

**GENERAL AGREEMENT
ON TARIFFS AND TRADE**

RESTRICTED
SR.50/1
8 February 1995
Limited Distribution

(95-0244)

CONTRACTING PARTIES
Fiftieth Session

SUMMARY RECORD OF THE FIRST MEETING

Held at the International Conference Centre, Geneva,
on Thursday, 8 December 1994, at 3 p.m.

Chairman: Mr. A. Szepesi (Hungary)

<u>Subjects discussed:</u>	<u>Page</u>
- Adoption of Agenda	2
- Chairman's opening address	2
- Order of Business	2
- Presentation of reports	2
- Arab Maghreb Union - Request for observer status	6
- Activities of GATT	6
- Report of the Council	6

Adoption of the Agenda

Before the adoption of the Agenda, the CHAIRMAN welcomed Grenada, the United Arab Emirates, Guinea Bissau, St. Kitts and Nevis, Liechtenstein, Qatar, Angola, Honduras and Slovenia as new contracting parties, which brought GATT membership to a total of 124.

The CHAIRMAN noted that the Provisional Agenda was contained in L/7552, and proposed adding the following item to the Agenda: "Arab Maghreb Union - Request for observer status." An additional item: "United States' Export Enhancement Programme for sales of barley to Korea" was proposed by Canada. The CHAIRMAN suggested that this matter be taken up under item 2 of the Provisional Agenda in the context of the examination of the Council's report.

The Agenda, as amended, was adopted (L/7573).

Chairman's opening address

The CHAIRMAN made an opening address (GATT/1659).

Order of Business

The CHAIRMAN drew attention to the Proposed Order of Business circulated in W.50/15 which provided an outline of the organization of work during the Session. He proposed beginning with the presentation of reports, followed by consideration of the request for observer status by the Arab Maghreb Union, general statements by contracting parties, consideration of the report of the Council, the dates for the next regular Session and the Election of Officers.

The CONTRACTING PARTIES approved the proposed Order of Business in W.50/15, as amended.

Presentation of reports

Presenting the Council's report (L/7571, Corr.1 and Add.1/Rev.1), its Chairman, Mr. Zahran (Egypt), said that although priority in the first months of 1994 had been given to concluding the Uruguay Round Negotiations and subsequently to the work related to the transition to the World Trade Organization (WTO), the Council had held eight regular meetings and eleven special trade policy review meetings since the Forty-Ninth Session of the CONTRACTING PARTIES. As in previous years, the Council had covered a broad range of issues and had continued to play an important management rôle as the governing body of the GATT between the Sessions of the CONTRACTING PARTIES. The report of the Council reflected that a major aspect of the Council's work had pertained to examining the requests for accessions and for observer status as well as to overseeing the large number of accession negotiations. Since the Forty-Ninth Session of the CONTRACTING PARTIES on 25-27 January 1994, Angola, Grenada, Guinea Bissau, Honduras, Liechtenstein, Qatar, St. Kitts and Nevis, Slovenia and the United Arab Emirates had become contracting parties bringing the GATT membership to 124 contracting parties. The Council had established two working parties to examine the requests for accession from Estonia and Lithuania. Four new countries -- Georgia, Sudan, Uzbekistan and Viet Nam -- and one international organization -- European Bank for Reconstruction and Development -- had been granted observer status.

Given the unusual increase in the number of requests for accessions, in particular in 1993, the Council had made an effort during the current year to further rationalize the management of work on accession negotiations. For the successful conclusion of such negotiations in the most effective possible manner, the Council had identified a number of points of an indicative nature which aimed at rationalizing the work on accession negotiations. These points, contained in a statement by the Chairman, had also been submitted to the Preparatory Committee of the WTO for consideration. Another accession-related matter raised in the Council concerned the lack of an appropriate GATT mechanism to monitor the implementation of commitments relating to tariff and non-tariff matters undertaken by governments upon accession. This matter deserved further consideration either in the context of the work of the GATT Council next year or, if considered appropriate at the time, by the General Council of the WTO. He also noted that, following the decision taken at the Forty-Ninth Session of the CONTRACTING PARTIES, the Council had considered and adopted a proposal by the United States for a decision on the interpretation of Article XXXV which allowed a contracting party and a government acceding to the GATT to engage in negotiations relating to the establishment of a GATT schedule of concessions by the acceding government without prejudice to the right of either to invoke Article XXXV in respect of the other.

Early in the year, the Council, in a separate regular meeting to review the work in GATT relating to the follow-up to the United Nations Conference on Environment and Development (UNCED), noted that such work, already undertaken in GATT, had contributed to a deepening knowledge of the interlinkages between trade and environment. Contracting parties had expressed their continuing determination for GATT to play its full part in ensuring that policies in the fields of trade, environment and sustainable development were compatible and mutually supportive. This commitment had been subsequently confirmed by the adoption in Marrakesh of the Ministerial Decision on Trade and Environment. The Sub-Committee on Trade and Environment of the Preparatory Committee of the WTO had already initiated substantive discussions on the basis of that Decision, pending the establishment of the Committee on Trade and Environment within the WTO.

