

**GENERAL AGREEMENT
ON TARIFFS AND TRADE**

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COUNCIL
4 May 1995

MINUTES OF MEETING

Held in the Centre William Rappard
on 4 May 1995

Chairman: Mr. W. Armstrong (New Zealand)

Subjects discussed:

Page

1.	International Trade Centre UNCTAD/GATT	2
-	Report of the Joint Advisory Group	2
2.	Roster of non-governmental panelists	4
-	Extension of Roster	4
3.	European Economic Community	4
(a)	Import régime for bananas	4
-	Panel report	4
(b)	Member States' import régimes for bananas	4
-	Panel report	4
4.	United States - Restrictions on imports of tuna	5
-	Recourse by the European Community and the Netherlands	5
-	Panel report	5
5.	United States - Taxes on automobiles	6
-	Panel report	6
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	7
7.	Switzerland - Review under paragraph 4 of the Protocol of Accession	8
8.	United States Agricultural Adjustment Act	8
-	Thirty-sixth and thirty-seventh annual reports by the United States under the Decision of 5 March 1955	8
9.	Interim Agreements between the European Communities and Bulgaria and Romania	8
-	Communications from the European Communities	8
10.	Committee on Balance-of-Payments Restrictions	9
(a)	Simplified consultation with Bangladesh	9
(b)	Programme of consultations for 1995	9

11.	Committee on Budget, Finance and Administration	9
-	Report of the Committee	9
12.	Appointment of presiding officers of standing bodies	10
1.	<u>International Trade Centre UNCTAD/GATT</u>	
-	<u>Report of the Joint Advisory Group (ITC/AG(XXVII)/145)</u>	

Mr. Haron (Malaysia), Chairman of the Joint Advisory Group (JAG), introducing the report on its twenty-seventh session (ITC/AG(XXVII)/145), said that the Group had examined the following matters: consideration of the new Executive Director's strategy paper entitled "ITC at the crossroads: an agenda for the future"; review of the ITC's technical cooperation activities in 1993, based on its Annual Report; report of the ITC technical meeting, held in 1992, on the proposal for setting up a global trust fund and a consultative committee, and on a proposal for an ITC programme on the integration of women in trade development. In addition, a special session of the Group had been devoted to the commemoration of the ITC's 30th anniversary. The Group had also had before it an evaluation of the ITC programme element concerning import operations and techniques, as well as a report of the Technical Meeting in 1994. This item, however, had been postponed for discussion at the twenty-eighth session of the Group scheduled for the end of May 1995.

In his opening statement, the Executive Director had recalled that when he had joined the ITC on 13 June 1994, it had been well into its third difficult year. The difficulties encountered prior to his arrival had included the vacancy in the post of Executive Director and in a large number of other management posts, reduced funding, and the absence of a mandate to deal with several important issues. In 1994, the financial situation had remained a substantial problem with reduced contributions from major donor countries and a decline in funding from UNDP. Delivery in 1994 had been expected to fall below 1993 levels, and the outlook for 1995 continued to be preoccupying. As regards activities undertaken in 1994, he had referred specifically to a study on possible action by the ITC on the follow-up to the results of the Uruguay Round, and to the ITC's contribution to UNCTAD's International Symposium on Trade Efficiency.

Upon assumption of his post, the Executive Director had undertaken a thorough review of the ITC's situation, which had resulted in the preparation of the document "ITC at the crossroads: an agenda for the future". Full support had been accorded to the proposed reform and action plan contained in the paper by the UN Secretary General, the GATT Director-General and the UNCTAD officer-in-charge, and he had welcomed the opportunity to obtain the views of the JAG on the proposed orientation. In presenting the "agenda" paper, the Executive Director had referred specifically to the initial results of the priority setting exercise which proposed six core services for the ITC's future programme. Priorities would be determined according to the collective needs of recipient countries and the ITC's comparative advantage in fulfilling those needs. Although the ITC's services would remain valuable for all developing countries and economies in transition, its technical priorities and capacities would be primarily directed to the collective needs of the least-developed and lower-income countries. Once the priorities had been established, action would be taken during 1995 to redress any imbalance in the allocation of resources in the ITC, to ensure that substantive functions were funded from the regular budget and other predictable resources. The Executive Director had also stressed that in building on its comparative advantages, the ITC would seek closer cooperation with outside institutions and other members of the UN family. The ITC had always attached the utmost importance to close and constructive cooperation with its parent bodies; it was therefore vital for it to remain a joint institution of the GATT/WTO and UN/UNCTAD. To enable it to assist developing countries, the ITC would

need the resources and the means to fulfil its mandate adequately. The Executive Director had appealed to donors for continued support and had urged them to be more forthcoming in their contributions.

