GENERAL AGREEMENT

ON TARIFFS AND TRADE

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COUNCIL
4 October 1994

MINUTES OF MEETING

Held in the Centre William Rappard
on 4 October 1994

Chairman: Mr. M. Zahran (Egypt)

Subjects discussed: Page

Prior to the adoption of the Agenda, the Chairman invited the Council to respect a minute of silence in remembrance of the tragedy of the ferry "Estonia".

1. European Bank for Reconstruction and Development (EBRD)
— Request for observer status (L/7528)

The Chairman recalled that at the July Council meeting he had informed the Council, under "Other Business", that the European Bank for Reconstruction and Development had recently expressed its interest in becoming observer in the Council (L/7528) and that the matter would be taken up at the present meeting. He proposed that the Council grant the European Bank for Reconstruction and Development observer status.

The Council so agreed.

The representative of Switzerland said that this decision concerned GATT and did not involve the WTO. Switzerland did not wish to challenge, in any way, EBRD's request for observer status in the future WTO, but simply wished to recall that contracting parties were discussing the overall issue of observers in the WTO in the Sub-Committee on Institutional, Procedural and Legal Matters and a systematic discussion should be held in order to ensure consistency in the approach to the question of observership in the WTO.

The Council took note of the statement.

2. European Economic Community

(a) Import régime for bananas
— Panel report (DS38/R)

(b) Member States' import régimes for bananas
— Panel report (DS32/R)

The Chairman recalled that the Council had considered these matters at its meeting in July and had agreed to revert to them at a future meeting. They were on the Agenda of the present meeting at the request of Guatemala. He said that according to his information, the positions of governments concerning this important question remained at the present time unchanged and that it would consequently not be possible for the Council to reach a consensus on this matter at the present meeting. For the sake of preserving the efficacy of Council deliberations, and in line with past Council practices, he proposed that, following Guatemala's statement, the Council take note of that statement and that the positions expressed on this matter by delegations which had spoken at the July Council meeting, as well as by those which had addressed this question in previous Council meetings, remained unchanged. He would offer the floor only to those delegations which might wish to announce a change in their positions as previously recorded, or to those delegations which thus far had not addressed this matter and wished to put their position on record.

The representative of Guatemala, speaking also on behalf of Ecuador, Honduras, Mexico and Panama, which jointly represented a major group of banana suppliers to the member States of the Community, informed the Council that on 22 September 1994 in Machala (Ecuador) the representatives of Costa Rica, Ecuador, Guatemala, Honduras, Nicaragua, Mexico, Panama and Venezuela had met in order to examine problems caused by the Community in relation to bananas. At that meeting the above-mentioned countries had signed a joint statement -- which was made available to the Council members -- that referred specifically to the future outlook for banana activities in Latin America, and called for a constructive and detailed dialogue between all banana-exporting countries of the region and importing countries. This declaration also called for a dialogue with the African, Caribbean and Pacific (ACP) banana-exporting countries with the aim of finding a lasting solution on an equitable basis in the area of trade in bananas. Such a dialogue had already been initiated within the FAO Intergovernmental Group on Bananas in the meeting recently held in Kingston (Jamaica). This clearly showed, once again, that it was not only five countries who wished to embark on a dialogue, without prerequisites, with the Community in order to find a just solution for all banana-exporters since it was quite obvious that the Community's import régime for bananas was not beneficial to either producers from ACP and Latin American countries or to consumers. The Community had recently adopted a special regulation with regard to its import régime for bananas in order to enable it to grant financial assistance to ACP countries to offset the losses which this régime caused.[1] This once again proved that the import régime had adverse effects for all banana-exporters. In the case of Latin American banana-exporting countries, this régime had caused lasting losses including the payment for licenses to the value of more than US$ 200 million, which these countries had had to pay over the past year when the price of bananas had dropped to its lowest level ever. Another recent fact which Guatemala did not wish to develop at the present meeting but wished to reserve its rights to revert to, was that on 16 September the Community had introduced certain quality standards which ironically discriminated against Latin American bananas because they were of the best quality. On 6 October 1994 the European Court of Justice would give its ruling on a complaint submitted by one of the Community's member States against Rule 404 of the Community. In this regard, one must point out that independently of what the ruling of the Court might be, it would be valid for the member States of the Community only, not for contracting parties. Guatemala hoped that the ruling would confirm the inappropriateness of Rule 404 within the legislation of the Community. This would help in finding a solution which would,

[1]See Official Journal of the European Communities No C/206/14

in fact, tackle the very root of the problem. However, if this was not to be the case, this did not mean that such a Rule was consistent with the Community's obligations under the General Agreement as indicated by the two Panels which had examined the matter, or under the WTO. Guatemala urged contracting parties to adopt the recommendations of the two Panels and the Community to meet its obligations as soon as possible. It requested that this item be included in the Agenda of the next Council meeting.

The Council took note of the statements and that the positions of delegations that had expressed their views in previous meetings remained unchanged, and agreed to revert to this matter at its next meeting.

3. United States - Restrictions on imports of tuna
— Panel report (DS29/R)

The Chairman recalled that at its meeting in July 1992, the Council had established a Panel to examine the complaint by the European Community and Netherlands as co-complainants. The Council had considered the Panel report at its meeting in July 1994 and had agreed to revert to it at the present meeting.

The representative of the European Communities said that at the July 1994 Council meeting he had hoped that the conclusions of the report could have been adopted. The United States had not put forward any arguments against the adoption of the report but had only suggested that the Council hold an open meeting with the participation of the environmental organizations. Therefore, the Community urged the United States to accept the adoption of the Panel report at the present meeting and emphasized once again that, in the matter at hand, the Community did not question the validity of the environmental objectives of the United States but the modalities used in the pursuit of these objectives. The Community shared the aims which the United States were pursuing but could not accept the methods used to achieve these aims.

The representative of Canada stressed that the Panel report did not question the merits of environmental protection. Clearly, there was broad international agreement about the importance of taking effective measures to preserve and protect the world's natural resources. The question was how this should be done, especially when the resources were not within any individual country's jurisdiction. Canada believed that the answer lay in international cooperation and multilateral agreement and not in unilateral action as in the case examined by the Panel. For this reason, Canada had strongly supported the findings of the first Panel on the United States' measures (DS21/R), and had been very disappointed that the first Panel report had not been brought forward. Canada therefore now supported the adoption of the second Panel report which, in its view, clearly confirmed the findings of the first Panel. In particular, the second report confirmed that Article XX did not justify the use of import restrictions to extend in an extrajurisdictional manner, with respect to nationals of other contracting parties, the requirements of domestic policies or regulations. The bottom line was exactly where the first and second Panel placed it, i.e. "if Article XX were interpreted to permit contracting parties to take trade measures so as to force other contracting parties to change their policies within their jurisdiction, including their conservation policies, the balance of rights and obligations among contracting parties, in particular the right of access to markets, would be seriously impaired. Under such an interpretation the General Agreement could no longer serve as a multilateral framework for trade among contracting parties." Canada agreed strongly that this was an appropriate, indeed, the only acceptable interpretation of Article XX in this regard and that the Panel report would therefore make an important contribution to the body of decisions of the contracting parties.

