

GENERAL AGREEMENT ON

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COUNCIL

8-9 February 1989

DISCUSSION ON UNILATERAL MEASURES

At its meeting on 8-9 February 1989 (C/M/228) and following a brief procedural debate, the Council agreed to a suggestion by the European Communities that prior to the approval of the Agenda, there be a general discussion on the subject of unilateral measures.

The representative of the European Communities asked the Council to discuss an important issue pertaining to the existence of the multilateral system itself, before beginning its regular work. Proceeding in this way would not be new: a precedent had been set at the Council meeting in May 1988. He recalled that the Council also had a surveillance function which went beyond its ordinary work, and it was in that context that he was taking the floor.

The Community wished to initiate a discussion on threats to the multilateral system embodied in GATT. GATT was, in fact, in mortal danger due to the increasing recourse to unilateral and discriminatory measures. Today, this fear was illustrated by the measures taken by the United States. Such unilateral and discriminatory measures should be disavowed without ambiguity.

He quoted from a document distributed by the United States' delegation at Montreal in December 1988 which presented the United States' position on recourse to unilateral measures, based on Section 301 of the Omnibus Trade and Competitiveness Act of 1988. The United States would resort to unilateral action only where the issues involved in a section 301 case were not covered by the GATT or where a country refused to adopt or implement a panel report. The mortal danger to GATT came directly from all that was unilateral. The Community had often stressed the dangers of unilateralism, for example during discussion on the US Trade Act in 1988. It had questioned the compatibility of Section 301 with the provisions of the General Agreement, because it allowed unilateral measures to be taken on the basis of a unilateral finding, without the CONTRACTING PARTIES' authorization. In this, the United States Trade Act contained the seed of unilateralism, arbitrariness and bilateralism in its negative sense.

What he was saying had been reproduced in the Council's Minutes (C/M/224) and the Community had used the same words at the CONTRACTING PARTIES' Forty-fourth Session in November 1988. In the Uruguay Round, before and at Montreal when drafting the text on dispute settlement, the Community had insisted that participants take a position on the need to outlaw unilateral measures, and the United States alone had blocked agreement on this point.

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As to the dispute between the United States and Brazil¹ and that between the United States and the Community², which the Council would consider during its regular work after the current discussion, the Community had deplored the retaliatory measures taken by the United States. He said that in order to keep the present discussion centred on unilateral and discriminatory measures, regardless of their origin or justification, he would briefly focus on the question of hormone-fed beef. He quoted from an article by Professor Bhagwatti published in the New York Times on 9 January 1988, which indicated that the Community was fully within its GATT rights in banning the use of hormones in meat produced in the Community as well as that which was imported. The article also stated that it was a generally accepted premise that social policy did not always reflect scientific evidence.

The United States Presidential Proclamation No. 5759 of 24 December 1987, which entered into force on 1 January 1989, would only affect a tiny share of the Community's total exports to the United States. It was not because of this small amount -- US\$100 million -- that he was taking the floor, but rather because of the danger faced by the GATT system if recourse to such unilateral and discriminatory measures were not duly penalized.

The United States had failed to fulfil a number of obligations. First, it had not taken the trouble to comply with a fundamental obligation -- that of notifying its measures to GATT; by doing so it had demonstrated that it had deliberately chosen to act outside the legal framework of the General Agreement. Second, the issue at stake was whether the United States had the right to take retaliatory measures without prior authorization by the CONTRACTING PARTIES. This was the basic question which all GATT contracting parties as well as the Director-General should answer. Did any country within the GATT system have the right to be judge of its own cause? If that were the case, it would be a repudiation of GATT itself. The Community had begun this discussion and asked the United States to express its view. It also invited other contracting parties to talk; silence on such a basic question would be misunderstood. To remain silent would be reprehensible and irresponsible. Without wanting to sound apocalyptic, he did want to provoke some real heart-searching and thus bring about a full awareness of the situation, without which a general lack of confidence in GATT as an institution might prevail. If there were no clear response to its appeal to GATT, how could the Community justify not taking its own measures of self-defense? If the Community entered the spiral of counter and counter-counter retaliation in response to United States' measures, could GATT continue to be viable and respected?

Regarding the possible counter-measures by the Community, he quoted an opinion of the Communities' Legal Service which indicated that such counter-measures would be legitimate, according to the precedent of the

¹Agenda item no. 3.

²Agenda item no. 9.

France/United States Aviation dispute, decided by arbitration in 1978. Therefore, the Community would have proper grounds for not setting aside the possibility of counter-measures if there were no clear signal from contracting parties.