The JAG had congratulated the Executive Director and his staff for the quality of the "agenda" paper and had welcomed its general thrust towards clear priority-setting and cost-effective use of resources in order to maximise the impact of the ITC's technical cooperation programme. The Group had acknowledged that the ITC had an important rôle to play in the area of trade and environment in collaboration with the UNCTAD and GATT. The secretariat had been requested to submit a strategy paper on this matter to the twenty-eighth session. The Group had supported the action plan contained in the paper, and had urged the Executive Director to proceed with its implementation without delay. The Group had urged donors to contribute generously to help the ITC with the implementation of the programme and had requested that a full report, providing greater precision on the ITC's priorities as well as a proposed division of work between the ITC and its parent organisations and other related agencies, be presented at the next session. The Group had also been of the view that an external review of the ITC would not be necessary for the present. Unanimous acknowledgement of the increasing relevance of the ITC as an international development instrument had been expressed, and it had been pointed out that the ITC had an important rôle to assume in trade efficiency. It had also been considered that the ITC was uniquely endowed to provide unbiased and practical support in governments' trade expansion efforts following the successful conclusion of the Uruguay Round.

During discussion of the ITC's activities in 1993, the Group had noted that the ITC had done its utmost to maintain an effective level of support to recipient countries under trying circumstances. The Group had expressed appreciation to the Officer-in-Charge and to the ITC staff for their diligence and dedication during a critical period. The Group had also discussed the proposal for setting up a global trust fund and a consultative committee as contained in the report of the 1992 Technical Meeting. It had not been possible, however, for the Group to endorse the proposal as it stood, and the Chairman had proposed that informal consultations be held with a view to reaching a decision at the twenty-eighth session.

On the integration of women in trade development, the Group had fully supported the proposal for an ITC programme for 1992-1997, and had expressed appreciation for the work already undertaken on the subject. Some representatives had stressed that the objectives of the programme should cut across all the ITC's operational activities. The meeting had been informed, and had noted, that this question would be considered along with other global issues being studied in the ITC's priority-setting exercise.

To celebrate the ITC's 30th anniversary, a special commemorative session had been held in the presence of the Executive Heads of UNCTAD and GATT, at which speakers had referred to the ITC's achievements since its creation and to the treasure of experience it had accumulated over the years. It had established an extended network of contacts throughout the world which had attracted strong support from governments of countries at all levels of development. The ITC's mandate remained equally valid after thirty years of existence and would be increasingly in demand at a time of rapid globalization of economic activities, and in the post Uruguay Round context. Expressions of strong support for the ITC's future activities had been extended to the Executive Director and the staff.

At the session, the following governments had announced confirmed or possible voluntary contributions to ITC for its technical cooperation programme: China, Denmark, Finland, France, Germany, Greece, India, Ireland, Italy, Japan, Netherlands, Norway, Poland, Sweden and Switzerland. The Executive Director had expressed gratitude for the announcements of these contributions, particularly those from countries receiving ITC assistance, and disappointment with the delay in the establishment of the global trust fund. The Executive Director had expressed the hope that the related consultations would be concluded in time for the next JAG session to approve its establishment. In concluding his

introduction, the Chairman appealed to those who could make contributions to be more forthcoming at the next session.

The Council took note of the statement and adopted the report in ITC/AG(XXVII)/145.

