration to concerns expressed by the United States and other contracting parties. It would be prepared to consult with the contracting parties concerned in that forum.

The representative of the United States welcomed South Africa's statement. In view of that Government's explanation in L/5898/Add.1 that the surcharge aimed to safeguard South Africa's already depleted monetary reserves from a persistent threat of a further decline, the United States had suggested that Article XII was the appropriate GATT provision under which South Africa should justify the application thereof. The United States hoped that the process of notification and consultation in the Committee on Balance-of-Payments Restrictions would allow South Africa to establish a time-table for the elimination of the surcharge.

The representative of the European Communities noted with satisfaction that South Africa intended to notify its remaining import surcharge measures to the Committee on Balance-of-Payments Restrictions, and that there would be consultations thereon. One had now embarked on the road to

either making South Africa's measures GATT consistent or to having them withdrawn.

The Council took note of the statements.

11. Negotiations under Article XXVIII:4 concerning the modification of certain concessions included in the European Communities' Schedule LXXX-EC
    - Communication from the European Communities (L/7096)

and

12. European Economic Community - Payments and subsidies paid to processors and producers of oilseeds and related animal-feed proteins
    - Follow-up on the Panel report (DS28/R) and status of related negotiations authorized by the CONTRACTING PARTIES pursuant to Article XXVIII:4
    - Communication from the United States (DS28/3)

The Chairman recalled that at its meeting in September, the Council had considered the matters under items 11 and 12 together as they both related to a common substantive issue, and had agreed to revert to them at the present meeting. He suggested again that in order to avoid an unnecessary duplication of the debate, delegations should address both items together.

The representative of the European Communities, recalled that at the September Council meeting the Community had requested the CONTRACTING PARTIES, pursuant to the first sentence of Article XXVIII:4(d), to promptly examine the matters it had referred to them, and to submit their views to the contracting parties concerned with the aim of achieving a settlement. The Community had perceived a fear on the part of some contracting parties that the Article XXVIII:4 negotiating process authorized by the Council in June would linger on for much longer as a result of this. The Community was willing to help the CONTRACTING PARTIES find an expeditious solution and allow them to provide the necessary replies not only to the matters it had referred to them in document L/7096, but also to any other issue of concern to the other parties involved in the negotiations. This applied also to the matter referred to the Council by Argentina under Agenda item 13. On the latter issue, the Community had a great deal of sympathy for Argentina's request for recognition of its principal supplier status in respect of two products. Had the Community alone been concerned, it would have found this request much easier to accede to. However, in doing so, the Community was concerned that it would be setting a precedent with far-reaching consequences for the entire system. The Community believed that Argentina's recourse to the dispute settlement mechanism in this case was inappropriate and improper. It further believed that an agreement could be reached between the two parties without an indiscriminate resort to the dispute settlement system, with the risk that that carried of blocking the mechanism or creating unnecessary complications. The Community was therefore willing to find an expeditious

solution to the matter raised by Argentina which would take into account other contracting parties' interests, and also take account of the precedent that might be created in this case. He added, however, that this was once again a matter for the CONTRACTING PARTIES, and that the Community could not be expected to resolve it alone.

The CONTRACTING PARTIES collectively, in good faith, had to find the solution; the Community was prepared to play its part, in order to fend off any accusation or perception that it was engaging in delaying tactics. He asked, therefore, whether the CONTRACTING PARTIES were prepared to provide answers to the matters referred to them by the Community. The Community was waiting for such answers. If the CONTRACTING PARTIES were not in a position to provide them, the Community would then be willing to help them find an appropriate solution which would allow the entire Article XXVIII:4 procedure, which they had authorized, to be completed.

The representative of the United States noted that it had been almost five years since US soybean growers had asked for relief from the harm caused them by the Community's oilseed policy. Yet, there was still no relief in sight, and that policy continued to impair up to US$2 billion a year in oilseed exports from the United States and nine other exporting countries. The damages to US exports alone had been US$1 billion annually. The United States had undertaken extraordinary efforts to obtain an appropriate solution through the GATT system to this devastating policy. It had won two panel proceedings. It had agreed to a request for Article XXVIII renegotiations by the Community, a request that, to the regret of many, had proved to be nothing more than a delaying tactic. It had sought binding arbitration by an independent panel to determine an agreed level of impairment, which had been rejected by the Community. To find a satisfactory remedy, the United States had pursued negotiations with the Community over and over again, beginning years before it had brought the first request for a panel and continuing until the evening before. Its efforts had been rewarded by a series of non-solutions which had left the Community's pernicious policies fully in place. All that the Community had done was to propose to implement some Common Agricultural Policy (CAP) reform measures that could slightly reduce its oilseed production. The Community was, furthermore, unwilling to guarantee that result, and had stated that if those steps proved inadequate the United States could always request further consultations or come back to the GATT.

This manifest unwillingness to abide by the multilateral system could not be permitted. The credibility of the very system the Community professed to support as the means of resolving international trade disputes was at stake. It was the Community, among others, that had proposed a strengthened Multilateral Trade Organization. However, at the same time as it made that proposal, it was unwilling to let the GATT achieve a fair outcome in the oilseeds dispute. The Community could not insist on adherence to the multilateral system on the one hand, while refusing to let it work on the other.

The chronology of this dispute should convince even the most cautious contracting party that the United States had gone the extra mile to resolve this problem through the multilateral system, and that the Community had

not reciprocated. Therefore, his delegation requested that the Chairman put the following proposition to the Council at the present meeting: "The CONTRACTING PARTIES authorize the United States to suspend the application to the European Community of concessions under the General Agreement in the amount of US$1 billion". This request was based upon the estimate of overall impairment that the United States had provided to the contracting parties at the September Council meeting. However, it would be the United States' intention to suspend concessions valued at less than the full annual amount of US$1 billion. Moreover, the United States would delay the suspension until thirty days after its announcement, in the hope that before the suspension went into effect, the Community would agree to a mutually-satisfactory resolution of this dispute. In addition, the United States held open its offer of binding arbitration on the amount of damages, on the condition that the arbitration be concluded within this thirty-day period. The United States' goal was to encourage the Community's compliance with its GATT obligations and not to impose countermeasures. It hoped that by taking a serious, but limited, first step, it would encourage the Community to honour its GATT obligations. However, should this not be the case, the United States was prepared to take further steps until it was compensated fully for the impairment to its trade.

The United States had shown uncommon patience in this entire matter, and had been faithful to the multilateral system. The report by the reconvened Panel members (DS28/R), issued more than seven months ago, had stated: "The panel considers that there is no reason for the CONTRACTING PARTIES to continue to defer consideration of further action...". The time had now come for such action. He, therefore, asked members whether they would support a consensus decision by the Council at its present meeting authorizing the suspension of concessions by the United States.

The representative of the European Communities said that while the Community was not surprised at the United States' approach, it could not follow its logic, given that negotiators from the Community and the United States had agreed to continue negotiations on this and other issues. He wondered whether the United States' request at the present meeting was deliberately aimed at exerting pressure on the Community. With regard to the United States' contention that the Community had merely implemented a few reform measures in its agricultural policy which could only slightly reduce its oilseed production, he would say that the two parties had begun a bilateral process which covered not only oilseeds but also other elements that went far beyond oilseeds and embraced an overall solution to the agricultural negotiations in the Uruguay Round. In its discussions, the Community had moved on three areas, namely crop surfaces, surface of land to be set aside, and an induced 25 per cent reduction in production. This could hardly be qualified by anyone, starting with the producers themselves, as a slight reduction of oilseed production. There could, of course, be misunderstandings, as shown by the United States' lack of awareness of the operation of the Community's decision-making system, which, could admittedly be very complex at times. However, one could not say that the Community took things lightly or engaged in delaying tactics. His delegation recognized that this matter was of serious concern to all in

GATT, and he assured them that he would report to this authorities in this regard. Important and high-level Community meetings were to be held very shortly, and he would be unable to improvise answers to the important questions that had been put to his delegation at the present meeting. He cautioned that the Community should not be confronted with an ultimatum, as the United States was asking the Council to do.

He again reiterated that the CONTRACTING PARTIES, which had authorized the on-going Article XXVIII process, had to provide answers to the matters referred to them by the Community. The Article XXVIII process, which had experienced some difficulties, had to be fully completed. If the difficulties encountered by the Community, and referred to the CONTRACTING PARTIES pursuant to Article XXVIII:4(d), caused problems for the latter in providing timely answers to the contracting parties concerned, the Community would be willing to offer a prompt and all-embracing solution to these problems. However, it would not be fair to the Community to jump from Article XXVIII to Article XXIII. In this context, he wondered on what basis the CONTRACTING PARTIES could take a decision on the United States' request, when the latter spoke of Article XXIII in one paragraph of its communication, and of Article XXVIII in the next. He therefore asked the CONTRACTING PARTIES not to rush hastily into something suicidal by following the United States' reasoning. One was currently working under an Article XXVIII process, and could not suddenly venture into a procedure authorizing suspension of concessions under Article XXIII. The deferral of a decision on the latter point would not be a delaying tactic, but an act of courage. His answer to the United States, accordingly, was neither yes nor no, and that no further decision should be taken until the Article XXVIII procedure authorized in June had been exhausted.

The representative of the United States noted that in its statement the Community had suggested that the United States had somehow been confused in the presentation of its request to the Council, and had somehow mixed up Articles XXIII and XXVIII. However, if the Community were to look carefully at the United States' request for binding arbitration made at the September Council meeting, as well as the request for suspension of concessions made at the present meeting, it would note that in neither case had the United States indicated that Article XXVIII was the basis for these requests. In requesting binding arbitration, the United States had in fact said that this would be used to determine the value of the impairment caused by the Community's oilseed subsidies, and had made it clear that this could be the basis for any sort of further action by the GATT. It was the Community itself that had raised Article XXVIII, and which had then failed to follow through in the negotiations thereunder with the United States and the other parties concerned. The United States had requested binding arbitration to go to the fundamental question in dispute with the Community regarding the latter's implementation of its obligations to remove the impairment.

With regard to the Community's argument that the Article XXVIII process was still underway and that therefore it would be inappropriate to take any further action or decision, he would note that the United States had been willing to negotiate all along but also that it could not be

deterred from enforcing its GATT rights simply because the Community proclaimed to the world that it was in a perpetual state of negotiation on this issue. That simply would not suffice. With regard to another of the Community's arguments, namely that its decision-making process was very subtle and complex which made it difficult for the Community to provide an immediate answer to the United States' request, he said that all were aware of the Community's difficulties in reaching a consensus internally. That was indeed a big part of the problem; the Community had reached a consensus to develop a certain kind of agricultural policy which it now found impossible to change to the satisfaction of its trading partners. However, when conflicts with GATT obligations arose, the Community and its member States had to live up to their obligations in the same way as other contracting parties. They could not simply state that internal difficulties in the Community made it impossible for them to give other contracting parties satisfaction.

His delegation interpreted the Community's "neither yes nor no" answer as meaning that the Community was not in a position to agree to the clear proposal that the United States had put before the Council. However, if he were wrong, and if the Community indeed wished to agree to that request, he would ask that the Chairman, at the conclusion of the discussion, put the question to the Council and see if there was a consensus.

The representative of Canada said that his Government's strong interest in this matter was well known. Canada's trade in oilseeds, particularly rapeseed and soya meal, had been substantially affected by the Community's oilseed régime. Canada, as others, had taken very seriously the Article XXVIII negotiating process initiated by the Community. It was concerned that the Community, in effect, had frustrated this process by blocking the United States' proposals for binding arbitration on key elements, and had offered no viable alternative. This called into question its willingness to ensure the effectiveness of the GATT dispute settlement mechanism. Canada's preferred option was still for the Community to comply with the recommendation of the two Panel reports on this matter, and to bring its régime into conformity therewith.

Another option, although distinctly second-best from Canada's point of view, was for the Community to provide compensation. Canada urged the Community to make a further effort to reach a solution under Article XXVIII as quickly as possible. It had a great deal of sympathy for the United States' frustration with the Community's delaying tactics, and supported the former's request for authorization to withdraw concessions under Article XXIII. Canada noted with satisfaction that the United States intended to pursue this issue within GATT rules, and believed that its proposed action was consistent with its GATT rights and obligations. Canada considered that the United States' retaliation under Article XXIII could co-exist with continued negotiations under Article XXVIII, and hoped that the Community would make serious efforts to complete the Article XXVIII process in order to arrive at an acceptable solution. Granting authorization to the United States for withdrawal of concessions should not prejudice the continued work under Article XXVIII. Canada rejected the Community's argument that it was inappropriate for the United States to seek recourse under Article XXIII in this case because the

Article XXVIII process was underway. The Article XXVIII process had stopped as a result of the Community's position. Had the latter been willing to agree to binding arbitration, recourse to Article XXIII could have been avoided. Canada, therefore, urged the Community to agree to the US request for authorization to withdraw concessions under Article XXIII.

The representative of Argentina said that the GATT established rights and obligations for all contracting parties. One of the constant tasks of its bodies was to ensure that there was a balance between the enjoyment of rights and the fulfilment of obligations. In the case at hand, the Community, through its permanent subsidy programme, had in fact impaired rights that had been agreed and negotiated during the Dillon Round in 1962. Members of the Panel on this matter had twice recognized the situation for what it was and had recommended that the Community eliminate this impairment by either modifying its régime or renegotiating the concessions. In June, the Council had authorized the renegotiation of concessions, and all were aware of what had occurred since then. At the September Council meeting, the Community had submitted a number of technical problems arising from those negotiations to the CONTRACTING PARTIES, requesting them to examine the matter promptly and submit their views to the contracting parties primarily concerned with the aim of achieving a settlement. There was no doubt that the Community had in fact abused its rights in not accepting an objective process of binding arbitration as had been suggested by the United States at that meeting. The Council could not just come up with an answer to a question put to it. This was a process that took time. For that reason, when the question of the amount of compensation in this dispute had been raised at the September Council meeting, Argentina had suggested that arbitration should take place so that a proposal could then be put to the Council following that process, because no agreement existed thereon.

The principle that an adequate balance between rights and obligations under the GATT should be maintained justified the Council to authorize the suspension of concessions requested by the United States under Article XXIII. The latter was still the relevant framework since one was dealing with the implementation of a panel report. It was essential to maintain, now more than ever, a respect for the underlying principles of the General Agreement. It was imperative that the present situation not be allowed to continue, because it would hamper the operation of the multilateral trading system as a whole. The parties concerned in this dispute should be aware that all were searching for solutions. It was only just that a contracting party that considered its rights to have been impaired should seek a solution of the kind that was now being proposed by the United States. He noted, in this connection, that the United States had left the door open for solutions to be found before it actually implemented its proposed withdrawal of concessions.

The representative of the Philippines, speaking on behalf of the ASEAN contracting parties, said that this dispute had implications for the credibility of the GATT dispute settlement system and the fate of the Uruguay Round. The ASEAN contracting parties commended the United States for its continued preference for a multilateral solution to this matter, and supported it in its efforts in trying to exhaust bilateral as well as

multilateral avenues in pursuit of a solution. They hoped that the United States would not reach the point at which it would be ready to say that such an approach had been exhausted. The United States had, in certain instances, utilized other means in pursuing its trading interests and might be tempted to do so again on this issue. The ASEAN contracting parties believed that it was in the best interests of the United States and the world-trading community to continue with the bilateral and multilateral approach. This was not only legal, but also prudent and responsible. The Community should therefore be more forthcoming on this issue, because it should not unwittingly give the United States and other contracting parties reason to believe that the bilateral and multilateral processes had indeed been exhausted. The ASEAN contracting parties urged the Community to table an offer as soon as possible that would contribute to a solution to the oilseeds dispute. This was the only viable way to overcome the difficulties that the oilseeds issue had brought on the multilateral trading system and the Uruguay Round.