Since the Forty-Ninth Session of the CONTRACTING PARTIES, eleven trade policy reviews had been carried out, bringing the number of reviews held to fifty-three since the inception of the Trade Policy Review Mechanism (TPRM). During this period third reviews of Canada and the United States and second reviews of Australia, Hong Kong and Indonesia had taken place, while first reviews had covered Iceland, Macau, Peru, Senegal, Tunisia and Zimbabwe. The current programme of Trade Policy Reviews would conclude with reviews of Sweden and Israel in December 1994 and of Cameroon, Pakistan and the third review of Japan in late January and February 1995. The last three reviews, prepared during 1994, would be conducted by the new Trade Policy Review Body of the WTO, under the GATT procedures. Following modifications to the TPRM in 1993, further improvements had been made in 1994. Taken together, these changes aimed at promoting greater complementarity between the government and Secretariat reports by proposing that government reports be in the form of "policy statements"; in addition, advance submission of issues addressed by discussants and questions by members, identification of main themes to be addressed by countries under review in answers to questions, and stricter time limits on statements by representatives during the Council's special meetings had helped to streamline and promote more lively and focused discussions. However, more active participation in the meetings - for major countries and others alike - would be valuable both to the countries under review and to the viability of the system. He believed the new Trade Policy Review Body should give this question serious consideration. The TPRM had now become a central part of the GATT surveillance function. It had provided essential monitoring of evolution and change in the trade policy régimes of major trading partners, had opened trade policy régimes of many developing countries to international scrutiny and had made significant contributions to the domestic process of trade policy formulation and reforms. The continuation into the WTO and the expansion of the TPRM to include the new areas of Services, Trade-Related Aspects of Intellectual Property Rights (TRIPs)

and Trade-Related Investment Measures (TRIMs) would provide an additional dimension to the Mechanism.

An important aspect of the Council's work in 1994 had continued to be its involvement in the dispute settlement process including the monitoring of implementation of panel reports. As indicated in the latest report to the Council by the Director-General, there had been a substantial decline in dispute settlement activity in the past twelve months both under the General Agreement and under the Tokyo Round Agreements. Compared to the previous twelve-month period, the number of requests for consultations had decreased by half from thirty-one to fifteen, panels established had fallen from seven to four and adoptions of panel reports declined from four to three. Four panel reports submitted to the Council were still under consideration. It was noteworthy that the number of disputes in which implementation issues had been raised had fallen to a particularly low level. One explanation of this decline in dispute settlement activity had been the expected entry into force of the WTO Agreement and its improved settlement rules. The Council had also considered the question of third-party participation in panels and had agreed to certain practices which would improve the work in this area without prejudice to the rights of contracting parties under established dispute settlement procedures.

As in previous years, the trend towards the establishment of free-trade agreements and customs unions had continued in 1994. It was important to ensure that this significant trend would not lead to the creation of new barriers to trade or to establishment of hostile blocs. The Uruguay Round Understanding on the Interpretation of Article XXIV provided a useful tool for ensuring improved rules and disciplines in this area. He recalled that, due to pressure of the preparatory work on the transition from GATT to the WTO, the Council had not addressed the proposals put forward by some contracting parties at the Forty-Eighth and Forty-Ninth Sessions to initiate a process of examination of the current trend towards regionalism. He also recalled that in recent years the requirements for biennial reporting on regional arrangements had not been fulfilled, nor had a calendar for such reports been established by the Council since 1987. He reiterated the Council recommendation that these matters be taken up in 1995 either by the GATT Council or, if considered appropriate at the time, by the General Council of the WTO.

With regard to the waivers requested for the implementation of the Harmonized System, although their number had declined in 1994, the number of requests (17) before the Council remained relatively high.

The Council had continued to devote the necessary attention to introducing more rigour and discipline in its working practices. Following the improvements introduced the previous year, further progress had been made in the current year concerning the treatment of "Other Business" items. The informal consultations held prior to Council meetings aimed to pave the way for achieving agreement on various issues, had also proved a useful practice which he believed should continue and be intensified, as necessary, in future, within the WTO.