2. Roster of non-governmental panelists
 - Extension of Roster (L/7493 and Add.1)

The Chairman recalled that at their Fortieth Session in November 1984, the CONTRACTING PARTIES had decided to establish a roster of non-governmental panelists, on a trial basis and for a period of one year, in order to facilitate the composition of panels in cases where parties to disputes were unable to agree on panelists (BISD 31S/9). In November 1985, the Council had approved the first roster of non-governmental panelists (L/5906). Since then, the Council had regularly extended the roster for fixed periods of time, and in June 1994, it had agreed to extend the roster until the entry into force of the Understanding on Rules and Procedures Governing the Settlement of Disputes contained in Annex II of the WTO Agreement. He proposed that for the purposes of the GATT 1947, the Council extend the roster, as set out in L/7493 and Add.1, until December 1995.

The Council so agreed.

3. 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 November 1994 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. It was his understanding that the positions of governments on this question remained at the present time unchanged and that it would therefore not be possible for the Council to reach a consensus on this matter at the present meeting. To preserve the efficacy of Council deliberations, and in line with past Council practice, he proposed that following Guatemala's statement, the Council take note of that statement and that the positions expressed on this matter by delegations at previous Council meetings remained unchanged. He would offer the floor only to those representatives that might wish to announce a change in their position as previously recorded, or to those that had not so far 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, said that since March 1994, he had drawn the attention of the Council to the illegal aspects of the Community's banana import régime. He had hoped that the recommendations of the two Panels under consideration, although not adopted, would have helped the Community to resolve the problem through an overall solution satisfactory to all developing-country exporters. However, the restrictions which had previously been applied by five member States and which had subsequently been extended to the twelve member States, had further been extended to the three countries that had joined the Community on 1 January 1995 and which had not previously applied restrictions on bananas. The adoption of the waiver for the fourth Lomé Convention (L/7604) had deviated the Council's attention from the substantive issue of the Community's restrictions on bananas to its preferences to ACP countries. The failure to find an appropriate solution in the short-term would not only continue to affect the legitimate interests of their countries but could also affect the multilateral trading system. Although

they had suggested previously that all the parties involved meet to find a solution which would not only be consistent with the provisions of the multilateral trading system, but would also meet the interests of all, the Community had not responded. Therefore, while reiterating their readiness to enter into a dialogue and to find appropriate solutions, they once again urged the Council to adopt the two Panel reports, and called on the Community to meet its obligations as soon as possible. His delegation would revert to this matter at the next Council meeting.

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

4. United States - Restrictions on imports of tuna
- Recourse by the European Community and the Netherlands
- Panel report (DS29/R)

The Chairman recalled that the CONTRACTING PARTIES had considered this matter at their Fiftieth Session and had agreed to refer it to the Council for further consideration.

The representative of the European Communities emphasized the importance of the adoption of this Panel report, and recalled his delegation's statements on this matter on previous occasions indicating that the Community shared the United States' environmental policy aims. However, as the Community had also stated previously, it believed that the Panel was right in its findings that the means used by the United States in pursuance of its policy were not GATT-consistent. It was for this reason that the Community requested adoption of the Panel report.

The representative of Venezuela noted that eleven months had passed since the Panel report had been circulated reiterating conclusions already reached by an earlier panel established at the request of Mexico.¹ Both panels had concluded that the United States' embargoes were GATT-inconsistent and therefore a violation of agreed multilateral trade rules. Yet, the embargoes still remained in place, to the detriment of exports from countries like Venezuela. The Council still awaited a categorical and substantive statement by the United States on the report under consideration and on its conclusions - be it to allow adoption or to reject it. As had been stated on several occasions, the non-adoption of panel reports undermined the credibility of the multilateral trading system. The present situation, when reports were being ignored, constituted a precedent. The time had come for the United States to make its views on this report known. Venezuela was examining the possibility of requesting consultations with the United States within the WTO on this issue, given that the tuna embargoes were still in place and that the GATT 1947 panel reports on this matter had still not been adopted.