The representative of Venezuela said that his government once again urged the contracting parties to adopt the Panel report on the tuna embargo imposed by the United States in the case put forward by the European Communities. For a long time this had generated an unnecessary controversy between the United States and its trading partners, in particular, Venezuela. The continuing reluctance of the United States to solve this dispute through a simple change in their legislation did not, de jure or de facto, have any form of justification. Such a resistance could no longer be tolerated.

The facts contradicted the US arguments that the embargo was necessary in order to protect the dolphin population in the Eastern Tropical Pacific Ocean (ETPO). As Venezuela had pointed out on previous occasions, the protection of dolphins in association with tuna fishing in that area had been carried out in a very strict manner under the provisions of the Multilateral Programme of the Interamerican Tropical Tuna Commission. In conformity with the agreements adopted by that Commission in April and June 1992, all nations at present fishing in that area were prohibited from killing more that a certain number of dolphins per year. The Interamerican Tropical Tuna Commission (IATTC) had established a calendar for the annual reduction of admitted catches in order to reach a dolphin mortality rate which would be close to zero per cent by the end of the decade. The IATTC agreements which had also been accepted by the United States had brought about drastic reductions in the incidental catches of dolphins in the ETPO and since its adoption only two years ago, the figure had been reduced by more that 97 per cent. Last year the incidental catching of dolphins represented less than 0.04 per cent of the total dolphin population in this zone which reached more than 9.5 million. Statistically speaking, this meant that the incidental killing of dolphins had been reduced to almost zero per cent six years before the deadline set by the IATTC in the time table for reduction. Given this achievement, the members of the IATTC had once again brought forward their original time table for reduction and hoped to do so again in the near future.

In the light of the extraordinary success of the IATTC dolphin protection programme, it was obvious that the US embargo did not in fact meet any environmental objective. Furthermore, this embargo had not only given rise to several disputes within GATT, but had been counter-productive in that it had weakened the IATTC dolphin protection programme. The embargo had unnecessarily prolonged the tuna/dolphin dispute and had polarized the broader debate on trade and environment, frustrating any progress in the debates being held in so many fora on international trade and environment. The two Panels which had analyzed the tuna embargo had suggested that a multilateral approach to the protection of dolphins would avoid unnecessary controversy and, at the same time, would serve the objectives of the US Environmental Programme as well as the interests of their trading partners. The second Panel underlined the success of the IATTC dolphin protection programme and its potential for avoiding new disputes on incidental dolphin catches.

Maintaining the embargo imposed on Venezuela was particularly perverse in the light of the example provided by it as a participant in the IATTC dolphin protection programme. The tuna fleet of Venezuela -- the second largest in the Eastern Tropical Pacific Ocean -- had reduced the incidental catching of dolphins to such a degree that the embargo should in fact be lifted. However, under the US Marine Mammal Protection Act, foreign nations could not avoid the embargo only by meeting the level of incidental catches set out by that legislation, but would themselves have to adopt legislation identical to the United States' legislation which was in no way related to dolphin population protection in the ETPO. Since Venezuela did not have identical legislation to that existing in the United States in all the prescribed areas, it was therefore still subject to the tuna embargo despite the fact that the incidental catches of dolphins had been brought down considerably, even lower than the level stipulated by the embargo.

It was obvious that there was no relationship at all between the US tuna embargo and dolphin protection in the ETPO. Nonetheless, despite the very strong support which both Panels had received, having determined that the embargo was in violation of the General Agreement, the United States still

had resisted taking any steps or measures to lift that embargo. Venezuela had advocated that the United States should adjust their Marine Mammal Protection Act to the provisions of dolphin protection which the IATTC had supported. Venezuela's efforts in this regard, through bilateral and multilateral channels, had been in vain. Therefore, Venezuela had no other recourse than to give its support to the 1994 Panel report and urged other contracting parties to do likewise and to adopt the report.

The representative of Mexico recalled that his country had pointed out on previous occasions that the US embargo on tuna was not justifiable either from a commercial or an ecological point of view. In fact the embargo, instead of contributing to environmental protection, prejudiced this objective. Mexico supported the adoption of the second Panel report which confirmed the conclusions of the first Panel. As it had announced at the previous Council meeting, Mexico reserved the right to request the inclusion of the first Panel report (DS21/R) on the Agenda of future Council meetings.

The representative of the Philippines, speaking on behalf of ASEAN countries, reaffirmed their support for adoption of the Panel report in DS29/R which they had expressed at the July Council meeting. The findings of this Panel, once again, confirmed the need to preserve the basic objectives and principles of the General Agreement as well as to ensure the balance of rights and obligations among contracting parties, in particular the right of access to markets. The latter would be seriously impaired if Article XX were to be interpreted so as to permit a contracting party to take trade measures in order to force other contracting parties to change their policies within their own jurisdiction. As rightly observed by the Panel, under such an interpretation, the General Agreement could no longer serve as a multilateral framework for trade among contracting parties. It was important to note that the Panel's findings were in line with the findings of the previous Panel in the dispute between the United States and Mexico which ASEAN countries had also supported. In particular, both Panels had concluded that the imposition of trade embargoes was not in conformity with the provisions of the General Agreement. ASEAN therefore wished to join previous speakers in urging the United States to agree to an early adoption of the Panel report.

The representative of India shared fully the remarks made by Canada with regard to extrajurisdictional trade measures. In addition, India also agreed with the Panel's interpretation of the term "necessary" in Article XX(d). The Panel agreed with the previous Panel on tuna, that a contracting party could not justify a measure inconsistent with another GATT provision as necessary in terms of Article XX if an alternative measure, which it could reasonably be expected to employ and which was not consistent with other GATT provisions, was available to it. By the same token, in cases where a measure inconsistent with other GATT provisions was not reasonably available, a contracting party was bound to use, among the measures reasonably available to it, that which entailed the least degree of inconsistency with other GATT provisions. The Panel had also concluded that measures taken so as to force other countries to change their policies, and that were effective only if such changes occurred, could not be considered "necessary" for the protection of animal life health in the sense of Article XX(b). India believed that the conclusions reached by the Panel had crucial significance for the work under way in the Sub-Committee on Trade and Environment and in the future Committee on Trade and Environment to be set up within the WTO. India therefore urged the Council to adopt this important Panel report.

The representative of Hong Kong said that, like other contracting parties, it considered the conclusions of the second Panel report as confirming the conclusions of the first Panel report. Hong Kong believed that a contracting party which took a trade measure to force other countries to change their policy could trigger a similar measure from the latter. This would be a recipe for chaos. While not questioning the validity of the US environmental objectives, Hong Kong could not accept the method of imposing unilateral actions and strongly supported the adoption of the second Panel report. Its conclusions, together with those of the first Panel report, provided clear and sensible guidance for the future.

The representative of Japan supported the adoption of the Panel report. Extraterritorial application of domestic unilateral measures was an issue of great concern to Japan which concurred with the Panel's findings on this matter. Japan was still on the "intermediary nations" list as its tuna exports to the United States were still prohibited. Japan therefore urged the United States to take the necessary steps to implement the recommendations of the Panel report.

The representative of Australia supported the adoption of the Panel report at the present meeting. As other contracting parties had pointed out, the concern with respect to the matter at hand was not related to the merits of maintaining environmental standards and objectives but with the methods used by the United States. The Panel report confirmed some very important key principles namely with regard to no unilateral action to prohibit imports or to impose extraterritoriality in contravention of Articles XI and XX of the GATT. Australia therefore urged the United States to accept the adoption of the Panel report at the present meeting.