The representative of Australia said that while his country did not have a direct trade interest in this matter, it had a very strong systemic interest. He drew attention to Australia's record in seeking to uphold and promote the virtues of a strong and effective rules-based framework for the conduct of world trade, and to its condemnation of discriminatory and trade-distorting measures taken outside that system. In the case at hand, the United States had been meticulous in seeking a GATT-based resolution of this long-standing problem. Its actions had been particularly transparent in seeking successive panels and to seek resolution by GATT arbitration processes. Members of the Panel on this matter had twice found the Community to be in breach of its GATT obligations. In adopting the Panel's recommendations on this matter, the CONTRACTING PARTIES had agreed that the value of the binding on oilseeds had been impaired and had also agreed that changes to the Community's oilseeds arrangements had not been effective in eliminating the impairment. Despite long negotiations between the United States and the Community under Article XXVIII on the nature of the compensation to rectify the continuing damage -- negotiations that had been initiated on the recommendation of the CONTRACTING PARTIES -- agreement had not been reached, and the Community had not put in place any interim compensation measures.

Under these circumstances, it could only be inferred by the CONTRACTING PARTIES that the Community's tariff binding on oilseeds had been withdrawn or suspended, because it remained ineffective. A situation had emerged where, in terms of the GATT, the only response available to the United States was the withdrawal or suspension of substantially-equivalent concessions to the Community. In Australia's view, the long period that this issue had been before the Council, and the Council's involvement in the course of the subsequent negotiations, meant that the practical requirements set out in the General Agreement had been complied with. The GATT was based on reciprocal and mutually-advantageous arrangements among contracting parties. It expressly contemplated a suspension of concessions in circumstances where another contracting party unilaterally refused to extend contractual reciprocity. In the present circumstances, in which the CONTRACTING PARTIES had confirmed the United States' and the Community's reciprocal rights and obligations, and where it was clear that the

Community would not conform with those obligations, Australia considered that the United States had the right to suspend reciprocal obligations to the Community. Procedural rules could not override fundamental GATT principles; their purpose had never been to frustrate basic GATT principles or to deny observance of specific GATT obligations. Australia would find it hard to believe that the GATT could give comfort to actions of individual contracting parties which undermined the whole basis of the multilateral trading system.

After the most careful reflection, Australia supported the United States' right, under the basic GATT principle of reciprocity, to suspend obligations to the Community. It noted that the United States had proposed that its suspension of concessions would be delayed for a thirty-day period, and that it held open its offer to seek binding arbitration on the amount of damages. Australia therefore strongly urged the Community and the United States to continue with efforts to find a solution within this thirty-day period which would not only see the Community complying with its GATT obligations and thereby removing the need for the measures that the United States had requested authorization for, but which would also restore much needed confidence in the multilateral trading system and lead all to the conclusion of the Uruguay Round negotiations.

The representative of Chile recalled that at the April and September Council meetings, his delegation had supported the rapid implementation of the reconvened Panel's recommendations on this matter as a means of resolving the dispute. Chile's preference was for the Community to bring its régime into GATT conformity. The Community's argument for not doing so were not convincing. Enough time had gone by since the adoption of the Panel report, and efforts to reach a solution had not given any results. Accordingly, Chile believed that the United States should be authorized to suspend equivalent concessions to the Community. Chile would support such an authorization because it believed the circumstances to be sufficiently serious -- affecting even the progress of the Uruguay Round negotiations -- and because this was within the GATT framework and would thus strengthen the dispute settlement system thereunder.

The representative of Brazil said that this dispute, whose history was well known, had been putting the multilateral trading system under very severe stress and should therefore be resolved as quickly as possible. It should be clear after two panel rulings and many years of patience, that the Community had the responsibility to redress the impairment to other parties' GATT rights. Brazil believed that the Community should have made a serious attempt to offer compensation in the Article XXVIII:4 negotiations. The early suspension of that process had frustrated the expectations of all the parties affected by the Community's oilseeds policy. Brazil therefore supported the United States' request. This was a step that the multilateral trading system unfortunately had to take if it wished to assure its credibility, if its rules were to be obeyed and its dispute settlement procedures respected. The recommendations of the reconvened Panel members could be deemed unfulfilled, since it was clear that the Community had not acted expeditiously to resolve the problem. Nonetheless, this retaliation under Article XXIII should be seen as a

temporary solution until the Panel's recommendations had been implemented and the impairment redressed. Meanwhile, the Article XXVIII:4 negotiations should continue with the aim of reaching a definitive solution.

Brazil had hoped that the Community and the United States would have used the time available since the September Council meeting to try once more, with renewed flexibility and less suspicion, to find a formula to address the problem multilaterally and achieve a rapid solution. However, since this was not the case, Brazil believed that the United States was right in requesting authorization to suspend the application to the Community of equivalent concessions, and that the Council should grant that request. Brazil would find it difficult to support any action taken outside the GATT, and therefore encouraged the United States not to resort to any unilateral action.

The representative of Uruguay said that the present situation was a direct consequence of the lack of success thus far in the agricultural negotiations in the Uruguay Round. While a large majority of the contracting parties could accept the Round's Draft Final Act (MTN.TNC/W/FA), some that defended agricultural policies which ran counter to the commitments made in Punta del Este and in the Mid-Term Review, had forced all to face the present situation. Uruguay believed that the United States' position was justified if one took into account the developments in this dispute, which had gone on much longer than necessary and had become a barrier to a successful conclusion of the Uruguay Round negotiations. The United States' request was clearly based on the decisions made by the Panel on this matter, and on a decision by the CONTRACTING PARTIES at the June Council meeting authorizing negotiations pursuant to Article XXVIII:4. At its September meeting, the Council had had a long discussion on this issue without reaching any agreement. After repeated efforts to resolve this dispute, there now appeared to be a legal basis for authorizing the United States to suspend application of concessions. Uruguay believed it was inappropriate for any contracting party to continue to block the dispute settlement procedure. In this particular case, this procedure had reached its logical conclusion.

While Uruguay shared the United States' position, it would urge the parties concerned to make every possible effort to achieve a negotiated result. This would avoid a trade conflict, which would be of prejudice to all, particularly developing countries, and which, furthermore, could have unpredictable and unforeseen consequences. That being said, it appeared that virtually all available procedures had been exhausted and that this impasse had to be resolved somehow. Clearly, the credibility of the system would suffer a severe blow if the existing legal mechanisms were not applied.

The representative of Norway, speaking on behalf of the Nordic countries, said that they had been disappointed to learn that the Community and the United States had not reached an agreement. They believed that the negotiations should be brought to a conclusion, and urged all parties concerned to refrain from actions that would risk a further deterioration of the negotiating climate, which would be a real blow for world trade. The Nordic countries noted that new rules on dispute settlement as

contained in the Uruguay Round Draft Final Act would have provided a vehicle for unblocking a stalemate such as the one that was presently being faced. That was another demonstration of how much one needed a successful conclusion to the Round. In the case at hand, the Nordic countries saw no other option than a continued effort by the parties involved to find a settlement. If this matter remained unresolved, and kept coming before the Council, then the CONTRACTING PARTIES should, at the very least, be provided with a detailed account of how the negotiations had fared until then.

The representative of Egypt expressed concern that the negotiations between the United States and the Community had not resulted in a satisfactory resolution of this dispute, and that they now appeared to be on the brink of a trade war. This prospect should cause everyone great concern. While Egypt would not deny that the United States had a right to resort to retaliation under Article XXIII procedures, it would urge both parties to try to continue their efforts and seek a negotiated solution to this problem. If necessary, a neutral third party, such as the Council Chairman or the Director-General, could be asked to offer his good offices to help resolve this dispute. He reiterated that, without prejudice to the United States' right to withdraw equivalent concessions under Article XXIII, Egypt would prefer some more self-restraint on the latter's part before taking this step.

The representative of Hungary said that because of the magnitude of this dispute and the internal linkages that had been created, not only the credibility of the GATT dispute settlement system, but also the prospect of an early and successful conclusion to the Uruguay Round depended largely on its resolution. He recalled that at the September Council meeting his delegation had urged the parties primarily concerned to make every effort to resolve this dispute. Since then, it appeared that a serious effort had been made in high-level bilateral contacts between the United States and the Community. None of the parties questioned that there had been a real will to strike a deal.

Against this background, one had to note with regret and increasing concern that these efforts had not led to a mutually-acceptable solution. One was now approaching the critical deadline beyond which the high-level political commitments for the conclusion of the Uruguay Round before the end of the year could not be sustained. It was perhaps right to believe that the Round had become a hostage of this unresolved dispute. As to the possibilities of resolving this issue, he noted that the Community was waiting for guidance from the CONTRACTING PARTIES with respect to a number of issues that had arisen in the context of the Article XXVIII negotiations, and that the United States was still prepared to have an arbitration body determine the total value to be ascribed to the impairment caused by the Community's oilseed subsidies. Since Hungary continued to attach particular importance to a resolution of this matter within the existing GATT rules and procedures, it appreciated that even if binding arbitration could not be agreed upon the United States intended to continue to act within the multilateral system by asking for formal authorization to withdraw concessions. While Hungary had no direct answer to the options before the Council, its preferred solution would be to once again urge the

parties primarily involved to make renewed efforts to arrive at a rapid and negotiated solution within the GATT framework. It was his delegation's expectation that such a settlement would take fully into account the concerns of interested third parties, such as Hungary. At the same time, it was convinced that only a negotiated solution could give the necessary impetus to the finalization of a global and balanced package embodying the results of the Uruguay Round.

The present critical situation called for urgent action, requiring political will, courage and flexibility to bridge the still existing and reportedly much-narrowed gap between the United States' and the Community's respective positions. The need to maintain the credibility of the multilateral trading system and to conclude the Round as soon as possible did not permit any further delays.

The representative of Switzerland said that while his country had no direct material interest in this dispute, it was concerned about the functioning of the multilateral trading system. Its interest, above all, was to avoid any escalation of measures which could push parties to take action outside the GATT framework. In spite of the uncommonly-long duration of this dispute, the parties concerned had still managed to keep it within the GATT framework. It would be tragic if, after so many efforts, one failed to keep this conflict under multilateral control. However, Switzerland realized that one was at the end of the road. Virtually all the dispute settlement procedures had been exhausted and, at this stage, Switzerland had no choice other than to make a very strong appeal to both parties to do everything possible to reach an agreement. After all, this conflict had to be put in the broader context of the unfinished Uruguay Round negotiations in which all contracting parties' interests were at stake. Switzerland hoped that these interests would also be taken into consideration in the final efforts to settle this dispute.

The representative of Japan expressed concern at the United States' and the Community's failure to find a mutually-acceptable settlement in the context of the Article XXVIII negotiations. As his delegation had indicated at the September Council meeting, Japan believed it was essential that an amicable solution be found within the GATT, and expeditiously. Japan acknowledged that the United States' request for authorization to withdraw concessions was an effort on its part to operate within the GATT rules rather than to take unilateral action in disregard thereof. In that sense, its approach was a correct one. The question, however, did arise as to the appropriate amount of concessions to be withdrawn. Mention had been made of US$1 billion, but Japan believed that the Council had not had an opportunity to examine the basis for this figure. This question needed to be examined in an appropriate manner so that the Council, pursuant to Article XXIII:2, could determine what suspension of concessions was appropriate in the circumstances. Japan preferred to have the parties directly concerned find an amicable and negotiated settlement, which would be reached without the threat of an imminent withdrawal of concessions. As one approached a critical phase in the Uruguay Round negotiations, all parties should refrain from measures that would have any negative effect thereon. Japan called on the Community to take steps, expeditiously, to

eliminate the impairment accruing to the United States and other oilseed exporters, and also called on the United States to continue its efforts to settle the matter without resorting to the withdrawal of concessions.

The representative of New Zealand said that his country had no direct stake in the oilseeds dispute, although it shared in the general discomfort over the very worrying situation which had now emerged, and which had implications for all who had a stake in the multilateral trading system. New Zealand would note that the United States -- which now had the support of two Panel rulings -- had faithfully followed GATT processes, including negotiations for compensation under Article XXVIII. It was clear that a tariff binding had been impaired by the Community's oilseeds régime, and that compensation was owed to the United States on that account. While no-one could be pleased to be facing the stark truth of trade retaliation, one was forced to appreciate that when all other GATT processes had been exhausted, there was only one avenue which remained GATT consistent. New Zealand strongly believed in the maintenance of dialogue, and urged all parties to this dispute to continue to negotiate. It was reluctant to accept, especially in view of the broader political events, that all opportunities for a solution had passed. It therefore welcomed the United States' assurances that even after its request had been granted, it would be prepared to continue to make efforts to reach a mutually-satisfactory solution, and that its offer to accept binding arbitration on the amount of compensation was still open.

The representative of Korea said that it increasingly appeared that the future of world trade hinged on this dispute, and expressed disappointment that this issue remained unresolved. While Korea had only an indirect interest in this dispute, the resolution of this matter was so closely intertwined with the Uruguay Round negotiations that it had been hopeful that this dispute would be resolved. There was still some promise in the fact that the United States had refrained from instituting unilateral measures, and that the possibility of reaching a negotiated solution had not been precluded by either of the parties. Korea called upon both sides to continue their negotiations for a speedy and amicable solution, and to keep the broader interests of the multilateral trading system in mind as they worked to resolve this matter.

The representative of the European Communities said that he had listened to, and taken careful note of, all the comments made. Generally speaking, the authorization of withdrawal of concessions was a very serious act; this had happened only once in the GATT, when a Working Party in 1952 had found the United States' restrictions on dairy products to be contrary to the GATT[4], and to be sufficiently serious to authorize the Netherlands -- the complainant in that case -- to suspend the application to the United States of appropriate concessions. If one were to draw inspiration

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[4] - Netherlands action under Article XXIII:2 to suspend obligations to the United States (BISD 1S/62).
- Netherlands measures of suspension of obligations to the United States (BISD 1S/32).

for the case at hand, that procedure would be one to follow. That Working Party had been entrusted with the task of examining the appropriateness of the measures proposed to be taken by the Netherlands, having regard to their equivalence to the impairment suffered by the Netherlands as a result of the United States' restrictions. Japan had referred to this aspect and he merely wanted to refresh the Council's collective memory with regard to that single GATT precedent. He cautioned that if the Council authorized the withdrawal of concessions in the case at hand, there would be fatal repercussions for the Uruguay Round negotiations; this should be clearly known and understood. The United States and the Community were close to an agreement therein, even though some differences still had to be alleviated; if, however, a withdrawal of concessions was authorized at this juncture, it would perhaps be tantamount to condemning the future of the Round, which the Community would not wish to see done at the present time.

With regard to the United States' statement, he said that some contracting parties took certain liberties with their rights when it suited them. One had not yet gone beyond the framework of Article XXVIII into that of Article XXIII. The present situation in this dispute stemmed from the report of the reconvened Panel members, which had recommended that the Community act promptly to eliminate the impairment of its tariff concessions by modifying its oilseed subsidy scheme or by renegotiating its concessions under Article XXVIII. The Community had not been requested to combine the two alternatives, but had been allowed to choose between them; it had accordingly chosen the Article XXVIII procedure, with the Council's approval. The Council should therefore be consistent and not tamper with the Community's choice. He recognized that the Panel's recommendation had also stated that in the event that the dispute was not resolved expeditiously in either of these ways, the CONTRACTING PARTIES should, if so requested by the United States, consider further action under Article XXIII:2. He did not challenge the United States' right to seek authorization for the withdrawal of concessions, but he could answer neither positively nor negatively because he would have to refer back to his authorities on this question. That was why he was asking that the decision be deferred, lest that a decision taken too lightly be fateful to this institution and have far-reaching implications.