Presenting the report of the Committee on Trade and Development (L/7567), its Chairman, Mr. Tironi (Chile), said that since the Forty-Ninth Session of the CONTRACTING PARTIES, the Committee had held only one formal session, on 21 and 25 November 1994, when the following items had been discussed: (i) developing countries' participation in the international trading system; (ii) review of the implementation of the provisions of Part IV and the operation of the Enabling Clause; (iii) technical assistance to developing countries in the context of the Uruguay Round; and (iv) work of the Sub-Committee on Trade of Least-Developed Countries, which had held a meeting in November when the Director-General had met a long-standing request on the part of the least-developed countries, by announcing the establishment of a special unit in the Secretariat to deal specifically with the situation and needs of least-developed countries in the context of the new legal framework resulting from the

Uruguay Round. The Committee had addressed the substantive issue of the participation of developing countries in the international trading system by focusing on whether developing countries had recently increased their share in world trade, and whether international trade had contributed to their economic growth. These questions were of particular relevance with the creation of the WTO in which developing countries would play a major rôle. Ten main conclusions emerged from the debate: (1) The developing countries' percentage share in world trade had been growing. (2) This growth had been uneven: the least-developed countries, and recently Africa, had seen a decrease in their share in trade, while other regions, such as South-East Asia, had significantly increased their share. (3) This had resulted as much from domestic policies as from the general international environment, since these different trends could not be attributed to the international environment alone. (4) The Uruguay Round had represented a significant opportunity for developing countries to increase their share in trade, because of the integration of sectors previously outside the GATT system (such as agriculture and textiles) into WTO rules, and because the Round had dealt with internal policies (and not just border measures) that restricted trade. (5) Therefore future participation of developing countries in world trade would be determined by the effectiveness with which the Uruguay Round agreements would be implemented. (6) Though participation in world trade of both developing and developed countries had increased in the past twenty years, the opposite had occurred for the former socialist States, which seemed to indicate the importance of market forces, or a reduction of State intervention, for trade development. (7) Product composition of the trade of developing countries had been important, as the substantial rise in trade of manufactures had been the key to the increased participation of some of these countries. The growth of intra-regional trade had also been relevant. (8) It was important to make an examination of changes and to see whether higher or lower hindrances to trade in recent years could explain the developing countries' share in world trade. (9) In future, developing countries would make greater commitments in the WTO, and in this context all WTO members should note that developing countries accounted for 25 per cent of world trade. (10) Finally, it was necessary to integrate the autonomous liberalization measures taken by developing countries into the multilateral system aimed at facilitating, promoting and liberalizing trade.

The purpose of the Committee's discussions had been to provide a benchmark to analyse the progress made by developing countries in the multilateral trading system.

In addition, the Committee had successfully concluded consultations on the terms of reference for the WTO Committee on Trade and Development, by outlining the future work programme in the light of the Uruguay Round results and by reaching agreement regarding the complex issue of matters relating to the implementation of the special clauses of the Multilateral Trade Agreements and Ministerial Decisions in favour of developing-country Members of the WTO.

The CHAIRMAN then drew attention to the following reports of the Committees and Council's charged with the implementation of the MTN Agreements and Arrangements: Committee on Trade and Civil Aircraft (L/7557), Committee on Technical Barriers to Trade (L/7558), Committee on Import Licensing (L/7556), International Dairy Products Council (L/7562), International Meat Council (L/7561), Committee on Government Procurement (L/7564), Committee on Anti-Dumping Practices (L/7553), Committee on Subsidies and Countervailing Measures (L/7554), and Committee on Customs Valuation (L/7565).

Arab Maghreb Union- Request for observer status

The CHAIRMAN drew attention to a communication from the Arab Maghreb Union (L/7548) requesting observer status at Sessions of the CONTRACTING PARTIES. He suggested that the CONTRACTING PARTIES agree to grant the Arab Maghreb Union observer status.

The CONTRACTING PARTIES so agreed.

Activities of GATT

The following general statements were made:

Mr. M. Endo Ambassador, Permanent Representative of Japan	SR.50/ST/1
Mr. G.E. Shannon Ambassador, Permanent Representative of Canada	SR.50/ST/2
Mr. J.C. Sanchez Arnau Ambassador, Permanent Representative of Argentina	SR.50/ST/3
Mr. T.J.B. Jokonya Ambassador, Permanent Representative of Zimbabwe	SR.50/ST/4
Mr J.-P. Leng Ambassador, Permanent Representative of the European Communities	SR.50/ST/20
Mr. O.D. Davydov Deputy Prime-Minister, Minister of External Economic Relations, Russia (speaking as an Observer)	SR.50/ST/21

Report of the Council (L/7571, Corr.1 and Add.1/Rev.1)

The CHAIRMAN referred to the report of the Council of Representatives on its work since the Forty-Ninth Session. A list of matters on which the CONTRACTING PARTIES were expected to take action had been circulated in L/7571/Add.1/Rev.1. He stressed that the report was not intended to reflect detailed positions of delegations, since the Council Minutes contained such information and remained the record of the Council's work.

Point 2. Trade Policy Review Mechanism

Sub-point 2(b). Country reviews

The CHAIRMAN said that in accordance with the Decision of 12 April 1989 on the Functioning of the GATT System (BISD 36S/403, paragraph I.D.(vi)) the relevant documents pertaining to the reviews of Senegal, Australia, Iceland, United States, Peru, Tunisia, Macau, Hong Kong, Canada, Indonesia and Zimbabwe were before the CONTRACTING PARTIES. He also drew attention to document L/7458 concerning procedures for the continued operation of the Trade Policy Review Mechanism (TPRM).