The representative of Korea underlined the importance attached by his country to the protection of the environment and therefore, it did not understand the concerns of the United States in this respect. However, Korea had always believed that there were better ways to address such concerns than the measures taken under the US Marine Mammal Protection Act. Korea believed that trade measures taken for the purpose of environmental protection should be based on either bilateral consent or multilateral consensus. The Panel had rightly concluded that the issue was not the validity of the environmental objectives of the United States, but rather whether or not the policy measures, which intended to force other countries to change their policies, were justified under Article XX. Korea wished to join other contracting parties in expressing support for the adoption of the Panel report.

The representative of New Zealand said that he had expressed his country's views on the matter at hand at the July Council meeting and continued to support the adoption of the Panel report for the reasons set out on that occasion. In this regard, New Zealand shared in particular the views expressed by Canada.

The representative of Costa Rica supported the adoption of the Panel report the conclusions of which were well founded. Costa Rica, which had been affected by the "secondary" embargo had participated in the Panel proceedings as an interested third-party. At that time, as well as on other occasions, Costa Rica had indicated its commitment to environmental protection. At the same time, it had indicated the concern over unilateral approaches to this issue which led to the imposition of national measures on an extraterritorial basis. The Panel report clearly established that the US trade measures and not its environmental objectives were inconsistent with the General Agreement. Costa Rica therefore urged the United States to bring its trade measures into compliance with its GATT obligations.

The representative of Brazil believed that the conclusions of the Panel report were a landmark case. It addressed a major issue i.e. the divide between unilateralism and multilateralism. The second Panel confirmed the conclusions of the first Panel and therefore the Panel report in DS29/R should be adopted and its conclusions should become doctrine in future considerations of such issues.

The representative of Sweden, on behalf of the Nordic countries, said that these countries continued to support the adoption of the Panel report and shared, in particular, the views expressed by the European Communities and Canada.

The representative of Argentina said that his delegation had already expressed its views on, and support for, the Panel report. Together with the first Panel report, the second report indicated the appropriate way of handling environmental issues related to trade. Furthermore, Argentina wished to share the views expressed by Canada regarding the second Panel report.

The representative of the United States noted the sincerity of the comments made by previous speakers and undertook to convey them to his capital. His government was still studying the contents of the Panel report and its implications. Therefore the United States was not in a position to discuss the report's substantive findings at the present time and would request that the matter be reverted to at the next Council meeting.

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

4. United States - Measures affecting the importation, internal sale and use of tobacco
— Panel report (DS44/R)

The Chairman recalled that at their Forty-Ninth Session in January 1994, the CONTRACTING PARTIES had established a Panel pursuant to the complaints of Brazil, Canada, Chile, Colombia, El Salvador, Guatemala, Thailand and Zimbabwe. At its meeting in February 1994, the Council had agreed that the matter referred to the CONTRACTING PARTIES by Argentina in document DS44/8 also be examined by this Panel. The report of the Panel was now before the Council in document DS44/R.

Mr. Lecheheb (Morocco), introducing the report on behalf of the Chairman of the Panel, Mr. Wong, recalled that the CONTRACTING PARTIES had been informed on 28 February 1994 of the composition of the Panel, that was Mr. Wong, Mr. Luotonen and himself. The Panel held two meetings of substantive work -- on 25 and 27 April and on 24 May -- and submitted its report to the parties to the dispute on 15 July. The report had been distributed to contracting parties on 12 August. On the basis of the findings, the Panel had concluded that: (a) the Domestic Marketing Assessment (Section 1106(a) of the 1993 Budget Act) was an internal quantitative regulation inconsistent with Article III:5. In light of this conclusion, the Panel did not consider it necessary to examine the consistency of the Domestic Marketing Assessment with Articles III:2 and III:4; (b) the Budget Deficit Assessment (Section 1106(b)(1) of the 1993 Budget Act) was an internal tax or charge inconsistent with Article III:2; (c) the No Net Cost Assessment (Section 1106(2)(b) of the 1993 Budget Act) was not inconsistent with Article III:2; and (d) the evidence did not demonstrate that Section 1106(c) of the 1993 Budget Act Fees for Inspecting Imported Tobacco, mandated action inconsistent with Article VIII:1(a). The Panel recommended that the CONTRACTING PARTIES request the United States to bring its inconsistent measures into conformity with its obligations under the General Agreement.

The representative of Brazil, speaking also on behalf of Argentina, Chile, Colombia, El Salvador, Guatemala, Thailand and Zimbabwe, said that the Panel report and its conclusions were of great importance to all contracting parties as it clearly restated and dealt with the illegality of quantitative restrictions under Article III:5, leaving no doubt as to its value and observance by all contracting parties of their obligations under the General Agreement. Of no less importance was the conclusion that the Budget Deficit Assessment (BDA) was a discriminatory tax against imports of tobacco, whereby the Panel had once more affirmed the GATT principle of equal treatment with regard to both domestic and imported products. Brazil also noted that the Panel report was of significance to the parties concerned given the commercial relevance of its consequences for a large industry in those countries. It also noted the other conclusions of the Panel and requested that its recommendations be adopted at the present meeting.

The representative of Canada said that his Government was pleased with the Panel's finding that the DMA, which required that US manufacturers use at least 75 per cent of US grown tobacco in the production of cigarettes, violated the United States' obligations under Article III. The Panel had also agreed that the United States' BDA was GATT-inconsistent in that it did not apply equally to domestic and imported tobacco. Canada noted the conclusions of the Panel report that the US law

did not mandate action inconsistent with Article VIII with respect to inspection fees. Canada expected that the US inspection fees would be fully consistent with their obligations under Article VIII. Canada encouraged the Council to adopt the Panel report and urged the United States to implement the Panel's recommendations promptly by removing the GATT-inconsistent measures.

The representative of the Philippines, speaking on behalf of the ASEAN countries, expressed support for the adoption of the Panel report. ASEAN countries were of the opinion that the adoption of this report would be a useful contribution to the future implementation of the strengthened dispute settlement mechanism under the World Trade Organization.

The representative of Honduras said that, as a tobacco-exporting country, Honduras viewed with great concern the discriminatory measures adopted by the US Administration which affected imports, sale and use of these products on the domestic markets of certain contracting parties. Honduras, therefore, supported the adoption of the Panel report and urged the United States to bring its legislation in line with its GATT obligations.

The representative of Sweden, speaking on behalf of the Nordic countries, said that the Nordic countries had not yet had an opportunity to study the Panel report in detail, but in general the Panel seemed to have done a very thorough job. It had correctly concluded that a number of US regulations relating to imports and sale of tobacco violated the national treatment provisions of the General Agreement. The Nordic countries, therefore, wished to join other speakers who requested that the Panel report be adopted at the present meeting.

The representative of India said that his delegation had participated as an interested third-party in this Panel and had a systemic interest in this case. India fully supported Brazil's statement and like others, the adoption of the Panel report.

The representative of the European Communities said that the Community, as a third-party, also supported the adoption of the Panel report.