The representative of the United States said that the Community's answer to his question as to whether it would support a consensus in the Council authorizing a suspension of concessions was clearly that it would not. He noted that many representatives had referred to hopeful signs that had been raised as late as the night before, about an imminent agreement between the United States and the Community on this and on other, more broad, issues. However, those predictions of an imminent breakthrough did not square with what had been happening at the negotiating table, where all proposals being put forward by the United States had been rejected as being unacceptable. One had to conclude, therefore, that the Community was not providing a credible solution to the problem, and that it would do what it had always intended to do anyway.

With regard to the comment by some that the Council had not had an opportunity to examine the question of damages, he recalled that at the September Council meeting his delegation had proposed a binding and

effective arbitration procedure that by this date would have resolved the problem in a way that would have been clear for all. Referring to the precedent cited by the Community, he noted that that was a precedent in which the United States had shown admirable willingness to conform to the multilateral system. He recalled that in that dispute there had been an agreement that both parties thereto would step aside from the development of a consensus as to the appropriate remedy, and that the United States had ultimately agreed to the remedy imposed upon it. He wished that the Community would follow that precedent in the case at hand. But, beyond that, he would point out that the United States had indeed presented to the Council for examination a very clear, concise, and understandable explanation of its estimate of damages. The methodology had been presented in full, and Council members had had an opportunity to examine it. The United States had done everything it possibly could to persuade the Community that the time was ripe for it to respond in a meaningful fashion. The Community was clearly not going to be able to respond positively at the present meeting; the United States doubted it would be able to so respond at any other time that this matter might be brought before the Council in the coming year. Indeed, it was doubtful whether the Community was politically capable of providing a credible remedy. If that were so, the United States would have to admit that it had done all it could to exhaust its rights under the multilateral system, and to express its profound regret at the inability of the other party to this dispute to resolve this matter.

The Chairman said that it did not seem to him that there was a consensus on any of the requests made to the Council under these items. Under item 11, the Community had requested the CONTRACTING PARTIES, pursuant to Article XXVIII:4(d), to submit their views on the matters it had referred to them. The Council did not appear to be in a position to provide the Community with any answer. From the Community's statement, the Chairman assumed that it wished to maintain its request before the Council. That being so, he suggested the Council agree to revert to it at a future meeting. Under item 12, the Council had a specific request from the United States for an authorization to suspend concessions pursuant to Article XXIII:2, and he was unable to pronounce any consensus thereon. He noted that the United States was unable to say at this stage whether it wished to maintain that request on the Council's agenda.

The Council took note of the statements, and agreed to revert to item 11 at a future meeting.

13. Negotiating rights of Argentina in connection with the renegotiation of oilseed concessions by the European Communities
- Recourse to Article XXIII:2 by Argentina (DS34/1)

The Chairman recalled that the Council had considered this matter at its September meeting and had agreed to revert to it at the present meeting.

The representative of Argentina recalled that at the September Council meeting, his delegation had requested the establishment of a panel under

Article XXIII to examine the issue of Argentina's negotiating rights in the context of the Community's withdrawal of oilseed concessions in conformity with the Article XXVIII:4 process authorized by the Council in June. It had also requested that the panel have the terms of reference set out in document DS34/1. Since that time, two meetings had been held with the Community with a view to reaching an amicable resolution of the matter. These had been unsuccessful and there was, therefore, no means left to Argentina other than to pursue its request at the present meeting. He recalled that paragraph F(a) of the April 1989 Decision on improvements to the GATT dispute settlement rules and procedures (BISD 36S/61), provided that the decision to establish a panel "...shall be taken at the latest at the Council meeting following that at which the request first appeared as an item on the Council's regular agenda, unless at that meeting the Council decides otherwise". Since this was the second Council meeting at which the item was on the agenda, Argentina requested that the panel be established at the present meeting. Argentina's request was not a hostile act toward the Community, but rather a recourse to the normal procedures used to resolve disputes with regard to the interpretation of a GATT provision, in this case the practical application of Article XXVIII:1. One characteristic of the GATT was precisely the benefit of having a dispute settlement procedure which subjected contracting parties to the judgement of independent persons to decide whether they were right or not, and to make necessary recommendations, as appropriate, so that they could act accordingly. Argentina would accept the rules of the game and for this reason would like to see a panel establish the relevant findings and make the appropriate recommendations.

The representative of the European Communities said he found it strange that Argentina should maintain its request for a panel in light of the discussion on Agenda items 11 and 12. He was surprised that Argentina had made no reference to the opportunity that the Community had offered it in that discussion. The Community had then sympathised with Argentina's position, and had also indicated what should be the normal use of resorting to dispute settlement procedures. He had also indicated that it was not sufficient for the Community alone to agree but that the CONTRACTING PARTIES also had to be involved in any procedure suggested by Argentina. The Community had said that this was not a dispute between Argentina and the Community since the Community applied the provisions drawn up by the CONTRACTING PARTIES. This was more a dispute between Argentina and the latter. Since Argentina maintained its request in spite of this, he would reiterate what he had said earlier, and even go a little further. The Community recognized that Note 5 to Article XXVIII came into play, and that the Memorandum on Article XXVIII currently under negotiation in the Uruguay Round (MTN.TNC/W/FA, Section W) would also potentially apply in the future. However, in order to resolve the matter, the Community was prepared to recognize Argentina's status as principal supplier with regard to soybeans and soycake if a working group would be established to evaluate what the Community considered would be far-reaching consequences of such recognition by it for the entire system.

The representative of United States said that it was clear under the April 1989 improvements to the dispute settlement rules that any contracting party had the right to establishment of a panel on any matter

unless the Council decided otherwise by consensus; the only prerequisite was that consultations be held first. Argentina had fully satisfied this prerequisite and, accordingly, his delegation supported the latter's request for a panel. He asked the Community to clarify whether it was suggesting that under the present rules Argentina would not automatically be granted a request for a panel, unless, of course, there was a consensus otherwise. If the Community was indeed saying that, then the Council faced a troublesome debate.

The representative of the European Communities recalled that in the debate on Agenda items 11 and 12, his delegation had made it clear that while it was not opposed to Argentina's request for a panel, it was opposed to the misuse of, and inappropriate recourse to, the dispute settlement procedures. It had expressed a willingness to resolve this issue outside those procedures. Since Argentina still maintained its request, the Community wondered what Argentina was really seeking, unless, of course, it sought a panel for the sake of a panel. He had commented earlier that certain liberties were being taken with the right that accrued to contracting parties under the dispute settlement mechanism, and had noted that one got very touchy about these rights when one's own rights were affected in an unsuitable way. It seemed to him that Argentina was looking for an answer and that he had given an answer. This answer could have consequences for all contracting parties unless the latter as a whole were completely inconsistent in not recognizing the precedent value in this. He reiterated his proposal that a working group be established to evaluate what the Community considered would be far-reaching consequences of its recognition of Argentina's principal supplier status, and which would have the value of a precedent for the GATT.

The representative of Argentina said that his Government clearly did not want a panel for the sake of a panel. It simply wished to use this right in order for its principal supplier status to be recognized. The Community had said that it would recognize Argentina's principal supplier right subject to the conclusions of a working group. In this context, he noted that paragraph 4 of the Procedures for Negotiations under Article XXVIII adopted in November 1980 (BISD 27S/26), provided that any contracting party which considered that it had a principal or substantial supplying interest in a concession that was the subject of negotiation and consultation under Article XXVIII should communicate its claim in writing to the contracting party intending to modify or withdraw the concessions concerned. If the latter contracting party -- the Community in the present case -- recognized such a claim, that recognition would constitute a determination by the CONTRACTING PARTIES of an interest in the sense of Article XXVIII:1. If the claim was not recognized, the contracting party having made it could refer the matter to the Council. Argentina had communicated such a claim to the Community in the matter at hand, and the latter had not responded positively. Clearly, if the Community and the Council did not recognize such a claim, the matter would be considered closed. However, for the Community to condition such a recognition on the establishment of a working group which would examine the consequences thereof did not make any sense, and did not square with the 1980 procedures. His delegation therefore would ask the Community to indicate simply whether or not it recognized Argentina's claim. If it did, that

would be sufficient for Argentina, and there would be no need for further consideration of this Agenda item.

The representative of the United States reiterated his Government's position that notwithstanding the objection of one party, Argentina had the right to a panel at the present meeting, unless there was a consensus to the contrary. He hoped that the Chairman would so rule.

The representative of Chile said that his delegation supported Argentina's request, and noted that Argentina's exports of soya beans and soya cake constituted a major part of its total exports and therefore met the condition for the determination of principal supplying interest stipulated in Note 5 to Article XXVIII:1. Argentina's rights as principal supplier should therefore be recognized. However, given the Community's reticence and in order to be consistent with its own oft-stated position, Chile supported Argentina's request for the establishment of a panel with the terms of reference set out in DS34/1.

The representative of Argentina reiterated his delegation's position that if the Community, in accordance with the 1980 Procedures for Negotiations under Article XXVIII, recognized Argentina's negotiating rights in the case at hand, then the matter would be considered closed. If it did not, then Argentina's request for a panel would clearly have to be acted on by the Council.

The representative of Brazil expressed his Government's full support for Argentina's panel request, since it had fulfilled all the legal prerequisites. His delegation was interested, nevertheless, to hear the Community's reaction to Argentina's position.

The representative of Colombia said that from the discussion thus far, there were two options before the Council on this matter: one was for the Community to now recognize Argentina's claim to principal supplier status for soybeans and soya cake, in which case the debate on this item would be closed, so long as such a recognition was made without any reservation and without establishing a working group to examine the consequences thereof; the second was for the Council to decide, in the absence of such a recognition by the Community, whether or not to establish the panel requested by Argentina. In this context, Colombia fully supported Argentina's request for a panel.

The representative of Canada said this was the second Council meeting at which Argentina's panel request had been on the agenda, and Canada supported it. His delegation looked forward to the Community's response.

The representative of Uruguay said that his delegation agreed with all the previous speakers excepting the Community. It fully supported Argentina's arguments as set out in DS34/1, and believed that the question put to the Community -- i.e., whether or not it recognized Argentina's principal supplier rights -- should be answered. If the Community responded positively, the issue would be closed and there would be no need, nor any legal basis, for establishing a working group. If the Community believed that such a recognition could only be made subject to certain

reservations, then the Council had to decide at the present meeting on the establishment of the panel requested by Argentina, in accordance with the procedures set out in the April 1989 Decision. This was the only way in which this dispute could be settled and that was how the Council had to proceed.

The representative of the European Communities said he regretted that this debate was concentrating more on procedures than on substance. As to substance, he had already stated the Community's position clearly in the course of the discussion on Agenda items 11 and 12. He had indicated that the Community stood ready to respond to Argentina as far as the substance of this issue was concerned. Since the present discussion had in fact shifted to procedural issues, he wished to make certain comments for the record. First, he would note that forcing the Community's hand under the cover of procedures was in fact an attempt at replacing the present Article XXVIII negotiating process by a panel process. This was a very sensitive point for the Community, which had always objected to a panel taking a stand on issues under negotiation -- as in the case at hand, which was not even a dispute between Argentina and the Community, but in fact a matter involving a precedent. He detected, therefore, a form of circumventing the issue at hand, and a blind use of the dispute settlement procedures simply to serve the interests of the moment. The Community would be watching out very carefully for this type of use of the dispute settlement procedures in the future, particularly given the negotiating elements that still had to be concluded. Argentina's action was certainly not going to facilitate the conclusion of the Uruguay Round. However, as he had said earlier, the Community was ready to recognize Argentina's claim -- bearing in mind that this might be used as a precedent and that it was imperative that this did not constitute a precedent -- without prejudice to any future decision which might be taken by the CONTRACTING PARTIES with regard to Note 5 to Article XXVIII:1, nor to the future application of the Memorandum relating to Article XXVIII still under negotiation in the Uruguay Round. He recalled that he had proposed that this matter be resolved in an amicable manner between the parties concerned through the establishment of a working group, and that he had been denied this.

The representative of Argentina said he regretted the fact that the Community saw Argentina as trying to force the Community's hand in this process, or as making an artificial use of GATT procedures. This had never been Argentina's intention. The Community was fully aware of Argentina's request, which had been made in writing on 1 July. There had been meetings and discussions on many legal aspects of this whole issue, and there could, therefore, be no surprise involved at the present meeting. Moreover, Argentina had made it clear that since there was a divergence on the interpretation of a GATT provision in the case at hand, an independent opinion should accordingly be sought. It had suggested arbitration and different sorts of solutions, and the Community had made similar suggestions at the present meeting. Argentina had never used the procedures, or at least had not intended to use them -- although it could have been interpreted that way by the Community -- to force the hand of any contracting party. As to the matter at hand, if he had understood correctly, the Community recognized Argentina's negotiating rights for the two products concerned, and accordingly the matter could be considered as closed.

The representative of the European Communities noted that the Community had already acceded to Argentina's request for recognition of its principal supplier status in the products concerned in the course of the debate on Agenda items 11 and 12. He had reiterated that position under the present item in order to make things easier for the record of the meeting.

The Chairman said it was his understanding that the matter referred to the Council had been satisfactorily resolved between the parties concerned, and that the Council should, accordingly, take note of this and of the statements.

The representative of United States said that in his understanding, three options had been raised in the present discussion to resolve the matter: the first was the establishment of a working group, to which the Community had alluded but which did not appear to be satisfactory to Argentina; the second was the establishment of a panel, as requested by Argentina, and which would be an automatic Council decision if Argentina insisted on it; and the third was for some consensus whereby the Council determined that Argentina had principal supplier rights in the products concerned. His delegation was not quite sure whether there would be any objection to the third option on the part of others, or on the part of the Community. Short of that he did not see how it could be said that the matter had been settled.

The representative of the European Communities said he could agree fully with what the United States had said. The conclusion of the present discussion could be that the CONTRACTING PARTIES determined, pursuant to Article XXVIII:1 and in connection with the renegotiation of oilseed concessions by the European Communities, that Argentina has a principal supplying interest in the concessions on soya beans and soya cake. This determination would be without prejudice to any future decision by the CONTRACTING PARTIES with regard to Note 5 to Article XXVIII:1, nor to the future application of the Memorandum relating to Article XXVIII.

The Director-General said that for the sake of having the Council take appropriate action to conclude this item, he would quote paragraph 4 of the 1980 Procedures for Negotiations under Article XXVIII, which read as follows: "If the contracting party referred to in paragraph 1 [which intends to negotiate for the modification or withdrawal of concessions under Article XXVIII:1] recognizes the claim [of principal or substantial supplying interest], the recognition will constitute a determination by the CONTRACTING PARTIES of interest in the sense of Article XXVIII:1". In other words, it was enough for the two parties concerned to have agreed on this matter for it to constitute a "determination by the CONTRACTING PARTIES". Therefore, the Chairman was correct in proposing that the Council should take note that the matter referred to it had been satisfactorily resolved between the two parties, and nothing more.

The Council took note of the statements, and also that the matter referred to it had been satisfactorily resolved between Argentina and the European Community.