Mr. Gosselin (Canada) said that since its establishment at the Montreal Mid-Term Review meeting in 1990, adjustments of the TPRM had been made, and the most recent ones contained in document L/7458, aimed at streamlining and lightening the process. Canada, which had been reviewed three times over this period, encouraged contracting parties and eventually Members of the WTO to undertake a thorough Trade Policy Review (TPR). Nonetheless, the TPR process, already burdensome on the parties concerned and on the Secretariat, would be even more demanding on staff resources especially since reviews under the WTO would cover more countries and new policy areas. The present format, although intended to foster discussion, often seemed to result in an overly concentrated focus on micro questions of policy and on the application of the policy through measures. Canada believed that this drift towards a dispute settlement type-process would hamper the transparency which had been the purpose for the TPRM. Canada hoped for a return to more general policy discussions; it believed from its recent experience of utilizing the new format for government reports, which focused more on trade policy objectives, could provide some basis for refocussing discussion.

The CONTRACTING PARTIES took note of the statement and also took note of the reports by the contracting parties under review and by the Secretariat, and of the minutes of the respective Council meetings.

Sub-point 2(c). Programme of reviews

The CHAIRMAN drew attention to document L/7574 and recalled that the reviews of Cameroon, Pakistan and Japan under the 1994 programme had had to be carried over to the first months of 1995 and that these reviews would be carried out, as planned, under the procedures of GATT 1947.

The CONTRACTING PARTIES so agreed.

Point 3. Committee on Tariff Concessions

Sub-point 3 (b). Report

The CHAIRMAN drew attention to the second biannual report of the Committee on its activities (TAR/269 and Add.1).

Ms. Thompson (Australia), Vice-Chairperson of the Committee on Tariff Concessions, on behalf of Mrs. Bautista (Philippines), Chairperson of the Committee on Tariff Concessions said that the report contained detailed factual information on the status of waivers. While a number of countries had requested further extension of their waivers, some progress had been registered and several countries seemed very close to the conclusion of their Article XXVIII negotiations and would hopefully submit a new pre-Uruguay Round Harmonized System (HS) schedule in the near future. With reference to

its activities, the Committee had focused on the implication for GATT schedules of substantial changes to be implemented in the HS nomenclature as of 1 January 1996. It was expected that during 1995, many delegations would submit the necessary documentation related to the transposition of their schedules into HS 1996 and, where necessary, carry out renegotiations under Article XXVIII.

The CONTRACTING PARTIES adopted the report of the Committee on Tariff Concessions (TAR/269 and Add.1).

Point 4. Trade in Textiles

The CHAIRMAN drew attention to the report by the Committee on its meeting held on 2 December 1994 (COM.TEX/78).

The Director-General, Chairman of the Committee, introduced the Committee's report on its annual review of the operation of the Multifibre Arrangement (MFA) as extended by the 1986 Protocol (BISD 33S/7), and as maintained in force by the 1993 Protocol (L/7373). At its meeting, the Committee had considered the report of the Textiles Surveillance Body (TSB) (COM.TEX/SB/1975 and Add.1) and a statistical report by the GATT Secretariat (COM.TEX/W/268 and Add.1), and had heard an oral statement by the Chairman of the TSB.

He proposed to transmit to the Members of the Textiles Committee any notifications made to the TSB between its last meeting on 19 December and the date of the expiry of the MFA on 31 December 1994, after receiving such documentation from the Chairman of the TSB. He underlined that the meeting referred to above represented a momentous occasion - the end of thirty-three years of special rules for textiles and clothing trade: twelve years of the Cotton Arrangements and twenty-one years of the MFA. He expressed the appreciation of the Textiles Committee for the work of Ambassador Marcelo Raffaelli, Chairman of the TSB over a twelve-and-a-half-year period.

The CONTRACTING PARTIES took note of the statement and adopted the report of the Textiles Committee (COM.TEX/78).

Point 5. Committee on Balance-of-Payments Restrictions

Sub-point 5(c). Consultations with India and Pakistan (BOP/R/221)

Sub-point 5(d). Note on the meeting on 15 November 1994 (BOP/R/222)

Mr. Witt (Germany), Chairman of the Committee, introduced the reports. The Committee had met on 15 November 1994, and had held simplified consultations with India and Pakistan pursuant to Article XVIII:12(b) of the General Agreement and the Declaration of the CONTRACTING PARTIES on Trade Measures Taken for Balance-of-Payments Purposes (BISD 26S/205).