The representative of Australia said that his delegation wished to join other speakers who had called for the adoption of the Panel report. The national treatment provision was one of the central tenets of the GATT system, but tended also to be one which was very often abused. Australia was, therefore, very pleased to see the Panel report defend so strongly the principles of national treatment and urged the United States to accept the adoption of the Panel report at the present meeting.

The representative of Turkey said that his delegation wished to join other speakers who had expressed their support for the adoption of the Panel report at the present meeting and asked the United States to bring its GATT-inconsistent measures into conformity with its GATT obligations.

The representative of the United States said that the it had already notified its intention under Article XXVIII to modify its concessions on tobacco. As part of the legislation submitted to the US Congress, the President was seeking the authority to remove the DMA and to alter the United States' BDA to conform with the Panel's recommendations. Given the legislative remedy undertaken by the US Administration, there was therefore no need to adopt the Panel report. However, his delegation had no objections to its adoption.

The Council took note of the statements, adopted the Panel report in DS44/R, and agreed that, in accordance with the procedure adopted by the Council in May 1988 (BISD 35S/331), the report be hereby derestricted.

5. Issuance and derestriction of GATT documents
— Proposal by the United States (C/189)

The Chairman recalled that the Council had considered this matter at its meeting in February 1993. Since then, the Chairman of the CONTRACTING PARTIES, Mr. Szepesi (Hungary), had held consultations concerning the derestriction of GATT documents and the proposal made by the United States on this subject. He drew attention to the proposal by the United States (C/189) as well as to a non-paper received from that delegation which were available in the room.

The representative of the United States said that his country had participated in the consultations conducted by the Chairman of the CONTRACTING PARTIES which had led to substantial progress in framing the issues and providing interested delegations the opportunity to understand each other's concerns. Mr. Szepesi had conducted these consultations with his usual blend of diplomatic skill and common sense, and the United States delegation wished to express its gratitude for his continuing efforts in this regard. Unfortunately, like other delegations, the United States' attention had been focused primarily on Uruguay Round-related activities, and it had only recently been able to contribute meaningfully to Mr. Szepesi's discussions by presenting specific proposals for improvements to current GATT procedures. Although it appeared that Mr. Szepesi's consultations had not yet run their course, the United States had asked the Secretariat to circulate a paper describing its proposal (C/189) which might help to ensure that the Council reach a decision on improvements to its procedures before the entry into force of the WTO Agreement. This proposal would expand significantly the number of GATT documents that could be made available without restriction, thereby clearing out the large volume of historical GATT records that were no longer sensitive, and enhancing the credibility of the GATT and the WTO, once these procedures become practices of WTO bodies.

By the same token, revised procedures along the lines suggested by the United States would ensure that: (i) confidential treatment would be extended to documents on the basis of the nature of the information contained therein; (ii) the deliberative process would be protected, both within the Council and the Secretariat, and (iii) the capacity of individual delegations to seek confidential treatment of their own submissions, and to request continued confidential treatment of other restricted documents, would be maintained. To further aid the Council's consideration, the United States had asked that the Secretariat make available in the room a draft Council decision that reflected the proposal described in C/189. There was no substantive difference between the two papers. The United States had simply felt that some delegations might find it easier to assess the merits of its proposal if it was presented in the form in which it would ultimately be implemented. The Council could take action at the present meeting on the draft decision if it so wished. The United States hoped that delegations had had an opportunity to examine document C/189, and that they would consider the draft Council decision closely. The United States delegation would respond to questions from delegations concerning the ideas presented in its proposal either at the present meeting or in the course of further consultations with interested delegations conducted by Mr. Szepesi. In any event, it was essential that contracting parties move quickly to put in place improvements to GATT procedures on the issuance and derestriction of documents, certainly no later than the date of entry into force of the WTO Agreement. In the spirit of its proposal the United States also requested that document C/189 be derestricted at the present meeting.

The representative of the European Communities shared the view that greater transparency of work was needed in future in order to avoid any difficulties that might arise with public opinion and the criticism that international organizations sometimes carry out their work in a non-transparent manner. Improved transparency required better information rather than participation. This could be achieved in various ways. One of them was to make more documents available to the public. The consultations conducted by Mr. Szepesi had led to progress in the right direction but further discussions on the matter were needed in order to identify the documents to be derestricted and how they would

be made available to the public. However, in this context the European Community wished to draw attention to a recent incident when a document which was clearly of a confidential nature had been made available to the public even before it had been sent to capitals. Such incidents were regrettable and could undermine the goodwill of those contracting parties which otherwise would be in favour of a broader dissemination of documents.

The representative of Australia also supported the idea of derestricting certain categories of GATT documents, thus establishing more transparency in the GATT/WTO work. Australia was grateful to the United States for having submitted the proposal in C/189. However, like the European Communities, it felt that this matter deserved further discussion in order to identify more precisely the categories of documents to be derestricted. Moreover, the proposal on derestriction of documents even prior to their consideration by the Council was of particular concern to Australia. An enormous number of past documents deserved careful consideration before deciding on their derestriction. While Australia took note of the point made by the United States, that the question should be resolved before the entry into force of the WTO, it did not believe that this issue could be resolved by the November Council meeting. Australia supported that consultations by Mr. Szepesi on this matter be resumed and move ahead as fast as possible.

The representative of Canada expressed appreciation for the United States' contribution on the issuance and derestriction of documents which was a constructive step in advancing the consideration of this issue. Like the Community, Canada had also had the occasion to complain about the leaking of information contained in restricted documents and therefore supported the views expressed by the former on this matter. Canada also supported the suggestion that Mr. Szepesi resume informal consultations on the issue of derestriction of documents and that the US paper be examined in that context with the view to reaching an agreement on the matter either by the November Council or the CONTRACTING PARTIES Session.

The representative of Japan said that he concurred with the idea contained in the United States paper concerning the need to strike a proper balance between, on the one hand, the need to protect the deliberative process by keeping certain information confidential, and on the other hand, the very real need for public awareness and scrutiny of GATT activities. In searching such a balance the smooth and effective functioning of the GATT as a rule-making, rule-implementing and dispute settlement body should not be compromised. The contracting parties should also bear in mind that there could be no back-tracking on this matter and that it should therefore be approached carefully. The categories of documents that could be derestricted and those that should remain restricted had to be precisely determined in order to avoid surprises. Japan was therefore willing to participate in the discussions on this matter in a constructive manner in order to achieve a balanced solution.

The representative of Switzerland said that like previous speakers and, in particular the spokesman for the European Communities, his country was in favour of increased transparency which was important for GATT's image. Therefore, he was grateful to the United States for its proposal. However, Switzerland wished to examine it more in-depth and resume the consultations that had been conducted by Mr. Szepesi. A number of points had yet to be clarified such as the categories of documents to be derestricted, the date of derestriction and the relationship between these two aspects and the GATT working methods since any substantial modification in the procedures of issuance and derestriction of documents had a bearing on the working methods and might adversely effect the efficacy of the GATT. Switzerland would provide further details on these issues in the framework of the informal consultations to be conducted by Mr. Szepesi.

The representatives of India, Hong Kong, Korea, and the Philippines, on behalf of the ASEAN countries, wished to be placed on record as supporting the remarks made by previous speakers in connection with the proposal by the United States.