14. Status of work in panels and implementation of panel reports - Report by the Director-General (C/182)
and
15. Monitoring of implementation of panel reports under paragraph I.3 of the April 1989 Decision on improvements to the GATT dispute settlement rules and procedures (BISD 36S/61)

The Chairman suggested that the two items be considered together. He recalled that at its meeting in September, the Council had agreed that item 15 would appear on the Agenda in its present form until further informal consultations thereon were concluded. In connection with this item, he drew attention to a recent communication from Canada in DS17/9 which provided information on the status of implementation of the Panel report on the import, distribution and sale of certain alcoholic drinks by Canada's provincial marketing agencies (DS17/R).

The Director-General, introducing his report on the status of work in panels and implementation of panel reports (C/182), said that the report had been presented, for the first time and on a trial basis, in a tabular rather than narrative form. This change was linked to the substantial increase in the number of disputes and to the fact that information was now being provided on consultations and conciliation proceedings as well. Under the 1989 improvements to the GATT dispute settlement rules and procedures (BISD 36S/61), contracting parties were obliged to notify requests for consultations under Articles XXII and XXIII, and it had appeared useful to present the information in these notifications in summary form. A reading of the report showed that the number of newly-established panels had decreased slightly, with eight panels established in the previous twelve months as compared to eleven in the corresponding period in 1991. Adoption had increased, with six reports adopted in the previous twelve months as compared to four in the corresponding period in 1991. Since the entry into force of the improved dispute settlement rules, requests for consultations under Articles XXII and XXIII had been notified in 33 cases. In just over a quarter of those cases, a panel had eventually been established. One might therefore conclude that the consultations stage of a dispute had led in a significant number of cases to the complaining party obtaining satisfaction, or at least not pursuing the matter by requesting the establishment of a panel.

The proportion of disputes brought under the Tokyo Round Agreements continued to be large: in the 1991 and 1992 periods, most of the panels established had been under these Agreements. With regard to disputes in which implementation issues had been raised, their number had not increased. However, the average period of non-implementation had increased dramatically, and had almost doubled from 1990 to 1992. The facts spoke for themselves: the non-implementation of panel reports remained one of the most serious problems in the dispute settlement system.

He added that the Secretariat had now established an automated database on dispute settlement which was capable of producing reports and responses to queries related to past and current dispute settlement proceedings. The database would make it possible to produce, for example, an up-to-date list of all disputes in which a particular contracting party

had been involved, or of all disputes brought under a certain agreement, and of the names of panelists involved in previous disputes. Delegations could resort to the database by contacting the Legal Affairs Division in the Secretariat.

He added that a new edition of the Analytical Index of the General Agreement had been prepared and would be published in early 1993. The existing Analytical Index, which dated from 1985, had been updated and revised to include developments until the fall of 1992. The new edition would be supplemented with an index and other aids to finding information on GATT law. The Legal Affairs Division was prepared to make a draft of the text available to any delegation wishing to examine it and to submit comments thereon.

The representative of Australia welcomed the fact that these items were being considered together because the distinction between them was only one of detail. Contracting parties retained an obligation to inform the Council of outstanding panel reports that pre-dated May 1989 -- the date of entry into force of the improved dispute settlement rules and procedures -- and both the pre-1989 and the post-1989 dispute settlement scene were covered by the items under consideration. Australia believed that the unfinished business in the dispute settlement area needed urgent attention. It was greatly concerned at the rate of progress in the implementation of panel reports, and noted that this issue was placing strains on the credibility of the GATT.

Turning to specific cases in the Director-General's report, Australia continued to believe that there was unfinished business with regard to the Panel reports on US import restrictions on sugar (BISD 36S/331) and on Korea's restrictions on imports of beef (BISD 36S/202, 234 and 268). Regarding the implementation of the Panel report on Japan's restrictions on imports of certain agricultural items (BISD 35S/163), Australia expected Japan to proceed with further liberalization in the dairy and starch sectors as a contribution to rectifying its outstanding GATT obligations vis-à-vis Australia.

Addressing item 14, he said that there was a specific obligation in Paragraph I.3 of the April 1989 Decision for the contracting parties concerned to provide, before each Council meeting, a status report in writing of their progress in implementation of panel recommendations. He thanked Canada for its provision of such a report (DS17/9), and registered Australia's trade interests in the implementation by both Canada and the United States of the Panels regarding their respective measures on alcoholic beverages (DS17/R and DS23/R, respectively). Australia also noted that pursuant to the 1979 Understanding regarding Notification, Consultation, Dispute Settlement and Surveillance, Indonesia and Colombia had recently circulated (L/7099 and L/7093, respectively) details of autonomous liberalization measures taken by their respective Governments. This action underlined the two Governments' commitment to the essential mechanism of transparency and surveillance. Australia urged those contracting parties with action outstanding in respect of dispute settlement to follow this example.

The representative of Tanzania said that developing countries like Tanzania, which were the most disadvantaged and which were trying hard through enormous internal efforts to link themselves through trade to the world economy, could not derive a great deal of inspiration from the rising number of unresolved disputes -- not to mention those which never came up simply because one partner was much too weak in relation to the other. Once the ambitious Uruguay Round negotiations were concluded, more subjects would come under the purview of the rules of the multilateral trading system, which could lead to an increase in the number of unresolved disputes simply because these would be touching on new areas for the first time. The injury from such developments, as was being felt by some contracting parties at the present time, would become much more visible then. Tanzania made this point now rather than later because it believed it would be a good thing if all could be more modest and humble in dealing with developing countries on matters which related to the multilateral trading system.

The representative of Senegal voiced Senegal's concern at the slow pace of implementation of panel reports. This situation put in jeopardy the very credibility of the multilateral trading system in which Senegal had placed great hopes. He reiterated his Government's interest in seeing the rapid implementation by the United States of the recommendations of the Panel on the latter's restrictions on the imports of tuna (DS21/R).

The representative of Sweden said that the new format of the Director-General's report was a welcome improvement. The report revealed far too many cases of panel recommendations that had not been adopted or implemented. This, of course, undermined the credibility of the dispute settlement procedures. He regretted having to draw the Council's attention once again to the Panel report on US anti-dumping duties on stainless seamless pipes and tubes (ADP/47). This Panel had been requested by Sweden under the Anti-Dumping Code[5] in 1988. Its report had been circulated in 1990, and had been before the Committee on Anti-Dumping Practices on seven occasions without being adopted. This raised concerns about the functioning of the dispute settlement system in the anti-dumping field. The United States had argued in this case that the Panel's suggested remedy -- the revocation and reimbursement of the relevant anti-dumping duty -- could not be accepted because of its specific nature. However, an anti-dumping duty was specific by definition and remedies in disputes over anti-dumping measures had therefore also to be specific. Accordingly, a Panel report adopted in 1985[6], which was the only precedent in such a case, had contained the same remedy as in the case at hand. If a panel did not have the authority to recommend revocation of an anti-dumping duty that had been imposed contrary to the provisions of the Code, what would be the purpose of bringing an anti-dumping case to a panel? In view of the increasing number of anti-dumping disputes, one should carefully consider

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[5]Agreement on the Implementation of Article VI (BISD 26S/71).

[6]New Zealand - Imports of electric transformers from Finland (BISD 32S/55).

the implications, which could be far-reaching, of the US position. Sweden urged the United States to consent to adoption of this report at the earliest possible occasion.

The representative of Argentina said that the Director-General's report provided an extremely useful picture of the state of affairs with regard to consultations, establishment of panels, adoption of their reports and the implementation of their recommendations by the parties concerned. Argentina wished to underline that notifications of the status of implementation of panel recommendations in conformity with Paragraph I.3 of the April 1989 Decision should be provided by all the contracting parties concerned, and not just by one as was the case at the present meeting. Argentina was greatly concerned by the whole issue of implementation of panel recommendations. As it had stated on several occasions in the past, the non-implementation of panel recommendations affected the very balance of the rights and obligations of contracting parties stemming from the General Agreement, and undermined the credibility of the multilateral trading system. The contracting parties that had voiced concern under Agenda item 9 at the apparent lack of discipline in applying certain GATT rules -- for example, with regard to waiver requests for the transposition to the Harmonized System -- should adopt the same attitude with regard to the non-implementation of panel reports.

The representative of New Zealand, too, agreed that the issue of non-implementation of panel reports was serious, and should be kept on the Council's agenda. The new format of the Director-General's report was useful and allowed contracting parties to see at a glance the status of actions in the dispute settlement area. With regard to the Panel report on Japan's restrictions on imports of certain agricultural products (BISD 35S/163), New Zealand had held further consultations with Japan to discuss the implementation thereof. The discussions had not caused New Zealand to alter its view that Japan had not fully implemented all the Panel's recommendations. New Zealand continued to hope that full implementation could be negotiated soon. With regard to the Panel report on Korea's restrictions on imports of beef (BISD 36S/234), he recalled that his delegation had informed the Council in July that consultations on the further implementation of the Panel's recommendations after 1992 had been initiated. New Zealand hoped that this process would lead to Korea's eliminating the remaining import restrictions on beef or bringing them into GATT conformity, and looked forward to being able to report a successful conclusion to these consultations.

The Council took note of the statements and of the Director-General's report in C/182.

16. Free-trade agreements between Norway and Estonia, Latvia and Lithuania - Communication from Norway (L/7104 and Add.1)

The representative of Norway recalled that in a communication dated 23 October (L/7104 and Add.1), contracting parties had been notified, with reference to Article XXIV, of Free-Trade Agreements and Agreements on agriculture provisionally being applied between Norway, on the one hand,

and Estonia, Latvia and Lithuania, respectively, on the other. All three Agreements -- which covered trade in industrial, fisheries and agricultural products -- had been signed in June, and would enter into force when the process of ratification had been completed in the respective countries. Their objective was to abolish tariffs and other restrictions on substantially all trade between Norway and the Baltic States. Consideration had been given in this respect to the latter countries' economic and social situation, as well as the need to contribute to their ongoing economic liberalization process aimed at establishing market economies. An important underlying objective had been to contribute to and facilitate the integration of the Baltic States into the European and the world economy. Trade and market access, it had been recognized, were of fundamental importance in achieving these goals. The parties to these Agreements were at the Council's disposal for further information and consultations thereon.

The Chairman proposed that the Council take note of the statement, and agree to establish a working party as follows:

Terms of reference

"To examine, in the light of the relevant provisions of the General Agreement, the Free-Trade Agreements between Norway and Estonia, Norway and Latvia, and Norway and Lithuania, and to report to the Council".

Membership

The Working Party would be open to all contracting parties indicating their wish to serve on it.

With regard to chairmanship, he proposed, following consultations, that this Working Party and that on Sweden's Free-Trade Agreements with Estonia, Latvia and Lithuania be chaired by the same person. If this was agreeable, he proposed that Mr. Seade (Mexico) be designated to chair the two Working Parties.

The Council so agreed.

17. Southern Common Market (MERCOSUR)
- Request by the United States for notification under Article XXIV and for the establishment of a working party (L/7029)

The Chairman recalled that the matter of the Southern Common Market (MERCOSUR) had been discussed at meetings of the Council in February and April 1991, and also at the CONTRACTING PARTIES' Forty-Seventh Session in December 1991, under the heading "Agreements among Argentina, Brazil, Paraguay and Uruguay". The matter had also been raised by the United States at the April, July and September 1992 Council meetings, and was on the Agenda of the present meeting at the request of that delegation.

The representative of the United States recalled that his delegation had raised several times in the Council its request for an Article XXIV

review of the MERCOSUR Agreement. His delegation had listened very carefully to the views expressed by all delegations in previous Council discussions on this matter. The United States continued to believe that the appropriate means of examining this Agreement would be pursuant to Article XXIV. While an agreement on this matter had not yet been reached with the MERCOSUR member countries, his delegation would stress again the importance it attached to an Article XXIV review. More than seventy regional agreements had been reviewed under that Article, and the size and economic situation of the countries involved in such agreements had varied considerably. Now more than ever, the way in which the CONTRACTING PARTIES handled such a situation would have important implications for the effectiveness of the multilateral trading system. It was in this context, and in the spirit of constructive deliberations by the Council, that the United States was willing to seek the good offices of the Council Chairman to find a mutually satisfactory solution to the situation. The United States remained willing to discuss this matter on a bilateral basis with the MERCOSUR countries, and hoped that through the good offices of the Council Chairman and the bilateral discussions a solution would soon be found.

The representative of Brazil, speaking also on behalf of Argentina and Uruguay, said that, as they had previously stated in the Council and in the Committee on Trade and Development (CTD), and as indicated in documents L/7044 and L/7098, the MERCOSUR countries preferred an examination of their Agreement in the CTD under the provisions of the "Enabling Clause"[7]. Their reasons for this view had been explained in detail on several occasions, and full information had been provided on the scope of the Agreement and developments thereunder. In order to reach an understanding in the CTD, the MERCOSUR countries had shown utmost flexibility in responding to the concerns of all trading partners, including the United States. The same flexibility had not, however, been shown by the United States, as was clearly proved by its insistence in bringing the matter before the Council again. The MERCOSUR countries could not agree with the United States' position as stated in document L/7029. As to the latter's suggestion at the present meeting concerning the good offices of the Council Chairman, such a rôle was already being played by the Chairman of the CTD, and his efforts should be allowed to continue.

The representative of Australia said that the MERCOSUR was an important regional trading arrangement, and reiterated his delegation's preference for a rigorous examination thereof against the principles of Article XXIV. Australia's position was motivated not only by the significance of the MERCOSUR Agreement itself, but also by the wider considerations referred to by the United States. Australia supported the US suggestion concerning the good offices of the Council Chairman, and believed it should be possible to arrive at a pragmatic solution that would enable an examination of the MERCOSUR Agreement against Article XXIV principles.

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

The representative of Canada recalled his Government's preference for an Article XXIV examination of the MERCOSUR Agreement. His delegation was disappointed that it had not been possible to resolve the procedural aspects which had prevented a thorough examination of this Agreement under the GATT for many months now. The United States' suggestion to seek the Council Chairman's good offices was a sound option to try to resolve this impasse. His delegation encouraged the MERCOSUR countries to reconsider their initial reaction thereto.

The representative of Switzerland recalled that his delegation had suggested an examination of the MERCOSUR Agreement in the context of Article XXIV. It also supported the United States' proposal at the present meeting. Consultations on the matter had already been conducted by the Chairman of the CTD but had not unfortunately reached a successful conclusion. New efforts should therefore be made to begin an examination of the MERCOSUR in the GATT.

The representative of the European Communities recalled that his delegation had attempted to work with the parties concerned and with the Chairman of the CTD towards a compromise procedure that would enable the examination of this very important Agreement. His delegation continued to attach importance to a GATT examination of the MERCOSUR Agreement. However, it did not wish its compromise solution to be modified or reviewed as time went on. In his delegation's view, the parties involved in the Agreement should have the first choice of the GATT provisions under which an examination should be carried out. This should be without prejudice to other parties' positions as to the need for subsequent examination under other provisions. This aspect would have to be discussed in the review process and the Community reserved its right as to whether the initial examination of the MERCOSUR Agreement would be sufficient or not.

The representative of Finland, speaking on behalf of the Nordic countries, said that, as stated on earlier occasions, they considered that any agreements establishing a customs union or free-trade area, or interim agreements leading thereto, should be examined under Article XXIV, which were the relevant GATT provisions for such cases. The Enabling Clause was intended to cover other types of preferential arrangements of a more limited scope. However, the Nordic countries were flexible as to the forum for conducting a review of the MERCOSUR Agreement, provided that it would be comprehensive and cover all the relevant GATT provisions. The criteria contained in Article XXIV should apply to any arrangement notwithstanding the level of development of the participating countries. The United States' proposal at the present meeting, as well as the compromise put forward by the Community at an earlier stage in the CTD, were both acceptable to the Nordic countries which were interested in starting the examination of the MERCOSUR as soon as possible.