The Community did not want to act outside the GATT. This was why it was making this appeal to the Council to disapprove the unilateral and discriminatory measures taken by the United States. That was its first request. The second was that the Council should ask the United States to withdraw the measures already in force. Without its action having any legal status, the Council should invite the two parties to find a solution as quickly as possible in the legal context of the General Agreement. This was a last-chance appeal to enable GATT to survive and remain viable. It was important for all contracting parties to oppose unilateralism whatever its origin, form or justification.

To conclude on a lighter note, he quoted the words of Jean-Louis Laya, who wrote in 1880 "L'ami des Lois": "A snake may change its skin but never its habits". He pointed out that according to the lunar calendar, this was the year of the snake: the snake changes its skin, and this year it had exchanged the skin of protectionism for that of unilateralism.

The representative of the United States said that his delegation welcomed the opportunity to have this discussion outside the Council's agenda. Fingers were pointed in all directions, as unilateralism was not to be found in just one location. It was true that, as a former US Trade Representative had said, all countries were sinners. Moreover, it was important to differentiate between small and big crises. A big crisis was one which involved the multilateral trading system as a whole, as was the case prior to the launching of the Uruguay Round, but a small crisis, as was the case regarding the dispute on hormone-fed beef, should be treated as such and in a proper perspective. The trade involved was relatively miniscule in relation to total trade between the United States and the Community. He quoted from a recent newspaper article which described as protectionist a recent Community regulation regarding semi-conductor microchips. Over the preceding six weeks, the press had carried numerous charges concerning the Community's method of assessing anti-dumping duties, with accusations that those processes had been rigged against importers. These would clearly have to be examined.

The Community had referred to "unilateral" actions as if the latter were taken in a vacuum, but everyone knew that it took two or more "to tango". There were few contracting parties which had devoted as much effort, time and resources to supporting the GATT system as the United States, which had pushed consistently for the expansion of the GATT and the strengthening of its provisions. At every turn, it had encountered those who did not want the system to function more effectively, who found the system's current inadequacies convenient and who were content to draw back from new areas, new disciplines and new efforts to liberalize world trade. The United States had laboured with other contracting parties for most of the present decade to launch the Uruguay Round and to pursue it vigorously. The GATT was always the United States' first choice.

He emphasized that the United States had taken and stood ready to take action when it was in response to foreign unfair practices. Regarding the hormone-fed beef issue, it was unfortunate that the United States' meat trade and that of several other contracting parties had to be disrupted while a solution to this problem was being sought. There was still no evidence that US meat products ever had or ever would present any health risk to European consumers. The United States could accept that the Community could believe itself forced to take action for reasons of social policy, but at the expense of whose trade interests, with what scientific justification and with what basis for refusing to have any scientific assessment of the grounds for those actions? Was it appropriate for the Community to pursue one right at the expense of others' rights? Wherever it could, the United States would challenge unfair practices under the dispute settlement provisions of the General Agreement or the Tokyo Round Codes, but where other contracting parties prevented or impeded that process or blocked efforts to ensure that their practices were covered by multilateral disciplines, the United States would act to protect its interests. If such action was considered unilateral, it should nevertheless be recognized as perfectly justifiable, responsive action necessitated by the failure of bilateral or multilateral efforts to address a problem. The way to minimize or avoid unilateralism was to create a credible multilateral system -- by strengthening the existing system.

The Community had suggested that the United States pledge to remove its sanctions. The United States was prepared to accept that, on condition that the Community be prepared to suspend its own unilateral measures which had necessitated the United States' retaliatory action. He suggested that the United States and the Community could jointly pledge to the Council that they would roll back the two actions, thus allowing time to assess the problem, and asked if the Community was prepared to do this.

The representative of Japan registered his country's deep concern over what appeared to be a proliferation of unilateral actions without prior authorization by the CONTRACTING PARTIES. Japan believed that trade conflicts should be solved by the contracting parties concerned, in accordance with GATT rules and procedures. This was one of the fundamental corner-stones of the GATT system. Resort to unilateral action outside GATT led to a loss of credibility and a weakening of the GATT system.

In the area of unilateral actions, the most important was Section 301 of the US trade legislation. Japan believed that the United States should refrain from taking measures under Section 301 in a manner inconsistent with GATT. Council discussions should not, however, be used to put blame on a specific contracting party, but should address all sorts of unilateral actions inconsistent with GATT as a whole. Furthermore, all other kinds of protectionist moves which ran counter to the multilateral trading system, such as regionalism and bilateralism, should also be addressed. Japan was convinced that, in order to cope effectively with the serious issue of unilateral actions, there was an urgent need to strengthen GATT rules and disciplines as well as to reinforce its dispute settlement mechanism. In this connection, successful conclusion of the Uruguay Round negotiations was all the more important and necessary.