The Council took note of the statements and of the proposal by the United States in C/189 and agreed that this proposal be hereby derestricted. The Council also agreed to invite Mr. Szepesi, as Chairman of the CONTRACTING PARTIES, to continue his informal consultations on this matter.

The Chairman thanked Mr. Szepesi for his tireless efforts to reach an agreement on this important question.

6. 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 recalled that this item was on the Agenda pursuant to paragraph I.3 of the April 1989 Decision, and that in the course of informal consultations held in 1992 and in early 1993 it had been understood that it would continue to appear on the Agenda in its present form. In this connection, he drew attention to a recent communication from the United States in document DS23/18 on the status of implementation of the Panel report on its measures affecting alcoholic and malt beverages (DS23/R).

The representative of Canada expressed his delegation's appreciation at the efforts made by the United States to implement the alcoholic and malt beverages Panel report. However, Canada was disappointed that the US legislation implementing the results of the Uruguay Round did not incorporate provisions to implement the Panel's recommendations on the federal tax measures. Canada had hoped that, after more than two years since the adoption of the Panel report, this legislation might have afforded an opportunity to bring at least the federal measures into conformity with the United States' GATT obligations. On the state level, Canada was pleased to learn that Michigan had eliminated the preferential tax treatment for wine produced from local ingredients. However, Canada noted that, along with a tax measure in Mississippi, only two of the sixty-two state and federal measures on wine, beer or cider had been brought into compliance with the Panel report. Canada urged the United States to redouble its efforts to implement the Panel report, and hoped to have reports of more substantial progress at future Council meetings.

The representative of the United States said that his authorities had made, as commented by Canada, and would continue to make, great efforts to try to resolve this issue. The United States would inform the Council of any success in implementing the Panel's recommendations at the federal level. In the meantime, work towards implementing the Panel's recommendations at the state level would continue.

The representative of Australia noted the statement made by the United States on implementation of the Panel report. Australia, which had a direct trade interest in this issue, also wished to express disappointment at the failure of the United States to get recent legislation through Congress that would have implemented the Panel's recommendations.

The representative of Brazil said that, as indicated at previous Council meetings, Brazil expected the United States to be in a position in the near future to implement the conclusions of the Panel report on US denial of m.f.n. treatment to imports of non-rubber footwear from Brazil. Brazil had been following with considerable interest the efforts made by the US Administration to solve this case. However, the final solution depended on approval by Congress. Although there had been delays, Brazil was still confident that the means the executive branch had found to implement the Panel's recommendations would be duly approved by the US Congress.

The Council took note of the statements.

7. The Fourth ACP-EEC Convention of Lomé
— Report of the Working Party (L/7502)

The Chairman recalled that its meeting in March 1993, the Council had established a Working Party to examine the Fourth Lomé Convention. He drew attention to document L/7502 containing the report of the Working Party.

Mr. Harbinson (Hong Kong), introducing the report on behalf of Mr. Wong (Hong Kong), Chairman of the Working Party, recalled that the Council had established the Working Party at its meeting of 12 March 1993, with standard terms of reference which were "to examine in the light of the relevant GATT provisions, the Fourth ACP-EEC Convention signed at Lomé on 15 December 1989, and to report to the Council." The Working Party met three times between October 1993 and July 1994 under the Chairmanship of Mr. Joseph W.P. Wong. It had for its consideration the text of the Convention, questions and comments advanced by contracting parties, as well as answers supplied by the parties to the Convention (L/7296). The Chairman had also conducted a series of informal consultations with members of the Working Party on the contents of the report, in particular the paragraph entitled "Conclusions". There was general recognition in the Working Party that the objective of the Lomé Convention was commendable as it aimed to improve the standard of living and economic development of the African, Caribbean and Pacific (ACP) countries, including the least-developed among them. However, there was a clear divergence of views on whether the Convention was consistent with the relevant GATT provisions. In the view of the parties to the Convention, the trade policy objectives resulting from the Convention were in conformity with the rules and practices of the General Agreement, and were entirely compatible with their obligations under Article XXIV in the light of Part IV. Other members who were not parties to the Convention maintained that the Convention was not in conformity with Article XXIV and Part IV. Although the Working Party had not been able to reach a consensus on the consistency or otherwise of the Lomé Convention with the relevant GATT provisions, it was the Chairman's hope that the views expressed in the Working Party would be considered by interested parties in a positive spirit.

The representative of the European Communities stated that the Community was satisfied with some of the conclusions reached in this report, in particular that "the objective of the Lomé Convention was commendable as it aimed at improving the standard of living and economic development of the ACP countries, including the least-developed among them". At the same time, the Community was disappointed that the Working Party had been unable to agree unanimously on the compatibility of the Convention with the rules and practices of the General Agreement; views appeared to diverge on this issue. These agreements, which had been part of the political and economic scene since the creation of the Community, had economic, trade as well as highly political aspects attached to them. The Community had always considered that it was its duty to assist a number of countries, in particular the least-developed and countries towards which it had a particular responsibility, through the use of particular trade instruments, such as the Lomé Convention, development aid or political dialogue. The different Conventions had, in the Community's view fulfilled this objective. The Community accepted and took note of the report in document L/7502 and, at the same time, welcomed the fact that this report considered the objective of the Convention commendable.

The representative of Canada said that, as indicated in the report's conclusion, Canada believed that the Lomé Convention was aimed at improving standards of living and economic development of ACP countries. However, the issue raised by Canada and pursued in the Working Party related to the conformity of the Convention with Article XXIV. In this regard, Canada urged the Community to seek a waiver which would be one way of bringing this matter to a conclusion.

The representative of the United States supported the adoption of the report. He also believed that it would be appropriate for the Community to request a waiver to cover the Lomé Convention. The United States hoped that the Community would give serious consideration to that approach.

The representative of the African, Caribbean and Pacific countries, speaking as an observer, said that the ACP countries maintained the view that the Fourth Lomé Convention was compatible with the relevant GATT provisions. Nevertheless, due note had been taken of the statements made by previous speakers concerning measures to be taken to make the Convention compatible with GATT provisions.

The Council took note of the statements, and adopted the Working Party's report in L/7502.

8. Customs Union between the Czech Republic and the Slovak Republic
— Report of the Working Party (L/7501)

The Chairman recalled that at its meeting in May 1993, the Council had established a Working Party to examine the Agreement establishing a customs union between the Czech Republic and the Slovak Republic. He drew attention to document L/7501 containing the report of the Working Party.