The Committee had appreciated the courage and the sagacity with which India had carried out its economic reform programme and encouraged it to continue implementing its import liberalization programme. The Committee had noted that, if the balance of payments showed sustained improvement, India's aim was to move by 1996/97 to a régime in which import licensing restrictions would be maintained only for environmental and safety reasons. The Committee had welcomed the significant improvement in India's balance-of-payments position since the last consultation, but recognized that it remained volatile and, therefore, determined that a full consultation was desirable in the second half

of 1995, the timing of which would be established in consultation with India, the IMF and other interested parties.

In respect of Pakistan, the Committee had decided to recommend to the Council that Pakistan be deemed to have fulfilled its obligations under Article XVIII:12(b) for 1994 and that the next regular consultation with Pakistan should be a full consultation.

Under Other Business, as set out in BOP/R/222, the Committee had a discussion on the format of the Secretariat background report in connection with paragraph 7 of the Declaration on Trade Measures Taken for Balance-of-Payments Purposes (BISD 26S/205).

Mr. Shannon (Canada) noted that in recent meetings the Committee on Balance-of-Payments Restrictions had been unable to carry out its work properly because the countries invoking Article XII or Article XVIII:B had not provided precise information on their import restrictions covered by balance-of-payments provisions. The Committee members had been unable to assess the appropriateness of the measures to forestall the threat of, or to stop a serious decline in the country's monetary reserves, or in the case of a contracting party with inadequate monetary reserves to achieve a reasonable rate of increase in such reserves. It had also been impossible to suggest alternative corrective actions which might be available, or to examine the possible effects of the restrictions on the economies of other contracting parties. For the Committee on Balance-of-Payments Restrictions to work effectively in the future, countries invoking balance-of-payments provisions should provide precise information well in advance of their review.

The CONTRACTING PARTIES took note of the statement, adopted the report in BOP/R/221, and took note of the information in BOP/R/222.

Point 17. Recourse to Articles XXII and XXIII¹

Sub point 17(d)(iv). United States - Restrictions on imports of tuna

- Recourse by the European Communities and the Netherlands
- Panel report (DS29/R)

The CHAIRMAN recalled that this matter had been before the Council at its meeting in November 1994 and had been referred to the present Session for further consideration.

Mr. Leng (European Communities) recalled that the Community's position with regard to this matter had been explained on two occasions at Council meetings and was well known.

Mr. Gardner (United States) said that his Government had been preoccupied in past months with the ratification of the Uruguay Round results and had not had time to examine the panel report. He said that his Government would be in a position to comment on the panel report at the next Council meeting in 1995 if the issue was taken up at that time.

Mr. Misle (Venezuela) recalled that this report had been before the Council since July. On several occasions, Venezuela had developed legal and environmental arguments for the Council to adopt

¹See also a statement circulated by Ecuador, Guatemala, Honduras, Mexico and Panama relating to item 17(a) of the Council's Report - a) European Economic Community: (i) member States' import régimes for bananas and (ii) import régime for bananas (document W.50/22).

the report. It believed that sufficient time had gone by for the consideration of this report, and would appreciate being informed of the United States' position, hoping that as the result of its analysis, the United States would be in a position as a first step to adopt the report before lifting the embargo imposed on Venezuela tuna products since 1991. If such were not the case, Venezuela reserved its rights within the framework of the WTO.

Mr. Kenyon (Australia) expressed disappointment that the panel report which dealt with important GATT principles and rules, supported by Australia, had not been adopted.

The CONTRACTING PARTIES took note of the statements and agreed to refer this matter to the Council for further consideration.

Sub-point 17(d)(v). United States - Taxes on automobiles
 - Panel report (DS 31/R)

The CHAIRMAN recalled that this matter had been before the Council at its meeting in November 1994 and had been referred to the present Session for further consideration.

Mr. Leng (European Communities) said that the Community was not prepared to adopt the panel report. In the Community's opinion, the report introduced a totally new interpretation of the first sentence of Article III:2. This interpretation was contrary to the well-established precedents of earlier panels, in particular the panel report on Japan - Customs duties, taxes and labelling practices on imported wines and alcoholic beverages.² According to these established precedents, the first of which dates back to the 1950s concerning Italian tractors, the underlying objective of Article III, paragraphs 2 and 4, was to prevent any impairment of tariff obligations under Articles I and II and to ensure equality of treatment for imported products once they had undergone customs clearance. This was an overriding objective for all contracting parties. In the present case, this had not been mentioned at all, being replaced by emphasis on prohibition on imposing taxes "so as to afford protection to production".