The representative of Brazil said that his delegation supported the Community's two requests that the Council reject unilateral measures taken and that the United States agree to review and withdraw these measures. Brazil shared the inspiration for, the arguments in, and above all, the timeliness of, the important statement made by the Community, which sounded an essential alarm against the dangers threatening all contracting parties and reflected the doubts about the system. He expressed Brazil's satisfaction that the Community was joining hands with Brazil in the campaign against unilateral measures taken within the multilateral trading system.

The General Agreement was the only legal framework within which contracting parties should conduct their business -- a legal instrument which all contracting parties had accepted and which should be binding upon all to the same degree. Unilateralism, on the contrary, meant falling back to a state of war against all and the imposition of the will of the most powerful. There had been an alarming escalation of these illegal unilateral actions. For example, since 1985 the United States had invoked Section 301 on 18 different occasions, in most cases as an instrument to exert pressure -- a form of trade harassment to force its trading partners to take certain action. In order to justify this, the United States alleged that it was only in reaction to unjustified actions by its trading partners, thus using unilateralism to attain multilateralism.

Such an endeavour gave rise to two problems -- the selection of the method and the fact that the main actor was the judge of its own cause. Could the only interested party, based on criteria chosen by itself alone, define what an unjustifiable action was, without any prior authorization from the multilateral organization to which it belonged? To accept such an approach would be tantamount to admitting that one contracting party had a form of legislation that was universally valid and that this contracting party was more equal than the others. If all contracting parties were considered thus, there would be a state of total anarchy in GATT. Unilateralism put in question the legal value of the General Agreement and of the rules according to which contracting parties were negotiating; it raised the question whether new rules should be created.

At Montreal and elsewhere, one had heard the reaffirmation of the readiness to use unilateral measures if necessary to act against unjustifiable action by trading partners. Were contracting parties ready to accord to one among them a type of infallibility in its trade actions? All contracting parties were sinners, despite the fact that some had more power to sin than others. The time was ripe for a collective penitence -- to recognize that none were without sin and that all bore the same responsibility to defend the multilateral trading system. He called on all to make an act of penitence and never to sin again.

The representative of Australia said that contracting parties had been asked by one of the largest trading entities, the European Community, to make a collective criticism of the increasing resort to unilateral action by one of the other largest traders in the GATT, the United States. This gave rise to suspicion. Was the proposition true? Had the United States

embarked on a new wave of unilateral action? Before answering such questions, it should be asked what a unilateral action was. The immense variety included (1) the United States' ability under its national legislation to impose sanctions on individual countries regardless of international obligations or understandings; this was always to be criticised. (2) The more established, traditional form known as voluntary restraint arrangements, in which, regrettably, there had been no diminution by the major practitioners -- the United States and the Community. Nevertheless, this, too, should be criticised, and its longevity should not lead to complacency about it. (3) There was an amazing array of action outside the GATT in the agricultural field, where the United States and the Community had demonstrated roughly comparable levels of ingenuity. Thus, against this background, the US action appeared as a continuation of an unfortunate trend, but not a new departure. What was worthy of collective criticism was the overall phenomenon of resort to unilateral action by the big players. The reason the Community wanted to focus on US action was the hormones retaliation issue -- yet another dispute between the two parties over an agricultural trade issue.

In Australia's view, unequivocal support should be given neither to the Community's policy, for which there was no justifiable technical basis, nor to the US retaliation, for which there was no GATT basis. The Community refused to have the scientific basis of its ban on the import of hormone-fed meat tested under the Standards Code³ because it knew its position would not be sustained. In turn, it challenged the United States to test the ban under the GATT provision according to which contracting parties have the right to take action to protect human health, which the United States refused. Contracting parties were once again witnessing the inability of these two parties to deal with disputes between themselves on agricultural trade matters. The Uruguay Round was currently on the rocks over agriculture, and yet the Community and the United States were squabbling over a small trade item -- involving only about US\$100 million per year -- which had been on their common agenda for over a year and which they were incapable of settling.

A review of the agenda of unresolved items before the Council presented a sobering picture. A panel set up in June 1988 to hear US complaints against the Community on soja beans, a big trade item, had still not started work, due to the parties' disagreement on terms of reference; a Community request in September for a panel on US agricultural measures was still outstanding; and the hormones retaliation issue had been on the agenda of the previous two Council meetings. GATT's dispute settlement procedures were being brought to their knees over agricultural trade disputes between the United States and the Community. The significant restoration of the authority of those procedures achieved over the past two years, principally because the major players had been prepared to play by the rules, was currently being undone jointly by the United States and the Community. The time elapsed since these issues had come onto the Council's agenda now exceeded what was regarded as reasonable. Both parties had

³ Agreement on Technical Barriers to Trade (BISD 26S/8).

indicated over the past two or three years that delays like these were unacceptable from other trading partners. Was a two-class system developing?