The representative of Senegal said his Government supported the initiatives for regional integration such as MERCOSUR as well as its examination under the Enabling Clause. His Government could also support the compromise put forward by the Community in the CTD, which preserved the interests of all parties.

The representative of Venezuela reiterated his Government's position that the MERCOSUR Agreement should be exmained under the Enabling Clause. An examination under other GATT provisions would be prejudicial to the MERCOSUR countries as well as to other developing countries participating in regional arrangements. The consultations by the Chairman of the CTD were still underway and delegations should await their results. Therefore, he did not support the United States' proposal and considered that this matter should no longer be included on the Council's agenda.

The representative of the Philippines, speaking on behalf of the ASEAN contracting parties, supported Brazil's statement. They believed that there was no scope for an Article XXIV consideration of the MERCOSUR Agreement and that there was no need to duplicate the examination process foreseen in the CTD.

The representative of Colombia shared the view that the Agreement should be examined under the Enabling Clause in a working party to be established by the CTD. While his delegation did not exclude subsequent action in other fora, it felt that the process should first take place in that Committee.

The representative of the United States said that his delegation had shown constructive cooperation in trying to resolve the matter at hand. His Government believed that it would be useful and constructive to have the Council Chairman involved in the process.

The representative of Brazil said that the debate was on the question of competence and on whether the process should continue where it had already started, i.e., in the CTD. His delegation did not question the Council Chairman's ability to handle the matter but believed that the latter should not take up responsibilities of the Chairman of the CTD who had begun consultations on the matter, with the participation of the United States, on the basis of a compromise proposal. This work should be allowed to continue. His delegation was convinced that this item should not be included on the agenda of future Council meetings and hoped that all the means available in the CTD would be utilized to bring the matter to a successful conclusion.

The Chairman noted that a number of delegations believed that the competent body to deal with the matter at hand was the CTD, and that its Chairman had already initiated consultations. Others had expressed the view that the good offices of the Council Chairman should be sought to resolve the matter. Since a consensus had not been reached, he believed he could not offer his good offices at the present time.

The representative of the United States expressed regret that Brazil, among others, had been unwilling to accept the good offices of the Council Chairman to try to address the legitimate concerns for a possible consideration of the MERCOSUR under Article XXIV. He recalled that the United States had not accepted the CTD's competence in this matter but had pressed for an Article XXIV examination. The Council Chairman had full competence to undertake consultations on any matters relating to GATT provisions. The attitude taken by several delegations at the present

meeting on the United States' proposal made less likely an amicable solution in regard to MERCOSUR. His delegation failed to understand why Brazil might be apprehensive of the good offices of the Council Chairman. He would report back to his authorities on the debate at the present meeting, and could not exclude the possibility of his delegation taking a less cooperative attitude in the CTD on this issue. Meanwhile, his delegation would insist that this matter be considered by the CONTRACTING PARTIES at their forthcoming Session, and also be placed on the agenda of the next Council meeting.

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

18. Austria - Mandatory labelling of tropical timber and timber products and creation of a quality mark for timber and timber products from sustainable forest management
- Communication from the ASEAN contracting parties (L/7110)

The representative of the Philippines, speaking on behalf of the ASEAN contracting parties, said that on 26 June, Austria had enacted a Federal Act on the marking of tropical timber and timber products and on the creation of a quality mark for timber and timber products from sustainable forest management. This Act, motivated by environmental concerns, had entered into force on 1 September and the ASEAN contracting parties viewed it with serious concern. It represented a unilateral and discriminatory action which was not the correct prescription to what Austria perceived to be an environmental problem. A well-established and accepted principle in GATT and the United Nations Conference on Environment and Development (UNCED) was that trade policy measures for environmental purposes should not constitute a means of arbitrary or unjustifiable discrimination or a disguised trade restriction. Unilateral actions to deal with environmental challenges outside the jurisdiction of a country should be avoided, and measures to address global environmental problems should be based on international consensus.

While labelling and marking requirements might have legitimate purposes, such as consumer information, they could also have significant trade restrictive effects. This was particularly true when the marking requirement was costly, troublesome and applied in a discriminatory manner. Austria's action was the first instance whereby a central government had subjected imports of tropical timber products into a country to mandatory labelling requirements. Its legislation, however, did not provide for mandatory labelling on other types of wood imported into or produced domestically, which made it discriminatory. Furthermore, with the adverse publicity against the use of tropical timber by environmental lobbies, consumers might construe the existence of such a label differently and be influenced to avoid using tropical timber. A direct effect of this legislation would therefore be a likely switch by consumers to the use of temperate timber. Noting that Austria was an important producer and exporter of temperate timber, the ASEAN contracting parties wondered whether in introducing this legislation Austria had been motivated by an interest in expanding its trade therein.

This unjustifiable and discriminatory legislation put into doubt Austria's conformity with its GATT obligations in respect of the m.f.n. and national treatment provisions. Article I required that rules and formalities relating to importation should be applied unconditionally and without discrimination to "like products" irrespective of the countries from which they originated. Although there was a tariff classification criterion to differentiate tropical timber from other woods, this should not be the sole criterion since the nature of the product, its intended use, commercial value and price and substitutability should also be taken into account. The same argument also applied in respect of Article III.

The ASEAN contracting parties believed that Austria was also not in compliance with the provisions of the Technical Barriers to Trade (TBT) Code[8], which imposed an obligation on signatory countries not to adopt technical regulations in such a way as to cause "obstacles to trade", and to extend m.f.n. and national treatment to "like products" originating in any other country. Austria had also not provided the advance notification required by the Code. Instead, it had notified the Code Committee only after the law had been implemented and had stated that the measure had been intended to address an urgent problem. It had failed, however, to justify the nature of the urgent problem as required by the Code.

With regard to the quality mark requirement, the ASEAN contracting parties believed that this unilateral action would have negative consequences on all the ongoing efforts in the GATT and other multilateral fora to arrive at a multilateral consensus to deal with the issue of trade and environment. Under the law, any importer that wished to use this quality mark had to obtain a licence from the Austrian Government, which would be granted only if the authorities were satisfied that the source of the timber products fit their definition of sustainable or effective exploitation. Although the law stipulated that guidelines elaborated by the International Tropical Timber Organization (ITTO) had to be taken into account, the detailed criteria for determination of sustainable management would be laid down by the Austrian Government. The fact that the ITTO guidelines were to be taken into consideration in evolving the detailed criteria did not reduce the unilateral character of the criteria, especially as the ITTO guidelines had set a time frame for all trade in tropical timber to come from sustainably managed sources by the year 2000. Since Austria was an ITTO member, it should turn to the ITTO if it had any misgivings, rather than act unilaterally. Austria had not acted in good faith by not consulting members of the ITTO which were affected before undertaking its unilateral measure.

A number of further questions arose in relation to the practical implementation of the system. For instance, would the licence to use the mark be valid for tropical wood imported from a particular country or would the regulatory authority specify forest areas in each country which in its view were sustainably managed? What type of information and evidence would a furniture or wooden handicrafts importer have to produce to establish

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[8]Agreement on Technical Barriers to Trade (BISD 26S/8).

that the tropical wood used in its manufacture was obtained from a sustainably managed forest area and thus receive a licence to use the mark? In this situation, a large number of persons importing tropical timber and its products, or producers in Austria using such timber, might not be able to obtain a licence to use the quality mark because of the nature of the criteria adopted or the procedural difficulties which applicants faced in establishing that the forests from which the timber was obtained were sustainably managed. Their inability to obtain such licences to use the mark could only further strengthen the opinion among consumers that almost all tropical forest areas were not sustainably managed, and thus adversely affect further trade in tropical timber.

Austria's legislation on both the labelling requirement and the quality mark would inhibit trade in tropical timber and timber products and be counter-productive to the efforts of tropical timber producers to achieve sustainable forest management. Instead of preserving the forests, it would have the reverse effect. By putting impediments to trade in tropical timber and timber products, this would reduce demand for tropical timber and consequently lower its value. Tropical timber producers would then be forced to clear even larger areas of forest to obtain the same value for their products. With prices not commensurate with the value of their products, producing countries would have no incentives to carry out sustainable forest management measures.

From an economic point of view, trade measures aimed at protecting the environment were far from being an appropriate tool for dealing with such problems because they did not operate directly on the source of the problem. The Secretariat's study on trade and the environment, which had been submitted to the UNCED[9], had noted that one of the most effective ways to arrest deforestation was not by taking trade restrictive measures but by providing better market access for tropical timber products from developing countries. The ASEAN contracting parties did not intend to turn the discussion on this issue into a generic debate on the environment. They were fully engaged in the work of the Group on Environmental Measures and International Trade, as well as in that of other international fora to seek multilaterally agreed solutions to environmental problems. At the same time, they were conscious of ongoing efforts by environmental lobbies in many countries to exert pressure on the governments concerned to institute measures solely on tropical timber and timber products. They feared that Austria's action could only heighten these lobbies' efforts and cause further disruption to trade in tropical timber and timber products. Given this situation, they wondered if the GATT should remain silent. While they had raised this issue at the present meeting, they believed that many other exporting countries would also suffer if unilateral and arbitrary measures were erected to restrict trade in tropical timber and tropical timber products. The ASEAN contracting parties had raised this matter in the hope that Austria would rescind its unilateral and discriminatory measure. If that were not to be done, they would wish, without prejudice to their right to have recourse to the dispute settlement mechanism, that an informal consultation process involving all interested parties be initiated.

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[9] GATT annual report on International Trade 1990-1991, Chapter 3.

The representative of Austria said that his delegation had noted the statement by the Philippines on behalf of the ASEAN contracting parties, and their communication in L/7110, which provided a fair description of the laws and regulations enacted by his country's Parliament. Although Austria differed with the ASEAN contracting parties in the evaluation of the measures, this issue highlighted the necessity to analyze within GATT the new challenges that the multilateral trading system faced as a result of the increasingly intensive interaction between international trade and measures to protect the environment. It was for this reason that Austria also supported the work of the Group on Environmental Measures and International Trade.

It would be clear to all that the Austrian legislation in question was not induced by any economic or protective motivation because there was neither a tropical timber industry to be protected nor any industry producing a substitute product in Austria. With regard to the mandatory labelling requirement, as the ASEAN contracting parties had pointed out correctly in their communication, product labelling per se was not a restriction on trade. The limitation of this requirement to tropical timber, in the legislation in question, reflected a global concern that the destruction of tropical rain forests was one of the main reasons for the "greenhouse" effect. However, Austria recognized that the UNCED Statement of Principles on Forests[10] provided that "all types of forest, both natural and planted, in all geographic regions and climatic zones, including austral, boreal, sub-temperate, temperate, sub-tropical and tropical, should be sustainably managed". The labelling requirement was not, in Austria's view, an obstacle to trade, as the law did not impose any quantitative or qualitative restrictions on imports from any source; and it was non-discriminatory because it applied to all tropical timber or tropical timber products irrespective of the country of export. It would also apply to domestic tropical timber if it existed. Therefore, neither the m.f.n. principle nor the national treatment principle had been violated.

The labelling system had been set up so as to affect trade as little as possible. The label did not need to be used in all steps of the distribution system, but rather only at the last one so as to provide consumers information on the tropical timber offered. In this context, Austria wished to underline that the information on the label was completely neutral; it did not carry any value judgement, nor did it attempt to pursuade the potential buyer not to buy. The label "Made of tropical timber" or "Contains tropical timber" had no negative connotation whatsoever.

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[10] "Non-legally binding authoritative statement of principles for a global consensus on the management, conservation and sustainable development of all types of forests". Principles 13 and 14 thereof are reproduced in the Secretariat's Note on the results of the UNCED (L/6892/Add.3).

With regard to the quality mark, he underlined that this was voluntary and therefore not a requirement. It allowed interested parties to promote the sale of a product by stressing that it was produced from sustainably-managed forests. Austria was aware that tropical timber or products containing tropical timber were an important export item for some developing countries. Many of these had assured the international community that they already practiced the sustainable management, conservation and development of their tropical forests. They would therefore be able to obtain the quality mark and facilitate the sale of their respective products.

With regard to the "need to give consideration to the special conditions and developmental requirements of developing countries as they move toward internationally-agreed environmental objectives" (paragraph 2.22(i) of the UNCED's Agenda 21)[11], his Government had provided AS 200 million, with the possibility of an increase, to promote sustainable forest management in developing countries. Austria had proposed this amount in accordance with paragraph 8(c) of the UNCED's Statement of Principles on Forests, which said that "the implementation of national policies and programmes aimed at forest management, conservation and sustainable development, particularly in developing countries should be supported by international financial and technical co-operation, including the private sector, where appropriate". Contrary to the ASEAN contracting parties' view, Austria saw an international consensus emerging on the criteria of sustainably-managed forests. The criteria used in Austria's legislation closely followed those developed by the ITTO, and those laid down in principles 2(b), 5(a), 6(a), 6(b) and 8(b) of the Statement of Principles on Forests referred to above. In comparison to these principles, the definition used in the Austrian law was far less comprehensive and was therefore in line with the global consensus as expressed at the UNCED. Consequently, Austria was not setting any "dangerous precedent". Furthermore, Austria was not taking any measure to restrict or ban the import of tropical timber or products containing tropical timber, nor was it boycotting any contracting party's products, which would clearly be contrary to the GATT.

Austria could not accept the view that the envisaged measures were unilateral actions to deal with environmental problems outside its jurisdiction. The threat of "global warming" was a problem that concerned almost all countries, including Austria. In this respect, Austria was mindful of Principle 14 of the above-mentioned Statement of Principles on Forests which called for removing or avoiding "unilateral measures incompatible with international obligations or agreements to restrict and/or ban international trade in timber or other forest products, in order to attain long-term sustainable forest management". The measures foreseen by Austria were such as to encourage exporting countries to apply not only a precautionary approach, as suggested in Principle 15 of the Rio Declaration, but also to abide also by their duty under Principle 2 of the same Declaration, namely to ensure that activities within their

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[11] Reproduced in L/6892/Add.3.

jurisdiction or control did not cause damage to the environment of other States or of areas beyond the limits of their national jurisdiction.

Austria was ready to consult with interested contracting parties if further information was required. In this connection, his Government had already decided to send a team of high-level officials to the ASEAN countries to discuss this matter further.

The representative of Canada said that his delegation shared a number of the ASEAN contracting parties' concerns, and hoped Austria would be able to clarify some points. Canada was concerned over Austria's failure to notify its intent sufficiently in advance. More fundamentally, it was concerned at the underlying issue of the basis for, and the potential trade implications of, regulations that conditioned market access on foreign compliance with domestic concepts of environmental standards which might not be accepted by or not be appropriate to circumstances in the exporting country concerned. Austria's action raised a number of questions. First, on what basis could one country dictate what the environmental practices such as forest management should be in other countries? Second, on what basis were judgements made as to the actual practices in the other countries? Third, where would all be if many countries were to adopt such an approach, resulting in numerous unilateral regimes aimed at affecting the differing standards of others?

Canada believed it was important for governments to fulfil the commitments they had collectively made at UNCED to work together to address environment issues, including forest issues. Paragraph 2.22(i) of Chapter 2 of the UNCED's Agenda 21 spoke of avoiding "unilateral actions to deal with environmental challenges outside the jurisdiction of the importing country". Nothing in Austria's statement indicated that this had been taken into account in formulating its legislation. While some of the questions and concerns raised by that legislation fell under the auspices of the Committee on Technical Barriers to Trade, not all could or should be examined therein. Canada was concerned that a dangerous precedent was being set by Austria's action. It hoped that Austria would provide contracting parties with further information, and that there would be an opportunity to examine this as soon as possible. Canada wished to be part of any formal process that might be put in place to resolve this matter.