Mr. Harbinson (Hong Kong), introducing the report on behalf of Mr. Wong (Hong Kong), Chairman of the Working Party recalled that the Council had established the Working Party at its meeting of 12-13 May 1993 with the standard terms of reference which were "to examine in the light of the relevant provisions of the General Agreement, the Agreement establishing a Customs Union between the Czech Republic and the Slovak Republic, and to report to the Council". The Working Party met on June and July 1994, under the Chairmanship of Mr J. Wong. It had before it for consideration: the text of the Agreement (L/7212); the text of the Agreement on Mutual Relations and Principles of Cooperation in Agriculture, Food Processing, Forestry and Water Management (L/7212/Add.1); Questions and replies (L/7415). There was wide support within the Working Party with regard to the rationale for the Agreement. The members recognized the special circumstances which led to the establishment of the Customs Union and regarded the Agreement as an act of political responsibility vis-à-vis the multilateral trading system. The Working Party expressed support for the modalities of the Agreement, and noted that the scope of the Agreement covered all of chapters 1 to 97 of the Harmonized System nomenclature. The Agreement did not contain a transitional period since no tariff or non-tariff barriers had existed within the former Czech and Slovak Federal Republic. In addition, such restrictions could not be introduced in mutual trade in the future, with the exception of some well-defined cases, such as the safeguard of the balance-of-payments. The Working Party noted that the duties and other regulations of commerce in respect of third countries and their scope and effect remained unchanged from those of the former CSFR. Members also noted the full conformity of the commercial and customs policies of both Parties towards third countries, and noted in particular the identical rules of origin applied by the Parties. The Working Party agreed that, based on the documentation provided by the Parties to the Agreement, the Customs Union Agreement between the Czech Republic and the Slovak Republic was consistent with the provisions of Article XXIV of the General Agreement. The Parties to the Agreement were invited to submit bi-annual reports on the operation of the Agreement in accordance with the Decision of the CONTRACTING PARTIES (BISD 18S/38). The first such report was to be submitted in 1996.

The Council took note of the statement and adopted the report in L/7501.

9. United States - Standards for reformulated and conventional gasoline
— Recourse to Article XXIII:2 by Venezuela (DS47/3)

The Chairman recalled that this item had been on the Agenda of the Council meeting in March 1994. At the request of Venezuela it had not been considered by the Council at that meeting since bilateral consultations were under way. However, Venezuela had reserved the right to revert to this matter in future if the bilateral consultations did not lead to satisfactory results. He then drew attention to the communication from Venezuela in document DS47/3.

The representative of Venezuela said that at the Forty-Ninth Session of the CONTRACTING PARTIES in January 1994, Venezuela had informed contracting parties of its objection to the Regulations on Reformulated Gasoline adopted by the United States Environmental Protection Agency (EPA) in December 1993. As Venezuela had explained at the Session, the EPA Gasoline Regulation violated certain GATT articles and nullified and impaired advantages accruing to Venezuela under the General Agreement. The Regulation did so because it treated gasoline produced in the United States and certain imported gasoline in a more favourable manner than gasoline imported from Venezuela. It was inconsistent with the national treatment clause of Article III, as it used a methodology to certify imported gasoline for sale that was less favourable than the methodology used to certify gasoline produced in the United States. The preferential treatment granted to United States gasoline thus provided protection for United States industry at the expense of foreign production. This protection in turn represented a discrimination against an "imported like product" in violation of the national treatment obligation in Article III. The Gasoline Regulation was also inconsistent with the most-favoured-nation obligation laid down in Article I by granting preferential treatment to gasoline imported by one importer, a refiner located outside of the United States, who, in 1990, had imported into the United States no less than 75 per cent of the gasoline produced in his foreign refineries that year. This preferential treatment benefited gasoline from a particular source and was not granted to a like product originating in other contracting parties. The Regulation was also counter to Article XI as it constituted an unlawful de facto restriction on imports from Venezuela operating through the application of "other measures" in the context of this Article. It also violated Article VIII, as it imposed import requirements which, in the context of Article VIII:4, represented indirect protection for United States gasoline.

Besides violating Articles III, I, XI and VIII the Gasoline Regulation nullified and impaired Venezuela's rights under the General Agreement. First, the violation of the above-mentioned Articles constituted a prima facie nullification and impairment. Secondly, the Gasoline Regulation frustrated Venezuela's reasonable expectations of trade with the United States and had caused economic injury to Venezuela. In fact, Venezuela expected that the value of its gasoline exports to the United States, which had totalled US$ 478 million in 1993, would be reduced by no less than US$ 150 million as a result of the Regulation, which would lead to a significant market loss. Furthermore, the Regulation would have an adverse impact on the investment programme of over US$ 1 billion that Venezuela launched in the expectation that its refiners could use the same standards as those applied to the United States refiners under the Regulation in question. Following the Forty-Ninth Session of the CONTRACTING PARTIES, Venezuela had begun consultations with the United States on the Gasoline Regulation and in particular on its GATT-inconsistent aspects. In March, Venezuela had considered that these consultations could lead to a satisfactory amendment of the Regulation. However, now it appeared that a satisfactory amendment had been prevented by the United States Congress which had recently approved legislation whereby the EPA would not be able to sign, promulgate, implement or enforce the changes in the Regulation that would be satisfactory to Venezuela. Consequently, Venezuela was obliged to request that a panel be established to examine the Gasoline Regulation and its inconsistencies with GATT. It should be mentioned that when testifying before the United States Congress in April 1994, EPA representatives had revealed that the Gasoline Regulation was deliberately designed to protect United States refiners. Furthermore, during the recent debates in Congress on the Regulation some of its members had openly recognized that the Regulation violated the General

Agreement. As a member of the House of Representatives stated, implementation of the Gasoline Regulation without amending it would create a non-tariff barrier violating the GATT national treatment clause. Venezuela reiterated that it did not question contracting parties' ability to implement measures to protect the environment. On the contrary, it had accepted the commitment to conserve a healthy environment and was firmly determined to contribute to that goal. Thus, Venezuela had played an active and leading rôle in this area, both at national level and in various international fora, including GATT, and it intended to continue to bring a constructive contribution to the work of the Sub-Committee on Trade and Environment. Nevertheless, Venezuela rejected the unjustified use of environmental concerns as a pretext for disguised trade protection. It therefore urged contracting parties to re-affirm their commitment to the basic principles of the multilateral trading system. In accordance with Article XXIII:2 Venezuela now requested the CONTRACTING PARTIES to establish a panel to examine the Gasoline Regulation.

The representative of Brazil said that at stake in this dispute was one of the pillars of GATT - the national treatment on internal taxation, laid down in Article III. The basic principle of trade relations among over one hundred nations again seemed to be disregarded by one of the major trading partners. This was very unfortunate particularly as one expected the Uruguay Round Agreements to come into force in the foreseeable future. These Agreements, as all contracting parties were aware, provided for complex and intricate rules. If a basic principle like the national treatment, which was quite simple, was disrespected at this stage, what would be the fate of those intricate and complex obligations? As the US Authorities stated, the Gasoline Regulation approved by the EPA in December 1993 in the context of the so-called "Clean Air Act" was aimed at lowering the level of pollution in the atmosphere. Brazil did not question the objectives of such legislation -- the environmental merits of the Gasoline Regulation might be sound and valid -- but the instrument upon which US authorities wished to rely in order to attain those objectives. It was clear that any country could pursue the best ways at hand for environmental protection but in doing so, international obligations had to be respected. In this case, an international obligation agreed almost fifty years ago was being disregarded. His delegation therefore wished to support Venezuela's request for the establishment of a panel.

The representative of Argentina said that his delegation noted the statement made by Venezuela and its efforts to find a solution bilaterally. Venezuela's position, as explained in document DS47/3 and by the statement made at the present meeting, was reasonable . Having noted that Venezuela had exhausted all recourse through consultations under Article XXII, Argentina supported Venezuela's request for the establishment of a panel.