In accordance with the text of Article III:2, this prohibition applied only to competitive and substitutable products, mentioned in the second sentence. By introducing this prohibition as a decisive criterion also in the first sentence of Article III:2 concerning like products, the panel had gone against the text of that provision. Without giving any grounds for doing so, the panel had blurred the fundamental distinction between the first and second sentences of Article III:2. This interpretation, which was contrary to the actual terms of Article III, was unacceptable, since panels were not the law-making bodies of the GATT. The European Union was well aware that some flexibility must be given to "regulatory taxes" of the contracting parties. But to achieve this flexibility by an interpretation that was contrary to the very wording of Article III:2, created a danger of calling into question the well-established precedents on tax discrimination. It could not be denied that the new interpretation, owing to the variety of regulatory distinctions it authorized, allowed "tariff specialization" in an indirect manner and hindered full protection against any impairment of tariff concessions. Furthermore, the panel had set a very high standard with respect to proving the purpose and effect of protection of domestic production, even quite explicit statements by members of the American legislature had not been considered reliable proof. In doing so, the panel had exposed the legislators of contracting parties to the constant temptation - at a time when all governments were constantly looking for fresh revenues - to tax first and foremost imports, which often occupied "specialized market niches".

²L/6216.

Mr. Gardner (United States) took note of the Community's statement and intended to comment on it at the next Council meeting if this issue was taken up at that time.

Mr. Mahhusen (Sweden) said that in his delegation's view, the panel had not given due attention to all the discriminatory aspects and effects of the American car tax system. Its analysis of Article XX(g) and the issue of the least trade restrictiveness lacked in comprehension and provided no support for future discussion on taxes for environmental purposes.

Mr. Kenyon (Australia) expressed disappointment that the panel report which dealt with important GATT principles and rules that Australia supported, had not been adopted.

The CONTRACTING PARTIES took note of the statements made and agreed to refer this matter to the Council for further consideration.

Point 21. Customs unions and free-trade areas; regional agreements

- Free-Trade Agreement between the EFTA States and the Czech Republic and the Slovak Republic (L/7570)

The CHAIRMAN drew attention to document L/7570 containing the report of the Working Party, established by the Council in July 1992, to examine the Free-Trade Agreement between the EFTA States and what was then the Czech and Slovak Federal Republic.

The Chairman of the Working Party, Mr. Kesavapany (Singapore), said that the Working Party had recognized that the Agreements would contribute to further economic co-operation and trade relations between the Parties, advance economic activity and bring about an expansion of overall trade. It had noted that on entry into force of the Agreements, the EFTA States had eliminated customs duties and other import and export barriers for most products originating in the Czech Republic and the Slovak Republic covered under the Agreements, and that residual import restrictions on certain specific products, would be abolished not later than 1998. The Czech Republic and the Slovak Republic had also abolished customs duties on a specified list of products originating in the EFTA States, with restrictions on the remaining products to be phased-out within a transitional period of ten years.

Several members had agreed with the Parties to the Agreements that the Agreements covered substantially all the trade and that the agricultural bilateral arrangements, concluded within the framework of the Agreements, had contributed to facilitating trade between the Parties without raising barriers to the trade of other contracting parties. However, some other members doubted the consistency of the Agreements with the definition of a free-trade area in Article XXIV.

The Working Party had noted that the relevant provisions of the Agreements did not contain specific guidelines on a possible course of action regarding emergency actions involving third parties, but had been assured by the Parties that the Preamble to the Agreements contained the commitment that no provisions of the Agreements might be interpreted as exempting the Parties from their obligations under the General Agreement. Some members had pointed to their divergence of views with the Parties to the Agreements regarding the relationship of Article XXIV to Article XIX of the General Agreement.

Certain members had supported the Parties to the Agreements that the Agreements were consistent with the relevant provisions of the General Agreement; other members had questioned their full consistency with the relevant provisions of the General Agreement, including Article XXIV, and therefore

had reserved their GATT rights. The Parties to the Agreements had been invited to furnish biennial reports on the operation of the Agreements, the first such report to be submitted in 1996.

The CONTRACTING PARTIES took note of the statement and adopted the report (L/7570).

Sub-point 21(f). Enlargement of the European Community

Mr. Endo (Japan) said that his country was concerned that concessions made by the European Communities on items of interest to Japan would be modified less favourably due to the accession of Austria, Sweden and Finland to the Community. Japan had informed the Community of its intention to enter into Article XXVIII negotiations under Article XXIV:6 with respect to this enlargement and had requested the Community to provide the information needed for the process as soon as possible.

Mr. Leng (European Communities) took note of Japan's statement and said that the exact magnitude and scope of the enlargement of the European Communities had become clear only very recently, particularly, since the Community had learned that Norway had decided not to join. The Community still needed to work on the consequences of this enlargement on its Common External Tariff. Certain steps, in particular the internal ratification procedures by member States and adhering countries, were underway and awaited conclusion. Therefore, the final decision would be taken on 1 January 1995. On conclusion of these internal procedures, the Community would notify the complete text of all accession agreements. In the context of the procedures provided for by the Article XXIV, and in particular paragraphs 6 and 8, the Community intended to withdraw the list of tariff concessions of the three adhering countries as well as that of the twelve members of the Community. He confirmed that as of 1 January 1995 the Community would be ready to undertake the procedures under Article XXIV including tariff negotiations under paragraph 6 thereof.