The representative of Argentina noted from Austria's statement that it intended to send a team of experts to the ASEAN countries to hold consultations and to explain to them the basis for its measures. Given that consideration was being given in the GATT at the present time to work related to trade and the environment, Argentina questioned why governments would wish to adopt unilateral measures, knowing that these would affect other contracting parties. This was a point of particular importance, which Austria should have taken adequately into consideration before modifying its legislation. Clearly, if a country wished to contribute to improving the environment, it could do a lot within its own frontiers without having to adopt unilateral trade measures which affected other contracting parties. Austria's action had been taken without prior consultations, and in spite of the fact that a GATT Group was looking at trade and environment issues.

Argentina fully shared the ASEAN contracting parties' concerns. Austria's requirement for the mandatory labelling of tropical timber was discriminatory, and carried to an excessive degree the requirement of informing consumers. There was no similar obligation in respect of other types of timber, which implied a discrimination against the country or countries from which such timber originated. With regard to the quality mark, Argentina noted that even though this was voluntary, its granting would depend on criteria to be established unilaterally by Austria. Clearly, if a product did not meet Austria's criteria for sustainable silviculture, it would get a negative image in consumers' eyes. This could also, for example, have an effect on Austria's GATT concessions and therefore constitute a disguised trade barrier. As pointed out in a Note by the Secretariat on packaging and labelling requirements (TRE/W/3, page 25), "[e]vidence indicates that, while at present, there is only a little trade in environmentally-labelled goods, potential trade-related problems may arise in the future. Present labelling programmes are, for the most part, voluntary, and affect a small share of goods already on the market.... A labelling programme could in fact create a trade barrier if it involved requirements which are costly or difficult for foreign firms to meet". Although the ecological-labelling issue had been discussed in the Panel report on US restrictions on imports of tuna (DS21/R), this was the first time a discussion thereon had been held in the Council. This issue once again underlined the importance of the work of the Group on Environmental Measures and International Trade, and of the need to reach a multilateral consensus on the treatment and interpretation within GATT of exceptions to be granted for environmental reasons. Argentina reiterated its total objection to the adoption of unilateral measures in this area. It understood that there was a commitment on the part of the contracting parties to work jointly to achieve a multilateral solution.

The representative of Chile said his Government shared the concerns voiced by the ASEAN contracting parties. Chile was also concerned that GATT rules, particularly with regard to notification and prior consultations, were not being followed. Chile was concerned by this precisely because it shared the desire of all for protecting the environment, but would find itself in the position of having to reject any measures aimed at environmental protection if GATT rules were not followed in their implementation. As a result of this, the image the outside world had of GATT as an institution that did not care for the environment would be further enhanced. This would harm international trade as well as all attempts to protect the environment. Chile believed that this was an issue that required a lot more study and discussion. Above all, unilateral action had to be avoided. One had to proceed very cautiously and concentrate on finding multilateral solutions to protect the environment.

The representative of Pakistan said that the ASEAN contracting parties had drawn attention to a problem of topical concern. If not addressed multilaterally, this problem could bring about adverse trade implications for a number of contracting parties in a wide variety of products. The way in which Austria had put into effect its legislation raised a number of issues bearing on the operation of the General Agreement, of a kind which were already being addressed in the Group on Environmental Measures and International Trade. Pakistan would have hoped for Austria's measure to be

in line with the results of the deliberations in that Group, rather than pre-empting them. The international community had only recently had a wide-ranging consideration of environmental problems in a comprehensive manner at the UNCED. Among the agreements reached had been the very basic principles that ought to guide individual governments as well as international actions as regards trade policy measures for environmental purposes, which should not constitute a means of disguised trade restriction. It appeared that Austria's legislation created a protective bias in favour of certain products. The question therefore naturally arose as to whether that measure did not constitute a disguised trade restriction. Apart from being contrary to the UNCED agreement, the Austrian measure also appeared to be in conflict with some basic GATT commitments. The UNCED had seen a clear commitment by the international community to the effect that environmental problems should as far as possible be based on international consensus. However, an international consensus did not exist thus far. Pakistan would therefore have hoped that Austria had pursued its concerns in the context of developing an international consensus before proceeding to adopting a trade measure.

An important principle agreed at the UNCED was that if trade measures should be found necessary for the enforcement of environmental policies, consideration should be given to the special conditions and the development requirements of developing countries. The ASEAN contracting parties had already indicated how the Austrian measure appeared to have ignored this. For these reasons, Pakistan was concerned at this measure, and in particular, in the GATT context, at its apparent conflict with obligations under Articles I, III, IX and XI. The ASEAN communication in L/7110 had indicated that their purpose in raising this matter had been to "express concern over the measure and to allow the Council to seek the views of the GATT contracting parties on how such actions should be dealt with, especially in view of the importance and seriousness of the issue which would have an adverse effect on tropical timber producers, which are mainly developing countries, without prejudice to the rights of contracting parties to the dispute settlement mechanism". Pakistan felt that, given the potential adverse effects of such measures for the trade interests of a number of countries, particularly developing countries, the Council might request its Chairman to hold consultations to see how best to deal with this issue. Another possibility might be to request the Group on Environmental Measures and International Trade to use this measure as an example to deepen the understanding on the issues involved from a GATT perspective, and to see how best to devise ways to make trade and environmental policies mutually supportive.

The representative of Mexico said that his Government attached the utmost importance to environmental protection. Without doubt, the purpose of Austria's measures, and its intention in drawing up and implementing them, was praiseworthy. Mexico firmly believed that unilateral measures, be they for environmental or any other reasons, should not be resorted to. The Group on Environmental Measures and International Trade had made considerable and sound progress. Mexico hoped that this progress would enlighten all on the very complex relationship between trade and the environment, and that this would enable trade flows and sustainable development to be maintained while at the same time action was undertaken that would in fact preserve the environment.

The representative of the European Communities said that there were crucial questions at stake in this issue, and that the Council had a rôle to play in resolving them. However, the Community could not go along with the proliferation of ad hoc groups in this area. The Group on Environmental Measures and International Trade already existed and there were other fora, such as the Committee on Technical Barriers to Trade, which were perfectly suitable for a further study of this particular case. The Community noted that the ASEAN contracting parties were not making an accusation, but were seeking clarification on Austria's measures. The Community believed that was in order, and could go along with it. The responses provided thus far by Austria had not implied that its measures were unilateral. Ecological labelling was increasingly being practised and many would encourage it. The Community was sensitive to any arbitrary or protectionist trade measure taken under the guise of environmental protection and without cover from an international environmental agency. However, it had looked carefully at the Note by the Secretariat on the UNCED results (L/6892/Add.3), and did not see that Austria's measures conflicted with either paragraph 2.22(i) of Agenda 21, or indeed with other parts of that document. It was clear that this issue deserved further consideration by the Group on Environmental Measures and International Trade. At the same time, the Community was also conscious of widespread concerns for sustainable forest management, a respectable and important cause that one could not ignore. In conclusion, the Community thanked the ASEAN contracting parties for raising this important issue in the Council, although it was not persuaded, on the evidence available, that measures taken in the labelling area were contrary to GATT practices or provisions.

The representative of India said that his Government shared many of the concerns expressed not only by the ASEAN contracting parties, but also by several other speakers. During discussions on the inter-relationship between trade and the environment in the Council and elsewhere, his delegation had highlighted the importance India attached to environmental protection. Recalling that the first sentence of paragraph 2.22(i) of Agenda 21 spoke about avoiding unilateral action to deal with environmental challenges outside the jurisdiction of the importing country, he said that Austria's legislation was indeed designed to meet an environmental challenge outside its jurisdiction. The second sentence of that paragraph read: "Environmental measures addressing trans-border or global environmental problems should, as far as possible, be based on an international consensus". As several other speakers had pointed out, such issues as the greenhouse effect and sustainable forest management had not yet gathered an international consensus.

Paragraph 2.22(i) went on to say: "Should trade policy measures be found necessary for the enforcement of environmental policies, certain principles and rules should apply". One of these was the principle of non-discrimination. Previous speakers had indicated why Austria's mandatory labelling requirement was discriminatory. The fact that it did not apply to other types of wood and wood products, either imported into Austria or produced locally, would result in unjustifiable restrictions on trade. A second principle was that the trade measure chosen should be the least trade restrictive. A third principle was the need to ensure transparency in the use of trade measures related to the environment and to

provide adequate notification. As the ASEAN contracting parties had pointed out, Austria had notified its legislation after action had been taken. Paragraph 2.22(i) also spoke of a need to give consideration to the special conditions and developmental requirements of developing countries as they moved towards internationally-agreed environmental objectives. India believed that Austria's action was primarily aimed against developing countries because tropical timber was almost exclusively exported by developing countries.

Having said that, he would note that countries exporting tropical timber did have policies directed toward the sustainable management of their forests. The problem essentially lay in implementation, because of the scarcity of human and financial resources in the developing world. Tropical timber exports did not constitute a significant proportion of the trees felled in developing countries. Rapid deforestation, which was not confined to developing countries, was due mainly to the use of wood as fuel. Trade measures would have very little impact, if at all, on reducing deforestation in developing countries, and India believed, for this reason, that trade measures did not directly operate to address the source of the problem. On the contrary, they added another dimension to the already complex issue. Improvements in market access, including in respect of forest products, through the elimination of tariff escalation would provide better conditions for reducing deforestation in developing countries. While India noted that Austria had set aside AS 200 million for a transfer of resources to developing countries, it believed that Austria's legislation was discriminatory and contrary to the principles embodied in paragraph 2.22(i) of the UNCED's Agenda 21. For these reasons, India strongly urged Austria to withdraw its measures.

The representative of Hong Kong said that while the case at hand did not directly affect Hong Kong, the issues involved were relevant, particularly at a time when the interaction between trade and environmental policies had become a major concern to many trading nations, and especially those with substantial export interests. This case raised the fundamental question of the relationship between a contracting party's environmental initiatives and its GATT obligations, especially when such initiatives might have the side-effect of restricting or distorting trade flows. This question needed to be addressed, and Hong Kong noted that the Group on Environmental Measures and International Trade was indeed looking at this and other matters under its three-point agenda. It would therefore be appropriate to invite the Group to study this matter and offer its views, and not to create any other ad hoc group. Hong Kong believed that Austria's labelling requirement and the quality mark for tropical timber had been introduced for environmental reasons, and that any possible restrictive or discriminatory trade effects were unintended. On this basis, and given that the Group would take some time to complete its work, Hong Kong suggested that in the meantime the two parties concerned -- and any other that had a stake in this issue -- might hold consultations to clarify technical aspects of the measure, to look more closely at the possible adverse trade effects, and to find ways to address any particular problems caused to tropical timber exporters. Hong Kong did not see any reason why the interested parties could not get together in a positive and amicable manner, perhaps making use of the good offices of the Council

Chairman or the Director-General. Given the cooperation of those involved, it believed that a satisfactory solution could be found to address any trade problem which might be identified. Hong Kong also would ask that the Council be kept fully informed of any additional information or clarification provided by Austria, and of the outcome of any informal consultations. He reiterated that the issue at hand was of fundamental importance in the current debate on the relationship between trade and the environment.

The representative of Brazil said that Austria's legislation was a matter of great concern to Brazil too. On the one hand, it demonstrated the importance of the work of the Group on Environmental Measures and International Trade, and on the other hand, its discriminatory, unilateral and extra-territorial character was evidence of the necessity for multilateral action on global issues, especially environmental issues. Brazil agreed with the ASEAN contracting parties that the legislation in question discriminated against tropical wood by not imposing the same burden on "like products", thereby contradicting the basic GATT principles of m.f.n. and national treatment. Marking requirements represented additional costs and, in this case, penalized only exporters of tropical wood products, i.e., mainly developing countries. The introduction of a certification for sustainable forest management implied more costs impinging solely on countries with tropical forests. Furthermore, the certification only on tropical wood products also affected the conditions of competition between tropical and other types of wood by implying that the use of tropical wood was harmful to the environment and had to be controlled, while the same would not be true of other types of wood. This legislation introduced an unnecessary trade barrier in the sense of the TBT Code, since it did not aim at ensuring the quality of its exports, protecting human, animal or plant life or health, protecting its environment, preventing deceptive practices or protecting essential security interests. It constituted a means of arbitrary and unjustifiable discrimination between countries where the same conditions prevailed. It also tried to unilaterally substitute for a multilateral understanding.

However, the fact that this legislation contradicted GATT rules should not give way once more to the interpretation that the GATT was against environmental protection. In fact, one did not face here a fair environmental action that was being questioned unjustifiably, but rather one that ran counter to the commitments agreed to at the UNCED. Of course, this would not easily be understood by the public at large and, in this sense, went against GATT's efforts to clarify the relationship between trade and environmental measures, and to ensure that multilateral trade rules and environmental measures were mutually supportive. He noted that paragraph 2.22(c), (d), (f) and (i) of the UNCED's Agenda 21 established that countries should "[i]n those cases when trade measures related to environment are used, ensure transparency and compatability with international obligations.... [d]eal with the root causes of environment and development problems in a manner which avoids the adoption of environmental measures resulting in unjustified restrictions on trade.... [e]nsure that environment-related regulations or standards do not constitute a means of arbitrary or unjustifiable discrimination or a disguised restriction on trade.... [a]void unilateral actions to deal with

environmental challenges outside the jurisdiction of the importing country.... [and] [e]nvironmental measures addressing trans-border or global environmental problems should, as far as possible, be based on an international consensus".

At the same time, Principle 14 of the Statement of Principles on forests established that "[t]rade in forest products should be based on non-discriminatory and multilaterally agreed rules and procedures consistent with international law and practices". It also provided that "[u]nilateral measures, incompatible with international obligations or agreements, to restrict and/or ban international trade in timber or other forest products should be removed or avoided, in order to obtain long-term sustainable forest management". Brazil requested Austria to replace this legislation by a genuine, cooperative effort in favour of sustainable forest management projects, thereby contributing to ensuring that Agenda 21 would have the necessary resources to be implemented or, at the very least, to bring itself into line with its GATT obligations.

The representative of Peru reiterated her Government's position that trade policy measures for purposes of environmental protection should not constitute an arbitrary or unjustifiable barrier to trade. Austria's legislation appeared to be a discriminatory measure adopted unilaterally and without any prior consultation with the parties concerned, who were affected in terms of production and trade. Peru was a small exporter of tropical timber, although it had a great potential in this resource. It was therefore deeply concerned at this measure which was contrary to GATT principles, as well as to those agreed at the UNCED. Her Government's initial assessment was that the mandatory labelling of tropical timber and tropical timber products, and the creation of the quality mark for wood and wood products from sustainable forest management, constituted unjustifiable trade barriers. This was a unilateral and discriminatory measure which seriously affected the interests of several contracting parties. It also set a negative and dangerous precedent, as others had pointed out, and deserved the attention of all. Peru wished to participate in any consultations that might be held on this subject, and was also interested in receiving any information that Austria might provide to the ASEAN contracting parties thereon.

The representative of Colombia said that his Government attached great importance to the preservation of the environment and of a multilateral system of trading rules conducive to sustainable development. The trade implications of the matter at hand and the political relevance of the environment issue merited the Council's attention. The effect of Austria's measure was to place a restriction on the domestic market for some goods that were not produced domestically. This measure affected the competitive position of a product in a manner that was discriminatory when compared to the treatment of "like products". To a certain extent, this was a unilateral measure which affected the natural resources within another country's jurisdiction, and it was up to the Council to determine the GATT compatibility of this action. A genuine concern for the preservation of forest resources should take into account timber production in temperate as well as tropical areas. Otherwise, one would be doing nothing more than promoting an ecological imbalance by means of actions that would

subsequently turn out to be harmful to environmental preservation on a global scale.