The representative of Mexico recalled that on previous occasions his delegation had stated that the United States' embargo on tuna imports was not justified either from a trade or ecological standpoint. The panels' findings had clearly shown that certain elements of the United States' measure were inconsistent with its GATT obligations. It had been clear from the outset of the embargo, and had now become clearer, that Mexico's fishing techniques did not endanger the three species of dolphins involved in this case. The rate of accidental catch of dolphins was statistically at zero, with 0.3 per cent of dolphins per catch. The embargo had not helped to find an ecologically viable solution and had in fact delayed Mexico's efforts to reach the rate of mortality of accidental catch that he had referred to. Mexico supported the adoption of the Panel report under consideration, and the lifting of the primary as well as secondary embargoes, on the understanding that the conclusions and recommendations of

¹United States - Restrictions on imports of tuna - Recourse by Mexico (DS21/R).

this Panel report would not in any way change the conclusions and recommendations of the earlier Panel report (DS21/R), but would simply substantiate and supplement them. Mexico also reserved its right to revert to the Panel report in DS21/R at an appropriate time.

The representative of the United States said that his Government was not in a position to agree to the adoption of this Panel report. He recalled that the United States had taken a principled decision to remain in the GATT 1947 on an interim basis to protect the rights of all contracting parties during the transitional period from the GATT 1947 to the WTO. This included the rights of both complaining and defending parties in on-going disputes. Discussion at the Fiftieth Session of the CONTRACTING PARTIES had revealed that some contracting parties preferred to permit adoption only of panel reports favourable to them, even when they were the complaining party and had been unable to persuade a panel of the justification for their complaint. Such an approach did an injustice to the dispute settlement system. The United States was unwilling to support this approach by acceding to the request for adoption of this Panel report.

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

5. United States - Taxes on automobiles
- Panel report (DS31/R)

The Chairman recalled that the CONTRACTING PARTIES had considered this matter at their Fiftieth Session, and had agreed to refer it to the Council for further consideration.

The representative of the United States expressed appreciation for the Panel's work in a dispute that had raised complex issues concerning three major US domestic laws, and for its sensitive analysis. The Community's position on this report as stated at the Fiftieth Session of the CONTRACTING PARTIES was regrettable. It was unfortunate, and undermined the dispute settlement system, when a party brought a dispute and then blocked adoption of the report of the panel it had sought, thereby refusing to let the process be brought to a close. Each party that brought a dispute did so with high hopes that it could convince a panel to support its complaint. The complaining party then worked hard to do so and believed that its arguments should prevail. However, there were times when its arguments were not persuasive and a panel did not agree with its challenge. In such circumstances, it was best for the complaining party to accept that it had not convinced others of the merits of its complaint and permit adoption of the panel report. Little was served in clinging to arguments that had proved unsuccessful. Nor did blocking adoption of a report provide any relief to the complaining party. The United States believed that this Panel report was fair, well-reasoned and merited adoption. The Panel had recognized that governments had a sovereign authority to tax and that in exercising that authority they might need to differentiate among products while not discriminating against imports. The Community had proposed a radical approach which would have required panels to substitute their judgement for that of governments concerning how best to regulate and how best to exercise the authority to tax. The Community had thereby sought to have panels legislate rather than apply the provisions of the General Agreement as they stood. It was not surprising then that the Panel had chosen instead to adhere to the approach established in past panel reports, in particular the two most recent panel reports that had examined this issue, both adopted in 1992.² The latter panels had also properly focused on the purpose of Article III to prohibit measures applied to protect domestic production and not those measures that had a legitimate purpose. The Panel report under consideration was generally well-reasoned, and its conclusions followed common interpretations of the General Agreement. In its review of the US luxury and gas guzzler taxes, the Panel had confirmed that governments had discretion in

²Canada - Import, distribution and sale of certain alcoholic drinks by provincial marketing agencies (DS17/R).
United States - Measures affecting alcoholic and malt beverages (DS23/R).

choosing non-protectionist internal policy instruments that did not discriminate on the basis of origin. The United States noted with satisfaction that the Panel had recognized this right of governments. Accordingly, the US was prepared to join a consensus within the Council to permit the adoption of this report, and urged others to do the same.