The CONTRACTING PARTIES took note of the statements.

Point 22. Waivers under Article XXV:5

Sub-point 22 (a). Harmonized System

The CHAIRMAN drew attention to the following documents containing requests for extensions of waivers from the following countries: Argentina (W.50/14), Bangladesh (W.50/1), Bolivia (W.50/9), El Salvador (W.50/2), Guatemala (W.50/10), Israel (W.50/13), Jamaica (W.50/12), Morocco (W.50/3), Nicaragua (W.50/4), Pakistan (W.50/5), Sri Lanka (W.50/7), Trinidad and Tobago (W.50/8)

The Decisions were adopted with the following votes in favour:

Argentina (L/7592) - 108; Bangladesh (L/7593) - 109, 1 abstention; Bolivia (L/7594) - 107, 1 abstention; El Salvador (L/7595) - 108; Guatemala (L/7596) - 106; Israel (L/7597) - 104; Jamaica (L/7598) - 110; Morocco (L/7599) - 109, 1 abstention; Nicaragua (L/7600) - 109; Pakistan (L/7601) - 110; Sri Lanka (L/7602) - 110; and Trinidad and Tobago (L/7603), 110. No negative votes were expressed.

Sub-point 22 (c). Malawi - Renegotiation of Schedule LVIII

The CHAIRMAN drew attention to the communication from Malawi requesting an extension of its waiver (W.50/19), and to the draft decision annexed thereto.

The CONTRACTING PARTIES agreed that the draft Decision in W.50/19 be submitted for adoption by a vote.

The Decision (L/7589) was adopted by 110 votes in favour and none against.

Sub-point 22 (d). Senegal - Renegotiation of Schedule XLIX

The CHAIRMAN drew attention to the communication from Senegal requesting an extension of its waiver (W.50/6), and to the draft Decision annexed thereto.

The CONTRACTING PARTIES agreed that the draft Decision in W.50/6 be submitted for adoption by a vote.

The Decision (L/7590) was adopted by 110 votes in favour and none against.

Sub-point 21 (f). Zaire - Renegotiation of Schedule LXVIII

The CHAIRMAN drew attention to the communication from Zaire requesting an extension of its waiver (W.50/18), and to the draft Decision annexed thereto.

The CONTRACTING PARTIES agreed that the draft Decision in W.50/18 be submitted for adoption by a vote.

The Decision (L/7591) was adopted by 110 votes in favour and none against.

Sub-point 21 (j). Fourth ACP-EEC Convention of Lomé

The CHAIRMAN drew attention to the communication in L/7539 and Corr.1 containing the request for a waiver, as well as to a revised text of the draft Decision contained in C/W/820/Rev.2³

Mr. Leng (European Communities) said that the Community attached considerable importance to this matter due to its very political nature. At the Council meeting in November the Community had noted that the request for the above-mentioned waiver had met with a political consensus of the Council members. However, some contracting parties had wished, for linguistic reasons, to review the text and the Community had consulted with those contracting parties who had wished to make some adjustments. As a result, at the present meeting a new text had been submitted to the CONTRACTING PARTIES for adoption. He recalled that at the November Council meeting he had explained the reasons which had led to the request for this waiver and had stated that the Community had not changed its views regarding the compatibility of the Convention of Lomé with the GATT provisions. It had been at the encouragement of a number of contracting parties that this waiver had been requested. He hoped that contracting parties would be able to reach a consensus on this matter at the present meeting.

Mr. Gardner (United States) said that the United States along with many other contracting parties had long believed that the Community should seek a waiver for the tariff preferences which it provided to the ACP countries. Tariff preferences were an appropriate tool in fostering economic development. However, the United States wished to make clear that the United States and other contracting parties

³ This text was a revision of the draft Decision circulated at the November 1994 Council meeting in which the words "as foreseen under" have been replaced by "as required by".

had problems with the Community's existing banana régime which had been ostensibly designed to benefit ACP countries. Two panels⁴ had found that many of the provisions of the Community's banana régime and its predecessor régimes were discriminatory and GATT-inconsistent. These discriminatory provisions did not benefit ACP countries, but did adversely affect the economic and trade interests of other contracting parties. Furthermore several provisions, rather than help ACP banana exports, had been designed to protect the economic interests of certain Community companies at the expense of non-Community firms. The Convention of Lomé did not require the Community to include these objectionable features in its banana régime. The granting of the waiver would not relieve the Community of its obligation to address the discriminatory provisions in its banana régime and the harm caused by them to the legitimate trade and economic interests of other contracting parties. Failure to address such problems would leave adversely affected contracting parties with no alternative but to take appropriate actions to protect their legitimate interests.