It was also difficult to understand the attempt to set a precedent regarding the definition of marketing, which, according to Austria's legislation, covered production, processing, storage, packing, marking, offering for sale, sale, transport, advertising, and the import and export of products. Marking and labelling standards intended for the legitimate purpose of consumer information and the strengthening of the market did have their place in the General Agreement, and were governed by provisions which could be further improved with the satisfactory conclusion of the Uruguay Round negotiations. Governments had agreed, first at UNCTAD VIII and then at the UNCED, that they would co-operate in designing measures aimed at tackling the root of environmental problems by means of a multilateral consensus when matters affecting trade were in question. This principle had not been taken into account by Austria in drawing up the measures under discussion.

Colombia was concerned at the perception of developing countries as those that harmed the environment and of developed countries as those that promoted environmental conservation. In reality, all were trying to preserve the environment and a multilateral trading system that would promote sustainable development. Dividing all into good and bad on this issue would not benefit the system. It was urgent to act in the GATT on the question of the inter-relationship between environmental preservation and multilateral trading rules in order to arrive at a trading system which would promote sustainable development, without prejudice to the interests of the developing world. Colombia was willing to work with others in this area which was so closely related to its own future.

The representative of Finland, speaking on behalf of the Nordic countries, said that they had noted the statements made, and wished to recall that this matter had been raised at the October meeting of the TBT Committee. While the Nordic countries recognized that many aspects of this question were related to environmental concerns in the present GATT, they saw it as coming under the purview of the TBT Committee, and therefore believed that a solution should be sought within that forum.

The representative of New Zealand said that his Government shared the concerns expressed by some at the October meeting of the TBT Committee with regard to the late notification and the lack of consultation with affected parties on an issue that was assuming increasing importance in the trade policy arena. New Zealand supported international efforts for the achievement of the sustainable use of tropical timbers for reasons set out in UNCED documents. Austria's legislation, however, raised a number of technical issues which had yet to be fully considered by the CONTRACTING PARTIES. Some of these related to how, and how far, labelling systems allowed environmental objectives to be furthered in a manner that was less trade-distorting than some alternative policies. As far as pursuing questions related to the specifics of the legislation under discussion, New Zealand agreed with others that this might best be done initially in the TBT Committee. It believed that the Group on Environmental Measures and International Trade might also play a rôle through a discussion of the broader issues under the third item on its agenda.

The representative of the Côte d'Ivoire said that her country was a producer and exporter of tropical timber and timber products. Her delegation had referred Austria's decision to her authorities for their consideration. In the meantime, Côte d'Ivoire supported the ASEAN contracting parties' statement and shared their concerns. Côte d'Ivoire considered Austria's measures to be disguised trade restrictions, which could further hamper trade in tropical timber. They could also be qualified as discriminatory because they only applied to tropical timber products. Austria should have explained its measures to contracting parties before implementing them, which would have avoided the need for a discussion at the present meeting. She underlined that Côte d'Ivoire was very careful in protecting the environment, and that for more than ten years reforestation measures had been in place, as also limits on the destruction of forests, although 80 per cent of Côte d'Ivoire's population derived a living from working in the forest. Measures such as Austria's would discourage Côte d'Ivoire's efforts, which had been pursued in very difficult economic conditions.

The representative of Bolivia said that his delegation shared the ASEAN contracting parties' concerns regarding Austria's measures, which appeared, on an initial reading, to be incompatible with the GATT. The measures would affect trade flows and were linked to the concept of sustainable management, which required close discussion and examination in the GATT. Bolivia requested further information from Austria regarding its legislation. Unilateral measures could, as in the present case, create sensitive situations for countries which depended on foreign trade and on the export of primary commodities. Such measures, instead of bringing about a beneficial result, might be counter-productive, because they might aggravate further the situation in which developing countries already found themselves, and make it impossible for them to export their primary products.

The representative of Korea said that the relationship between trade and the environment always posed difficult questions. While achieving sustainable forest management was important for the environment, the export of tropical timber and timber products was also important for the development of certain exporting countries, especially developing ones. Though Austria's law had a worthy aim, its discriminatory and unilateral nature was of concern. A mandatory labelling requirement that applied only to tropical timber and timber products not only led to their stigmatisation, but also put in doubt Austria's conformity with its GATT obligations, and with its UNCED commitments. As had been pointed out in the GATT Annual Report on International Trade 1990-91, most deforestation was presently occurring because of the demand for fuel and agricultural land, and not because of the demand for tropical timber. Austria's law had provided only a limited and piecemeal approach to a serious problem that required a more global response. Korea supported the idea of informal consultations between the parties concerned, as had been suggested by the ASEAN contracting parties, and hoped that a satisfactory solution could be worked out therein.

The representative of Japan said that his delegation, too, shared the ASEAN contracting parties' concerns, and had noted that Austria was willing

to enter into a dialogue with them. The matter at hand dealt with the increasingly important question of the inter-relationship between trade and the environment. While Japan wished to study further the implications of Austria's measures, it had some preliminary observations thereon. A labelling requirement for environmental protection purposes should be designed and administered in full compliance with GATT rules. In order to ensure the GATT consistency of such measures, the following principles, in particular, needed to be observed: first, the labelling requirement should be transparent, and, in this context, sufficient specific information regarding that requirement should be provided prior to the implementation of such a measure; second, fair and objective implementation was an essential element to protect the trade interests of a foreign partner, and in this context, the labelling requirement should not constitute an arbitrary, unjustifiable or unnecessary obstacle to trade; and third, there should be equal access for all, including foreign producers and traders, to the labelling system. Japan, would further examine Austria's measure, bearing in mind, inter alia, the points just mentioned.

The representative of Tanzania expressed concern that Austria should have enacted this legislation without waiting for an international consensus on the basis of the guidelines given in the UNCED's Agenda 21. Austria's legislation gave rise to issues that were important for all, such as, for example, its definition of tropical timber. Tanzania, for its part, was greatly concerned with environmental conservation, and particularly with the deforestation problem, which it had faced with its own means. However, the problems that all were faced with in this area could not be resolved through unilateral action by one particular country. They would, in fact, have to be dealt with as an international matter and by all. Tanzania did not see any particular value in a restricted exchange on this matter between the ASEAN contracting parties and Austria, because the subject was of broad concern and should be discussed in a wider forum.

The representative of Switzerland said that the ASEAN contracting parties, in raising this matter, had prompted concerns amongst contracting parties which went beyond the actual scope of Austria's measures. This had also led to more general concerns, involving principles, which deserved a more detailed consideration. This issue was particularly complex and Switzerland preferred to study it in greater detail before commenting on it. Switzerland also believed that discussion thereon should continue in a different forum. As previous speakers had indicated, there were different ways in which discussion of this issue could be continued. His delegation believed that the TBT Committee could consider this matter initially and give a technical opinion as to the best way to continue discussion thereon. One could also ask the Group on Environmental Measures and International Trade to consider it and offer an opinion; one could then see under which GATT mechanism consideration of this issue could be continued.

The representative of Uruguay said that although Uruguay was not a tropical timber producer, it could not, as a matter of principle, let the environment be used as a reason for adopting protectionist and discriminatory trade measures. Uruguay supported the statements by previous speakers that had rejected Austria's unilateral measures.

The representative of Costa Rica said that his delegation shared the ASEAN contracting parties' well-founded concerns. Costa Rica attached great importance to environmental protection. However, it believed that the best way to go about this was through international consensus. Unilateral measures such as Austria's constituted a dangerous precedent which should be avoided at all costs. Costa Rica believed that a multilateral examination of this issue should enable such actions to be avoided in the future.

The representative of Australia said that his Government was interested in following the evolution of this issue and any consultation processes that might be established for that purpose. Beyond the specifics of this case, it was important that the Council be further sensitized to the need for the international community to resolve the sometimes competing objectives of free and open multilateral trade, sustainable development and measures to protect the environment. There would undoubtedly be further occurances of this problem, which also called attention to the importance of the work being carried out in the Group on Environmental Measures and International Trade, as well as the need to set in place an effective programme of work in the follow-up to the UNCED in the field of trade.

The representative of Austria said he had been surprised to hear from some representatives that an international consensus on the greenhouse effect and measures to fight it did not exist. He noted in this connection that at least 157 States had signed the Global Climate Change Convention, which indicated that there was a consensus on why and how to fight global climate change. As to unilateral measures against environmental challenges outside a country's jurisdiction, he said that Austria's environment was equally threatened by global warming, to which the destruction of tropical rainforests contributed considerably. In this context, he noted that the Preamble to the TBT Code recognized that "no country should be prevented from taking measures necessary to ensure the protection of the environment". As to the view that Austria had notified its labelling requirement to the TBT Committee only after the legislation had come into effect, he noted that in Article 2:8 of the Code the reason for the interval between the publication of a technical regulation and its entry into force was "to allow time for producers in the exporting country to adapt their products or methods of production to the requirements of the importing country". This certainly did not apply in this instance, because Austria's legislation simply required the attachment of a label on an existing product, and there was no need for the adaptation of that product.

Turning to references that had been made concerning the ITTO, he noted that the producing and consuming countries members thereof had adopted a plan of action which set the year 2000 as the date by which all exports of tropical timber products should come from sustainably managed resources, and pointed out that that was only eight years away. Austria had not anticipated the target of this plan by introducing a voluntary quality mark, but had set a step to make its consumers aware that certain products came from tropical wood and thus to enable them to make a well-informed choice and contribute to the goals of the above-mentioned ITTO guidelines. That organization had undertaken a feasibility study of labelling tropical hardwoods to show that they came from sustainably managed resources.

Austria's provisions concerning labelling had not gone as far as that, and the reference to sustainability thereunder was not a mandatory requirement but a voluntary one.

With regard to the future consideration of this matter, his delegation believed that the generic issues should be dealt with by the Group on Environmental Measures and International Trade. Specific questions relating to Austria's labelling and quality marks would appropriately be considered by the TBT Committee. Finally, he reiterated that Austria was ready to continue a dialogue with the ASEAN contracting parties and that it was despatching a high-level delegation to their countries to further discuss the matter at hand.

The representative of the Philippines, speaking on behalf of the ASEAN contracting parties, said that the debate clearly showed that many contracting parties regarded Austria's measures as arbitrary and discriminatory. This should not, therefore, be left unchallenged, given the ramifications of these measures on exporters of timber and timber products, particularly from developing countries, and a widely shared concern to undertake informal consultations with interested parties in order to examine what action might be taken to deal with the issue. In the light of these consultations, the Council could revert to this issue in the near future. While the ASEAN contracting parties had listened with attention to Austria's statement, they had not heard an answer to the question at the heart of this issue, namely, why it was that tropical timber was being singled out by Austria. Paragraph (e) of the Preamble to the UNCED's Statement of Principles on Forests provided that those principles should be applied to all types of forest. Having said that, one could not doubt Austria's sincere desire to promote sustainable development. While the ASEAN contracting parties shared that concern, sustainable development was not the issue before the Council.

The Chairman said that while several suggestions had been made about how to proceed further on this issue, including that he should undertake informal consultations, there did not appear to be a consensus. He therefore suggested that the Council take note of the statements and agree to revert to this item at a future meeting, and that in the meantime he would informally find out whether something could be done.

The Council so agreed.

19. Trade and environment
- Statement by the Chairman

The Chairman recalled that the matter of the follow-up in GATT to the recommendations of the United Nations Conference on Trade and Environment (UNCED) in the area of trade had been raised by the Director-General at the July Council meeting. He himself had reported to the Council at its September meeting on the progress of his informal consultations on how the GATT might proceed on this matter. Further informal consultations since then had indicated a wide measure of support among contracting parties on most of the elements necessary to ensure an effective follow-up to the

UNCED in GATT. There was support for the GATT playing its full part in ensuring that policies in the fields of trade, the environment and sustainable development were mutually reinforcing, coupled with recognition that GATT's competence was limited to trade policies and those trade-related aspects of environment policies which might result in significant trade effects for contracting parties. There was also recognition that concluding the Uruguay Round successfully was the most important contribution that GATT could make in this area at present. There was support for involving the Group on Environmental Measures and International Trade, the Committee on Trade and Development, and the Working Party on the Export of Domestically Prohibited Goods in the follow-up within their respective fields of competence, and also for holding a Council meeting at a future date to conduct a review of the work that was underway in GATT relating to the UNCED follow-up.

There were still some differences of view, however, on what would be the most effective way of apportioning work among the various GATT bodies and, in particular, on the extent to which the Council would wish to provide guidance to those bodies as they engaged in work related to the UNCED follow-up. It seemed clear that contracting parties wished to find an early and acceptable resolution to the issues that remained outstanding, and consultations would therefore need to be continued.

The representative of Canada expressed disappointment that no clear decision, or at least understanding, had emerged from the Chairman's efforts in his consultations on how the CONTRACTING PARTIES should follow-up on the GATT implications of the UNCED process. He hoped that the Chairman would continue his consultations and that this matter could be resolved by the CONTRACTING PARTIES at their forthcoming Session.

The representative of Colombia said that his delegation, too, was disappointed that after so many months since the UNCED, the GATT had not reached a satisfactory solution to this matter. His delegation recognized the Chairman's efforts and hoped that some agreement could be reached at the forthcoming CONTRACTING PARTIES' Session.

The Chairman noted the suggestions that an attempt should be made to see whether this matter could be resolved by the CONTRACTING PARTIES at their forthcoming Session, and said that he would continue his informal consultations.

The Council took note of the statements.

20. International Trade Centre (UNCTAD/GATT) - Statement by the Chairman

The Chairman recalled that at its meeting in September, the Council had again considered the question of the appointment of a new Executive Director of the International Trade Centre (ITC) and had agreed to revert to this matter at the present meeting following further informal consultations to be held by him.

The issue had been discussed once again during an informal consultation in early October and had also been before the most recent session of the Trade and Development Board of UNCTAD. Delegations had had the opportunity to express their views and to discuss and make proposals for possible future action. He recalled that he had asked delegations to (i) request their governments to reflect on various options, among them the possibility of reversing their earlier decision and accepting to reduce the level of the post of the Executive Director; and (ii) reach agreement on holding a meeting of the Joint Advisory Group (JAG) of the ITC before the end of 1992. On the first issue, subsequent discussions with a number of delegations had not indicated any progress towards an early resolution, the feeling of many of them being that some developments might still be forthcoming at the United Nations in New York. On the second issue, it had been agreed that the JAG would hold a one-day meeting on 26 November to examine the ITC's Annual Report, followed by another short meeting in the afternoon of the next day to adopt it. The corresponding invitations had just been issued by both GATT and UNCTAD. He believed that he had discharged the original mandate given to him. However, the issue would have to be pursued further through consultations, both formal and informal, and contracting parties might wish to decide on how best to go about it. He hoped that with the help and guidance of delegations in Geneva and New York, the issue could be resolved before long.

The representative of Canada said that his delegation had been actively involved in the discussions on this subject. It was not clear as to whether or not there was a legal requirement to hold a meeting of the JAG in November. If there was, then Canada would obviously participate in that meeting. Canada's main concern, however, was that a process should be launched as rapidly as possible to hold an external competition for the post of Executive Director of the ITC. What was required most of all at the present time was someone in the job with the necessary experience who would be given the time to do it properly, i.e., three years. This was more important than the level of the post.