The representative of Peru recalled that under one of the previous items of the Agenda, contracting parties had discussed the need to ensure that national measures to protect the environment were consistent with international obligations. Once again, in this case, in the pursuance of an objective that all contracting parties shared -- protection of environment -- inappropriate methods were being used and through tax discrimination an attempt was being made to prevent imports of gasoline from other contracting parties. Peru believed that cases of this nature might increase in the future and it was therefore essential that action be taken to determine a clear-cut method regarding international obligations. It, therefore, supported Venezuela's request to establish a panel and hoped that this panel would be established rapidly.

The representatives of Chile and Honduras wished to be placed on record as supporting the establishment of a panel.

The representative of the United States said that his delegation had no objection to the establishment of panel.

The representative of the European Community wished to reserve its rights to participate in the panel as an interested third-party.

The representative of Norway said that his authorities were studying details of this case, including the statement made by Venezuela at the present meeting and in particular its environmental aspect. Norway wished to reserve its rights to participate in the panel as an interested third-party.

The representatives of Australia, Canada, and Brazil also wished to reserve their rights to make third-party submissions to the panel.

The Council took note of the statements and agreed to establish a panel with the following standard terms of reference unless, as provided for in the Decision of 12 April 1989 (BISD 36S/61), the parties agree on other terms within the next twenty days:

> "to examine, in the light of the relevant GATT provisions, the matter referred to the CONTRACTING PARTIES by Venezuela in document DS47/3, and to make such findings as will assist the CONTRACTING PARTIES in making the recommendations or in giving the rulings provided for in Article XXIII:2."

The Council authorized its Chairman to designate the Chairman and members of the Panel in consultation with the parties concerned.

10. Committee on Balance-of-Payments Restrictions
   (a) Consultation with the Slovak Republic (BOP/R/218)
   (b) Consultation with Sri Lanka (BOP/R/219)
   (c) Note on the meeting of 27 July (BOP/R/220)

(a) Consultation under Article XII:4(a) with the Slovak Republic (BOP/R/218)

Mr. Witt (Germany), Chairman of the Committee, said that at the consultation with the Slovak Republic on 26 and 27 July, the Committee had commended the Slovak Republic for its economic reform and transition programme. In 1993, Slovakia's economic difficulties had been exacerbated by the dissolution of the former Czech and Slovak Federal Republic. Nevertheless, with prudent monetary policies and progress in structural reform, economic activity had been better than expected. However, with some policy slippage in the period immediately prior to the introduction of the surcharge on 3 March 1994, Slovakia's external accounts had deteriorated and gross reserves of the National Bank had declined to the equivalent of some three weeks of imports. The Committee expressed its understanding for the introduction of the surcharge as a temporary measure to address Slovakia's balance-of-payments difficulties, in keeping with the balance-of-payments provisions of the GATT. The Committee appreciated that the measure was price-based, applied on a non-discriminatory basis and that it had been promptly notified. However, it noted that, although the measure might have a short-term beneficial effect on the balance-of-payments situation, it would, if maintained, soon be detrimental to efficient resource allocation.

The Committee welcomed recent signs of improvement in Slovakia's economic performance. There were indications of a modest economic upturn: inflation had moderated, and gross official reserves had risen to five weeks import coverage. The Slovak authorities expected reserves to increase even further to two months import coverage by the end of the year due to the release of external financial credits and stringent macroeconomic policies. The Committee stressed the importance of fiscal discipline for the longer-term viability of the external current account, which would also be an important factor in expanding exports and attracting foreign direct investment. The Committee commended Slovakia

for its determination to maintain a liberal and open trading system and strongly encouraged Slovakia to adhere to its declared intention to eliminate the surcharge by the end of 1994.

The Council took note the statement and adopted the report in BOP/R/218.

(b) Simplified consultation under Article XVIII:12(b) with Sri Lanka (BOP/R/219)

Mr. Witt (Germany), Chairman of the Committee, said that the Committee unfortunately was not in a position to conclude the simplified consultations with Sri Lanka held on 26 and 27 July due to the absence of precise information on import restrictions maintained for balance-of-payments purposes. The Committee therefore requested Sri Lanka to notify, by tariff line, import restrictions, if any, maintained for balance-of-payments purposes, or to disinvoke Article XVIII:B. The notification or disinvocation had to be made no later than the end of September 1994 and if any import restrictions were maintained for balance-of-payments purposes, the Committee would then hold a full consultation with Sri Lanka. However, at present he was not in a position to state that Sri Lanka had disinvoked Article XVIII:B. On the contrary, he had just been informed by Sri Lanka that it was going to notify restrictions maintained for balance-of-payments purposes. Full consultations therefore would have to be held in due course, depending on the availability of precise data to be supplied by the International Monetary Fund.

The Council took note of the statement and adopted the report in BOP/R/219.

(c) Note on the meeting of 27 July (BOP/R/220)

Mr. Witt (Germany), Chairman of the Committee, drew attention to the points raised under "Other Business" at the Committee meeting on 27 July 1994 concerning some modifications in the programme of consultations for the rest of 1994.

The Council took note of the information in BOP/R/220.

11. Committee on Budget, Finance and Administration
— Report of the Committee (L/7534)

Mr. Gosselin (Canada), Chairman of the Committee, introduced the Committee's report (L/7534) on its meeting of 19 and 21 September 1994. With regard to the Financial Report by the Director-General on the 1992 account of the GATT, the Chairman noted that the Report indicated that budgetary savings of SwF 2,520,708 had been made in 1992 and that transfers amounting to SwF 501,219 had been made to offset excess expenditure recorded under some sections by savings under other sections. The Committee recommended to the Council that the CONTRACTING PARTIES approve the audited accounts for 1992 and convey to the External Auditor their thanks for the valuable assistance given to the CONTRACTING PARTIES in the audit of these accounts.

With respect to the Supplementary Budget reflected in Spec(94)29, dated 27 July 1994, the Committee had first discussed the issue of the WTO logo for which it had decided to establish a selection committee drawn from the Secretariat and the contracting parties that would carry out an initial selection and possibly submit options to the WTO Preparatory Committee which would then make the final choice. On other budgetary proposals by the Secretariat, the Committee had adopted its requests after certain adjustments, in particular, with regard to activities which could be postponed for next year. The Total Supplementary Budget for 1994 amounted to SwF 3,706,000. Since it reflected independent items, transfers between the different items would not be possible. In order to avoid asking the CONTRACTING PARTIES to approve, at this late stage, a supplementary financing, the Committee

recommended to the Council that the financial implications in 1994 resulting from the decision to create the World Trade Organization and which should not exceed SwF 3,706,000 be financed by using: first, any overall budgetary savings which might be realized on the original 1994 budget and which had been estimated at SwF 80,000 as at 31 August 1994; second, the credit of SwF 100,000 for Unforeseen Expenditure in the 1994 original budget; third, the amount of SwF 556,146 available under the 1993 Surplus Account, and fourth, by withdrawing the balance of approximately SwF 2,970,000 which might be necessary from the Working Capital Fund in application of paragraph (iii)(b) of the Rules Governing the Use of the Fund.

The Committee had also examined the budgetary situation as at 31 August 1994 which had been submitted in document CRP(94)9 and had taken note of the report. Since it had not been possible to examine all the items listed in GATT/AIR/3624 at its meeting on 19 and 21 September 1994, a new report concerning the items which had not as yet been dealt with would be submitted to the Council at its next meeting in November.