The representative of the European Communities said that the Community was the complainant in this dispute, and that it was to the Community first and foremost that the question of whether or not it wished to request adoption of the report should be put. Noting that the Panel had found one part of the Corporate Average Fuel Economy (CAFE) tax regulation to be incompatible with the United States' GATT obligations, he asked whether, in seeking adoption of this Panel report, the United States would also be willing to make the necessary adaptation to its CAFE regulations, as recommended by the Panel. The credibility of the dispute settlement system did not depend on formal procedural actions, but rather on the substance of partners' actions when it came to adapting to GATT obligations. As the Community had stated at the Fiftieth Session of the CONTRACTING PARTIES, this report had a major defect, in that the Panel had not taken into account the established jurisprudence of previous panels which had all stated that paragraphs 2 and 4 of Article III had as their primary objective to ensure the integrity of the tariff obligations under Articles I and II. In not taking this underlying objective into account in its argumentation, the Panel had committed a serious error which had devalued its reasoning. The Community had therefore found the report to be unsatisfactory, and could not agree to the adoption of its conclusions.

The representative of the United States said that the issue he had raised was the adoption of the Panel report. While it might be that no panel report was perfect in all respects, this was not sufficient for the United States to oppose adoption of this Panel report. The United States found it disingenuous that the Community had sought to draw the Council into a debate on the implementation of a report that it had decided to block the adoption of.

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

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 (BISD 36S/61), 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 noted that the April 1989 Decision was no longer in effect,³ and that the monitoring procedures established therein would therefore continue to apply only to those panel reports that had been adopted by the Council during the period in which that Decision was in force.

The representative of Canada regretted that the United States had no progress report to make on the implementation of the recommendations of the Panel on US measures affecting alcoholic and malt beverages (DS23/R), which had been adopted thirty-five months earlier. Canada considered three years to be, by any measure, a reasonable period for implementation. As only two or three state or federal measures out of sixty had been brought into conformity with the Panel's recommendations, Canada hoped that the state governments would make the required changes at their spring legislative sessions in order to avoid having to wait for another year, since certain US state legislatures only met in the spring. Canada also hoped that at the next Council meeting, which was not scheduled for some

³See L/7416.

months, the United States would be able to report on action taken to bring the inconsistent state and federal measures into conformity with the Panel's recommendations.

The Council took note of the statement.

7. Switzerland - Review under paragraph 4 of the Protocol of Accession (L/7251, L/7563)

The Chairman drew attention to documents L/7251 and L/7563 which contained respectively the twenty-fifth, twenty-sixth and twenty-seventh annual reports by Switzerland under paragraph 4 of its Protocol of Accession.

The representative of Switzerland said that his Government would shortly ratify the WTO Agreement. While Switzerland would not object to the establishment of a working party to examine the reports under paragraph 4 of its GATT 1947 Protocol of Accession, such action might not be useful since Switzerland's agricultural régime would be substantially modified as a result of commitments undertaken in the Uruguay Round.

The Council took note of the statement and of the reports in L/7251 and L/7563, and agreed to revert to this item at a future meeting if necessary.

8. United States Agricultural Adjustment Act

- Thirty-sixth and thirty-seventh annual reports by the United States under the Decision of 5 March 1955 (L/7408, L/7616)

The Chairman recalled that under the Decision of 5 March 1955 (BISD 3S/32), the CONTRACTING PARTIES were required to make an annual review of any action taken by the United States under the Decision on the basis of a report to be furnished by the United States. The thirty-sixth and thirty-seventh annual reports were now before the Council in documents L/7408 and L/7616.

The Council took note of the thirty-sixth and thirty-seventh annual reports by the United States in L/7408 and L/7616.

9. Interim Agreements between the European Communities and Bulgaria and Romania

- Communications from the European Communities (L/7617 and Add.1; L/7618 and Add.1)

The Chairman drew attention to the communications from the European Communities in documents L/7617 and Add. 1 and L/7618 and Add.1, and noted that the Interim Agreements described therein had also been notified to governments Members of the WTO, and that the WTO Council for Trade in Goods, at its meeting on 20 February, had established working parties to examine each of these Agreements.

The Council took note of the communications in L/7617 and Add.1 and L/7618 and Add.1.