The representative of Sweden expressed full support for Canada's statement, and added that it was crucial that the terms under which the Executive Director would be employed should be clearly specified in time and should not change during the recruitment process.

The Chairman suggested that the Director-General now be requested to hold further consultations on this matter.

The Council took note of the statements and requested the Director-General to hold further consultations on this matter.

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

The Chairman recalled that at the CONTRACTING PARTIES' Forty-Fourth Session in 1988, the Council Chairman had suggested that "in future, at the first Council meeting each year, on the basis of a consensus which would have emerged from consultations, the Council Chairman should propose the

names of the presiding officers of the Committee on Balance-of-Payments Restrictions, the Committee on Budget, Finance and Administration and the Committee on Tariff Concessions for the current year. This would not preclude the re-appointment of an incumbent" (SR.44/2). The proposals would be preceded by consultations, open to all delegations, and conducted so as to ensure transparency of the process. In the light of the foregoing, he announced that such consultations would be carried out in due course by his successor, and asked the Secretariat, in consultation with the next Council Chairman, to make the necessary arrangements and to contact delegations. These consultations would be open to all delegations.

The Council took note of this information.

22. United States - Fee on imports of cotton products

The representative of Pakistan, speaking on behalf of contracting parties members of the International Textiles and Clothing Bureau (ITCB), under "Other Business", said that on 1 July, the United States Department of Agriculture (USDA) had published the final rules and regulations of the Cotton Board to implement a fee on the imports of cotton products. This fee had been subsequently applied as of 31 July. The rules defined cotton products as any product other than an industrial product containing cotton, and the fee was applicable to textiles and clothing products imported under 700 specific tariff lines which could either be 100 per cent cotton or have a cotton content of only 5 per cent. The fee was assessed at a rate of 0.5 per cent of the value of cotton in the imported cotton products plus US$1.00 per "bale equivalent" of cotton in the imported cotton products. The USDA would periodically assign a value on cotton for purposes of assessment and the current value was US$1.384 per kilogramme. The USDA had also calculated the average cotton content of the products under each tariff line. The regulations also provided for reimbursement of the fee paid on products that were produced from US cotton or non-upland cotton. The fee discriminated against cotton products as compared to products made from other textile fibres. The contracting parties members of the ITCB believed that the fee conflicted with some of the United States' basic GATT obligations. The tariff lines covered were bound under the US Schedule of GATT concessions, and, as such, the existing levels could only be increased by additional impositions after following the procedures prescribed in the GATT. The fee adversely affected the interests of these contracting parties because they were all exporters of cotton products as defined in the US rules, and gave rise to serious concern on their part.

The representative of the United States said he had noted Pakistan's comments on behalf of the contracting parties members of the ITCB regarding the assessments on imported cotton textiles under the US Cotton Research Promotion Programme. Those concerns would be promptly forwarded to his authorities for consideration and appropriate response. As a preliminary comment, he pointed out that this Programme -- of which the fee assessment on cotton products was an integral part -- had been in place since 1966. The objective of the research, technical assistance, advertising, and other promotional activities of this programme was to increase consumption of cotton and cotton products in the United States. The fees in question had

been assessed on domestic cotton products since 1966, and their extension to imported cotton products offered absolutely no additional protection or advantage to US cotton textile manufacturers. The fees were assessed in a way which ensured national treatment for imports. However, the United States was interested in ensuring that other governments' concerns on this matter were understood, and would endeavour to provide responses thereto as soon as possible.

The representative of Japan said that his Government wished to analyse the specific features of the Programme, and asked the United States to provide details as necessary. In the meantime, Japan reserved its GATT rights on this matter.

The Council took note of the statements.

23. EEC - Excise duties on certain alcoholic beverages

The representative of Canada, speaking under "Other Business", said that on 19 October, the European Community's finance ministers had approved a "Council Directive on the harmonization of the structures of the excise duties on alcohol and alcoholic beverages" which included an allowance for reduced excise duties on alcoholic beverages produced by small distilleries and breweries in the Community. Reductions in taxes for domestic producers that were not granted to imported products would, in Canada's view, be contrary to the GATT. This had been confirmed by the findings in a Panel report on US measures affecting alcoholic and malt beverages which had been adopted in June (DS23/R). That Panel had made clear that governments could not charge different excise taxes based on volumes of production. Canada was concerned that the application of reduced rates of excise tax to certain alcoholic beverages produced in the Community could discriminate against Canadian exports to the Community. It therefore requested the latter to notify GATT of the Directive, and of any action that might have been taken or was being contemplated pursuant thereto. Canada was concerned that such implementation would be inconsistent with the Community's GATT obligations, and reserved its rights on this matter.

Also on the same date, the Community's finance ministers had approved a "Council Directive on the approximation of the rates of excise duty on alcohol and alcoholic beverages". Canada wished to know whether the reduced rates of excise duty applied to certain regions of the Community's member States as outlined in this Directive applied only to domestic production or to foreign alcoholic beverages as well. Canada requested that the Community also notify this Directive to the GATT, as well as any action that might have been, or would be taken pursuant thereto.

The representative of the European Communities said that Canada's concerns would be transmitted to his authorities for consideration.

The Council took note of the statements.

24. Customs union between the Czech Republic and the Slovak Republic

The representative of the Czech and Slovak Federal Republic, speaking under "Other Business", informed the Council that on 28 October an Agreement had been signed which established a customs union between the Czech and Slovak Republics -- the two new States that would be created after the dissolution of the present Czech and Slovak Federal Republic. The Agreement, expected to enter into force on 1 January 1993, was based on the following key principles: (1) establishment of a single customs territory consisting of the territories of the new independent States; (2) free movement of goods within the customs union ensured by the immediate removal or non-introduction of customs duties and non-tariff measures between the signatories; (3) application of a common customs tariff identical to that which was presently applied by the Czech and Slovak Federal Republic in regard to its foreign trading partners; and (4) introduction of conformed trade and customs policies of the new States towards third countries. Further details concerning both the Agreement on the customs union, and the new legal entities' intention of submitting an application for future membership of the GATT, would be presented to contracting parties in the near future. The Czech and Slovak Federal Republic expected to revert to this issue at the forthcoming Session of the CONTRACTING PARTIES in December.

The Council took note of the statement.

25. Suspension of GATT obligations between Czechoslovakia and the United States

The representative of the Czech and Slovak Federal Republic, speaking under "Other Business", recalled that in their Declaration of 27 September 1951 (BISD, Vol. II, page 36), the CONTRACTING PARTIES had stated that the Governments of Czechoslovakia and the United States were free to suspend, with respect to each other, obligations under the General Agreement. Since the reasons for the suspension of obligations between the two Governments had ceased to exist, his Government believed that the suspension was no longer desirable. The Czech and Slovak Federal Republic would therefore consider GATT obligations between the two Governments as being fully restored from 3 November, which would be confirmed by an exchange of letters between them. He expressed his Government's satisfaction that after more than forty years this abnormal situation had finally been resolved, and that normal trade relations respecting the GATT would be restored between the two countries. He asked the Council to take note that the 1951 Declaration was no longer in effect.

The representative of the United States confirmed that the United States and the Czech and Slovak Federal Republic had agreed to exchange letters stating that they no longer desired to invoke the suspension of GATT obligations in respect of each other. Accordingly, the United States considered that the CONTRACTING PARTIES' Declaration of 27 September 1951 allowing the two Governments to suspend with respect to each other obligations under the General Agreement, was no longer operative. It was unfortunate that circumstances had been such that for more than forty years

it had been necessary to engage in a mutual suspension of GATT obligations. The United States was gratified that it was now in a position to restore GATT relations with the Czech and Slovak Republic, and asked the Council to take note of the end of this suspension of GATT obligations. This action was without prejudice to whether either Government would, in the future, maintain GATT obligations with respect to new states emerging from each other's current territories.

The Council took note of the statements and also that the CONTRACTING PARTIES' 1951 Declaration on the suspension of obligations between the United States and Czechoslovakia (BISD, Vol. II, page 36) was no longer operative.

26. Norway - Subsidy in connection with a tender submitted for a hydro-electric project in Costa Rica

The representative of Argentina, speaking under "Other Business", recalled that at the September Council meeting, his delegation had announced its intention to request Article XXII:1 consultations with Norway over the latter's donation to favour the bid by a Norwegian consortium in a tender for a hydro-electric project in Costa Rica. Argentina had made this request on 2 October, to which Norway had responded positively on 12 October. A first round of consultations had since been held which had not led to a satisfactory solution. Although both parties intended to continue these consultations, Argentina reserved its right to resort to Article XXIII:2 if that should prove necessary. Argentina was anxious that all subsidies or grants linked to projects or sales of goods should be communicated to contracting parties through an appropriate mechanism, so that the contracting parties concerned might have an opportunity to give their views thereon. Such a practice was followed by members of the OECD for example, although GATT contracting parties not members thereof did not obviously benefit from the operation of that mechanism.

The representative of Norway confirmed that Article XXII:1 consultations with Argentina were underway with regard to a mixed-credit financing for a hydro-electric project in Costa Rica, and expressed the hope that this matter would be resolved soon. His delegation noted with interest Argentina's statement regarding the possibility of a notification scheme in GATT similar to that followed in the OECD. In this regard, he would note that Norway had gone through all the same necessary steps as required in the OECD context.

The Council took note of the statements.

27. Free-Trade Agreements between Finland and Estonia, Latvia and Lithuania

The representative of Finland, speaking under "Other Business", referred to his delegation's statement at the February Council meeting concerning the signing of a trade and economic cooperation arrangement with Estonia. He informed the Council that a similar arrangement had been

signed with Lithuania on 5 June, and that another was planned to be signed with Latvia later in the current month. Finland intended to formally notify all these arrangements to contracting parties at the same time, and expected that this would be possible before the forthcoming CONTRACTING PARTIES' Session, so that the appropriate decisions concerning the examination of these agreements could be taken then.

The Council took note of the statement.

28. Venezuela - Embargo on the import of cement from Mexico

The representative of Mexico, speaking under "Other Business", said that on 8 October, a High Court in the State of Carabobo in Venezuela had decreed a freeze on the customs clearance formalities for a shipment of 5,000 tonnes of cement being imported from Mexico, following a request for legal protection by a domestic company that had complained of alleged dumping practices on the part of the Mexican exporters. As a result, the ship carrying the cement to Venezuela had had to return to Mexico without unloading its cargo, thus involving significant economic costs. The High Court had justified its action on the basis of Venezuela's Law on Unfair Practices in International Trade. It had, however, qualified the procedures under that legislation as being brief and summary and, on this basis, had decided to respond to the Venezuelan company's request by imposing the drastic measure referred to earlier, instead of imposing an anti-dumping duty. A request for legal protection in Venezuela was a constitutional procedure designed to protect the fundamental rights of persons against hostile acts of authority. In this case, however, this right had been used as an alternative to applying Venezuela's anti-dumping legislation. Mexico was thus faced with an embargo on its cement exports to Venezuela, which was a prima facie violation of the GATT, in particular Article XIII thereof. Mexico was particularly concerned at the motivation for this measure, which was taken by the High Court as an alternative and expeditious means for tackling the so-called unfair practices on the part of Mexican exporters. Venezuela, like all contracting parties, could only impose anti-dumping duties in such cases, and in doing so, had to comply with the strict terms of Article VI, which had very clearly been violated here. Mexico urged Venezuela to rapidly take the necessary steps to put an end to this serious violation of the GATT, and to lift the embargo immediately.

The representative of Venezuela said his delegation had noted Mexico's complaint which would be transmitted that same day to his authorities for consideration. In this context, he noted that his Government had recently put into effect a law on anti-dumping and subsidies which included certain GATT-consistent mechanisms to deal with unfair trading practices. He expressed his Government's readiness to hold consultations with Mexico to resolve this matter as soon as possible in the spirit of the excellent relations that existed between the two Governments.

The Council took note of the statements.

29. Group on Environmental Measures and International Trade
- Statement by the Group's Chairman

Mr. Ukawa (Japan), Chairman of the Group, speaking under "Other Business", said that the Group had held six meetings since the Council, at its meeting of 8 October 1991, had taken note of its convening. He recalled that at its first meeting, the Group had adopted, for the present, an agenda of three items which had been the subject of in-depth discussion over the past year. These discussions had been assisted by background papers prepared by the Secretariat, and had benefited from a number of submissions by individual delegations. Given that the Group had been in existence for one year, it seemed appropriate to draw the CONTRACTING PARTIES' attention to the considerable ground he believed had been covered, and to the very constructive spirit in which the Group had been able to conduct its deliberations. He would, therefore, submit a progress report to the CONTRACTING PARTIES at their forthcoming Session in December on the Group's activities, including on an additional meeting to be held before then. Since it appeared premature at this stage to draw any substantive conclusions, his report would provide a factual account of the Group's work and would be made on his own responsibility in his capacity as its Chairman.

The representative of Canada expressed satisfaction that a report on the Group's activities would be presented by its Chairman to the CONTRACTING PARTIES at their forthcoming Session, and that one more meeting of the Group would be held before then. The Group's work had been a very educational and useful experience.

The Council took note of the statements.

30. Accession of Honduras
- Working Party Chairmanship

The Chairman, speaking under "Other Business", recalled that at its meeting in October 1990, the Council had designated Mr. Artacho (Spain) to serve as the Chairman of the Working Party on the Accession of Honduras. Since the latter had left Geneva, he proposed, on the basis of informal consultations, that Mr. Lanus (Argentina) be designated Chairman of the Working Party.

The Council so agreed.

31. Accession of Slovenia
- Working Party Chairmanship

The Chairman, speaking under "Other Business", recalled that at the July Council meeting, he had been authorized to designate the Chairman of the Working Party on the Accession of Slovenia in consultation with representatives of contracting parties and with the representative of Slovenia. He informed the Council that, following consultations, it had

been agreed to designate Mr. Lacarte-Muró (Uruguay) as Chairman of the Working Party.

The Council took note of this information.

32. United States and European Economic Community wheat export subsidies

The Chairman, speaking under "Other Business", recalled that at the September Council meeting, Australia had raised the issue of competitive export subsidization of agricultural commodities, particularly of wheat, by the United States and the European Economic Community. The debate on the subject had indicated a desire among contracting parties to engage in informal consultations with a view to addressing the problems arising from such subsidization. He had accepted to conduct these consultations, and had since initiated the process by engaging in a preliminary exchange of views with some of the delegations directly concerned. He proposed to pursue this exchange further, in the course of which other concerned delegations would also be invited to participate.

The Council took note of this information.

33. Observer status
- Council review of the status of observers and of their rights and obligations

The Chairman, speaking under "Other Business", recalled that in May 1990, in connection with the former USSR's request for observer status, the Council had agreed that the whole issue of the status of observers and their rights and obligations should be reviewed at the end of 1992. On the basis of informal consultations he had held, it appeared that more time would be required before this review could be conducted. He therefore proposed that further consultations be conducted early in 1993 so that the matter could be brought to the Council before the Summer of that year. In the meantime, he requested that the Secretariat prepare an informal background paper which would provide a factual summary of the discussions held thus far. In this connection, he drew attention to document C/173 of 15 June 1990, and its supplement, which contained a description of the current procedures regarding observer status as well as of the rights and obligations of observers. This document, together with the informal background paper, would serve as the basis for the informal consultations which would be held early in 1993.

The Council agreed to the Chairman's proposal.

34. Report of the Council (C/W/722)

The Secretariat had distributed in C/W/722 a draft of the Council's report to the CONTRACTING PARTIES on matters considered and action taken by the Council since the Forty-Seventh Session.

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

The Council so agreed.