The representative of Switzerland said that his country took note of the fact that, in adopting the Supplementary Budget for 1994, the Council would agree that certain activities directly related to the implementation of the Agreement establishing the WTO would be financed through the GATT Budget. It would therefore be appropriate to ensure that, during the period when GATT and the WTO co-exist, all contracting parties would adequately participate in the work concerning the budgetary aspects of both GATT and the WTO. In order to ensure budgetary transparency and a smooth transition from GATT to the WTO, Switzerland expected that the WTO Preparatory Committee would elaborate and adopt rapidly, together with the GATT Committee on Budget, Finance and Administration, clear guidelines concerning the conditions and ways for the transfer of GATT assets to the WTO, the management of these assets as well as other related issues that would have to be dealt with during the period of co-existence of the GATT and the WTO.

The Council took note of the statements, and approved the Committee's specific recommendations in paragraphs 7, 17 and 18 of the report and adopted the report in L/7534.

12. EEC - Restrictions on imports of lemons
— Statement by Argentina

The representative of Argentina, speaking under "Other Business", recalled that at the Council meeting in June 1994, Argentina had requested consultations with the Community under Article XXIII:1 concerning the restrictions applied to Argentina's export of lemons to the Community through the use of a system of reference prices and countervailing charges that were part of the organization of the market in fruits and vegetables in the Community. He informed the Council that a constructive consultation process under Article XXIII:1 was currently underway with the Community.

The Council took note of this information.

13. US -Japan Agreement on trade issues of 1 October 1994
— Statement by the EEC

The representative of the European Communities, speaking under "Other Business" said that the Agreement reached on 1 October 1994 between the United States and Japan was of interest to all contracting parties. The deterioration of relations between Japan and the United States, leading to a crisis was not in anybody's interest. While statements by Japan and the United States had proved to be reassuring, a fuller knowledge of the provisions contained in the Agreement would be better.

In particular, his delegation wished to know whether the market opening measures which Japan was ready to introduce would apply to all its trading partners.

The representative of Australia, shared the views expressed by the Community. Japan and the United States were important trading partners for Australia, and therefore Australia had a very strong interest in seeing that good trading relations existed between these two countries. It was hoped that the present Agreement would achieve this. Australia supported trade liberalization, but remained very concerned and vigilant about the prospects of special deals being made that were not on a genuinely m.f.n basis. It was also hoped that this Agreement would provide opportunities for all interested trading partners. More information from the parties concerned about the arrangement reached would be welcome.

The representative of Switzerland associated his delegation with the statements made by the Community and Australia and with the request for additional information.

The Council took note of the statements.

14. Free-Trade Agreement between Bolivia and Mexico
— Statement by the Parties to the Agreement

The representative of Mexico, speaking under "Other Business" and also on behalf of Bolivia informed the Council that the two countries had concluded a Free-Trade Treaty which provided for the establishment of a free-trade area within a period of twelve years. Tariff exemptions would begin on 1 January 1995. The main purpose of this Treaty was to expand and diversify exports of both countries through the elimination of any obstacles to trade. It also aimed to set up conditions of free competition, to grant greater and better investment opportunities, and to promote the protection of intellectual property rights.

The Council took note of this information.

15. Mexico - certificates of origin for products subject to anti-dumping or countervailing duties
— Statement by Switzerland

The representative of Switzerland, speaking under "Other Business" welcomed the new measures taken on 30 August 1994 by Mexico regarding rules on certificates of origin. These new provisions had improved the original regulation to a certain extent, particularly in relation to the obligation for the authorities of exporting countries to legalize the origin of the products. However, the new regulation still raised certain difficulties for exporters in particular with respect to exports of goods to Mexico, which transited through third countries and which originated from countries which were sometimes non-GATT contracting parties and where Mexico had no diplomatic representation. Switzerland hoped that a rational solution could be found to resolve this problem, but in the meantime would wait for the new regulation promulgated by Mexico to be amended in order to eliminate any resulting trade distortions and difficulties.

The representative of Mexico, said that this regulation which required the presentation of a certificate of origin was applied with the aim of avoiding unfair trading practices by importers who used third markets to evade payments of anti-dumping or countervailing duties on products affected by such measures by concealing their real origin. These provisions were consistent with Mexico's rights and obligations under the GATT, and Mexico had done everything possible to ensure that these measures would not affect foreign trade. In order to give more time to trading partners to adapt to

this system, the entry into force of the Decree had been postponed from 15 July 1994 to 1 September 1994. During the intervening period, Mexican representatives had visited a number of countries to explain to officials and businessmen how the Mexican system worked. As a result of these visits, on 30 August 1994, a new regulation was published incorporating some of the suggestions that had been given by officials and businessmen of Mexico's trading partners. This agreement entered into force on 1 September 1994.

The representative of Hong Kong said that a major concern for Hong Kong had been the specific certificate of origin requirement introduced by Mexico for textiles, clothing and footwear products since these items were of substantial trade interest to Hong Kong. Consultations had been held with Mexico since late July 1994 when this regulation had come to Hong Kong's attention. As a result of these consultations, Mexico had introduced changes to the original regulation which appeared to provide a pragmatic solution to the difficulties. Hong Kong wanted to record its appreciation for the flexibility shown by Mexico. However, it was important to see how this arrangement worked in practice, and therefore in the meantime Hong Kong reserved its right to revert to this matter in the future.

The representative of Malaysia, speaking on behalf of the ASEAN countries, expressed appreciation at the efforts made by the Mexican authorities to introduce some changes to their original regulation following consultations with the ASEAN countries. However, as mentioned by Hong Kong, the new regulation had entered into force on 1 September 1994, and the effects of this measure on exports from ASEAN countries to Mexico were still being monitored. Consequently, his delegation also reserved the right to revert to this matter in the future.

The Council took note of the statements.

16. Management of accession negotiations
— Announcement by the Council Chairman

The Chairman, speaking under "Other Business", recalled that at the July 1994 Council meeting, it was agreed to hold further informal consultations on this matter in the autumn and that the Secretariat would prepare an informal paper for those consultations reflecting the various suggestions which had been put forward by delegations in their discussions. Such consultations were being held, and he intended to inform the Council on their result at its next meeting. A draft paper to be prepared by the Secretariat would be circulated to all delegations when it was ready.

The Council took note of the information.

17. Technical Group on Quantitative Restrictions and other Non-Tariff Measures
— Announcement by the Council Chairman

The Chairman, speaking under "Other Business", recalled that at its meeting in July 1994, the Council had been informed that through the informal consultations conducted, it appeared that all delegations agreed that work on documentation regarding quantitative restrictions and other non-tariff measures should continue, but that a meeting of the Group this autumn might not necessarily be required. It was also noted that the Sub-Committee on Institutional, Procedural and Legal Matters of the Preparatory Committee would consider how this work should continue once the WTO entered into force. It was also agreed that delegations reflect further on this matter and revert to it at the next Council meeting.

In the light of further informal consultations on this matter held on 29 September 1994, there appeared to be general agreement that the Technical Group on Quantitative Restrictions and other Non-Tariff Measures should not meet in the autumn, on the understanding that countries would continue to update notifications of quantitative restrictions and other non-tariff measures, until a decision was taken on the future work to be carried out in this area under the WTO.

The Council took note of this information.