10. Committee on Balance-of-Payments Restrictions
 (a) Simplified consultation with Bangladesh (BOP/R/223)
 (b) Programme of consultations for 1995 (C/W/824)
 (a) Simplified consultation with Bangladesh (BOP/R/223)

The Chairman, on behalf of Mr. Witt (Germany), Chairman of the Committee, said that at the simplified consultation with Bangladesh under Article XVIII:12(b) of the GATT 1947 held on 14 March, the Committee had decided to recommend to the Council that Bangladesh be deemed to have fulfilled its obligations under Article XVIII:12(b) of the GATT 1947 for 1995. The Committee had noted that the next consultation with Bangladesh would be held in the WTO Committee on Balance-of-Payments Restrictions, and that the timing and applicable consultation procedures for that consultation would be decided by the latter in accordance with paragraph 8 of the Understanding on the Balance-of-Payments Provisions of the General Agreement on Tariffs and Trade.

The Council took note of the statement, agreed that Bangladesh be deemed to have fulfilled its obligations under Article XVIII:12(b) of the GATT 1947 for 1995, and adopted the report in BOP/R/223.

- (b) Programme of consultations for 1995 (C/W/824)

The Chairman drew attention to the Committee's proposed programme of consultations for 1995 contained in document C/W/824, and informed the Council that the following balance-of-payments consultations were scheduled for the May/June period:

28/30 May: consultation with South Africa under the BOP provisions of the WTO;
 31 May: simplified consultation with Egypt;
 26 June: Article XII consultation with Hungary;
 27 June: Article XII consultation with Poland;
 28 June: Article XII consultation with Slovakia.

To avoid duplication, all consultations would be conducted by joint meetings of the GATT 1947 and the WTO Committees on Balance-of-Payments Restrictions, except the consultation with Egypt, which had been postponed from 1994 and would be held in the GATT 1947 Committee.

The Council took note of the statement and of the information in C/W/824.

11. Committee on Budget, Finance and Administration
 - Report of the Committee (L/7628, WT/BFA/3)

Mr. Metzger (France), Chairman of the Committee, introducing the Committee's report on matters considered at its meetings on 16, 22 and 27 March (L/7628, WT/BFA/3), said that the report contained also a number of points which were the exclusive domain of the WTO, and which he would not comment on at the present meeting. On the CONTRACTING PARTIES' representative to the ICITO/GATT Staff Pension Committee, he said that since the present representative, Mr. Peter Cheung (Hong Kong), would soon be leaving Geneva, the Committee had recommended that Mr. Jean-Daniel Rey (Switzerland) be appointed to the Staff Pension Committee until the expiration of the present mandate on 31 December 1995 (paragraph 22). He then recalled that governments with more than three years of arrears in contributions since 1988 as at 1 January 1995 became inactive members as of that date. Therefore, in accordance with paragraph 7(b) of document PC/7, L/7578, the Committee had recommended that the governments listed in paragraph 24 of its report, and classified as inactive

members, be urged to liquidate their arrears. On the relationship between the UN and the GATT/WTO with regard to the International Trade Centre (ITC), the Committee had proposed that in order to ensure better control on the ITC's regular budget, but without changing the rôle of the Joint Advisory Group, the Secretariat should be mandated to negotiate a new financial agreement with the UN Administration. The Committee's recommendations in this regard were contained in paragraph 26. Finally, the Committee had considered additional assessments to the 1994 budget and the Working Capital Fund for four new contracting parties: Djibouti, Guinea, Papua New Guinea and the Solomon Islands. The recommendations in respect of each of the new contracting parties were contained in paragraphs 32, 33, 34 and 35 of the report.

The Council took note of the statement, approved the Committee's specific recommendations in paragraphs 22, 24, 26, 32, 33, 34 and 35 of its report (L/7628, WT/BFA/3), and adopted the report.

12. Appointment of presiding officers of standing bodies (C/192)

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

At the Council meeting in November 1994, his predecessor had announced that his successor would carry out such consultations. The results of his consultations had been announced at an informal meeting of the Council on 3 March 1995, and had been set out in document C/192. He proposed that the Council approve the appointments therein.

The Council so agreed.