Mr. Urruela Prado (Guatemala) said that at the request of his delegation, bilateral consultations with the Community had been held on the text of the draft Decision concerning the request for a waiver. At these consultations Guatemala had indicated that it did not oppose the Lomé Convention *per se*, but that there were serious obstacles for Guatemala to join the consensus that had been emerging around the draft Decision. On two occasions, Guatemala had utilized the dispute settlement mechanism in order to promote its rights against the banana import régime as applied by the Community. The first panel had analyzed the régimes of some member States of the Community and had concluded that they were GATT-inconsistent. Despite these recommendations, the Commission had imposed on its member States a common organization of the market in the banana sector. A second panel had condemned this régime. Guatemala was aware of the fact that the Lomé Convention had a broader coverage. However, the present import régime of the Community designed to benefit countries of the Lomé Convention had seriously affected Guatemala's interest in this product. Guatemala did not want to prejudice the ACP States but rather sought to find a fair solution for all. He urged other contracting parties to show their openness to dialogue by taking into account interests of all parties in order to find an overall solution. Guatemala would not oppose the consensus, but he made it clear that the waiver would not liberate the Community from its obligation to bring its banana import régime into conformity with GATT obligations. He added that the extension of the Lomé Convention which was of the transitional nature would in no way prejudice Guatemala's rights under the General Agreement nor in the WTO.

Mr. Pierce (Jamaica) said that this matter had been discussed at the November Council meeting where Jamaica, speaking on behalf of the ACP countries, had indicated the importance which ACP countries attached to the request for the waiver. The Community had already outlined the reasons why this request had not been adopted at the November Council meeting. In November, a large number of delegations had expressed their support for the waiver and amendments sought by one delegation had been incorporated into the text of the draft Decision. The ACP member States hoped that this request would be granted at the present meeting. In this context, he thanked Guatemala for deciding not to oppose the consensus to grant the waiver.

Mr. Tironi (Chile) said that at the November Council meeting, Chile had indicated its concerns with regard to this matter, but would support and vote in favour of the draft Decision for a waiver to enable the Community to bring its trade preferences granted to the ACP countries under the Lomé Convention into conformity with GATT. However, Chile wished to put on record that it did not consider that the Lomé Convention was compatible with the obligations under Article XXIV of the General Agreement as indicated by the Community in paragraph 5 of the draft Decision.

⁴DS32/R; DS38/R

The CONTRACTING PARTIES took note of the statements, approved the draft Decision in C/W/820/ Rev.2 and agreed that this draft Decision be submitted for adoption by a vote.

The Decision (L/7604) was adopted by 105 votes in favour, none against, and 1 abstention.

Mr. Kenyon (Australia) said that his country which had supported the request, was very pleased that the CONTRACTING PARTIES had acted positively on the request for a waiver by the Community and the ACP contracting parties to the GATT in relation to the Fourth Lomé Convention.

The CONTRACTING PARTIES took note of the statement.

Sub-point 21(h). German Unification - Transitional measures adopted by the European Communities

- Report by the European Communities on the use of the waiver of 14 June 1993 (L/7572)

The CHAIRMAN drew attention to the report by the European Communities on the use of the previous waiver granted on 14 June 1993 (L/7572).

The CONTRACTING PARTIES took note of the report.

- Request for a waiver under Article XXV:5 (C/W/821/Rev.1 and Add.1, L/7541)

The CHAIRMAN drew attention to the request by the European Communities in document L/7541 for a waiver from the provisions of Article I:1 in order to apply certain transitional measures adopted in the context of German Unification which had been circulated for the Council meeting in November and was referred for consideration to the CONTRACTING PARTIES' Session. He also drew attention to the draft Decision in C/W/821/Rev.1 in which, at the request of the Community, the date of the waiver had been modified from 31 December 1994 to 31 December 1995.

Mr. Leng (European Communities) said that a waiver had been granted to the Community since the date of German Unification until 1993 to enable it to apply transitional measures taken to maintain trade flows between the former German Democratic Republic and its European partners of the former CMEA. As indicated in the report, despite the minimum trade impact, these measures had not been without importance, in particular for a number of small and medium-size enterprises. The CONTRACTING PARTIES had before them a draft Decision which covered the period until the end of 1995. He stressed that this was the final request for a waiver concerning this transitional régime.

Mr. Gardner (United States) said that the United States was prepared to agree to a waiver, since the Community had given its commitment that this was the last time such a waiver would be sought.

The CONTRACTING PARTIES took note of the statements, approved the text of the draft Decision in C/W/821 as amended, and agreed that the draft Decision be submitted for adoption by a vote.

The Decision (L/7605) was adopted by 105 votes in favour, none against and 1 abstention.

Mr. Kenyon (Australia) said that his country was very pleased that the CONTRACTING PARTIES had acted positively on the request for a waiver by the Community to apply certain transitional measures adopted in the context of German Unification which had been supported by Australia.

The CONTRACTING PARTIES took note of the statement.

The meeting adjourned at 6 p.m.