The most important conclusion to be drawn from the state of affairs contracting parties now collectively faced was the following. As at December 1988, three agricultural trade disputes were locked, unresolved on the GATT agenda. It was no coincidence that the Uruguay Round had stalled on agriculture because the United States and the Community had been unable to sit down and negotiate. The Uruguay Round was in jeopardy and the authority of the multilateral trading system was currently at risk, in both cases because the United States and the Community were incapable of agreeing to address systematically the most persistent cause of trade disputes between them -- agriculture. This was what merited censure. If the Council wanted to express a view on these matters, it should be that both the United States and the Community should assume their responsibilities and devote their time and efforts to putting agricultural trade reform on the road.

The representative of Canada said that there had been a number of cases recently where unilateral trade measures had been taken or threatened by certain contracting parties. This was a problem of crucial interest to all contracting parties, and Canada, for one, did not want to engage in finger-pointing in the present discussion. Canada considered the use of unilateral retaliatory action, without prior GATT sanction, to be clearly inconsistent with a contracting party's GATT obligations. GATT had a well-developed dispute settlement system for resolving bilateral disputes, and a strong, effective dispute settlement system was in the interest of all.

For this system to work, however, all contracting parties had to be willing to respect procedures and to make use of them. This included a willingness both to forego the use of unilateral measures as well as to agree to submit disputes to GATT panels, which carried with it the presumption that parties would follow the dispute settlement procedures expeditiously and in good faith, including the adoption and implementation of panel reports, rather than resorting to unilateral action. Contracting parties had also established procedures in Article XXIII:2 that provided for a contracting party to request authority from the CONTRACTING PARTIES to suspend the application of concessions or other obligations to any other contracting party. Canada urged contracting parties to confirm their commitment to the GATT system by avoiding the use of unilateral action and by using the dispute settlement system.

The representative of New Zealand said that it was important to look at these matters in their widest context. Questions of principle, GATT procedure and national interest were involved. In terms of New Zealand's and, no doubt, most Council members' interests, and even the interests of GATT as an institution, it was highly desirable that the United States and the Community resolve the particular bilateral dispute which underlay this discussion before it mushroomed into a cycle of retaliation and counter-retaliation in which the real issues were lost. That was the underlying matter before the Council.

New Zealand did not consider the way in which the Community had introduced this item onto the Council's agenda to be conducive to a resolution of the underlying dispute. The Community was absolutely correct in a procedural sense in arguing that the United States was pre-empting GATT's proper procedures by retaliating in a unilateral manner. But those who wanted to take a stand on the importance of observing GATT procedures had a concomitant responsibility to ensure that their own house was fully in order before doing so. His delegation was not sure that the Community's house was entirely in order. By focussing on the US unilateral measures, the Community was addressing only one half of the wider problem. It was equally clear that the underlying reason for these unilateral measures was the Community's failure to allow the dispute settlement mechanisms of the appropriate GATT body to operate.

Thus, New Zealand shared the Community's concern that the United States had adopted unilaterally a series of measures without regard to appropriate GATT procedures; but it was also concerned at the Community's unwillingness to allow this to be handled properly at a more technical level under procedures which had been developed precisely for disputes of this nature, thereby allowing the situation to deteriorate to the point where the dispute now threatened not only the interests of the two protagonists but the entire international trading community. This was a matter of wide concern in New Zealand. It was imperative that the United States and the Community find a way of resolving this dispute in all its aspects as promptly as possible, either within the GATT or through serious bilateral discussions.

The United States and the Community were the largest players. As an institution, GATT was to a large extent what those two contracting parties chose to make of it. In the Uruguay Round, contracting parties were looking to each of them, separately, for the sort of leadership, common sense and commitment that had given GATT its preeminent place among effective multilateral organizations. On agriculture, little of that leadership had so far been seen. Contracting parties were looking for that same sort of leadership in the present dispute, rather than schoolyard squabbling, which was not only stupid but dangerous.

The representative of Argentina said that his delegation questioned the timing of and reason for the present discussion, and doubted the wisdom of holding such a special discussion outside the Council's agenda. Argentina believed, however, that the subject raised by the Community was fundamental to the whole system. Unilateralism, the abuse of power, and placing national laws over international law had in fact led to the current severe crisis, which had necessitated a reaction by contracting parties and which was a firm justification for the Uruguay Round. The real sinners were those with sufficient power to defend their positions outside the General Agreement and to enact laws enabling them to influence international trade to their own benefit.

No contracting party had the right to cast the first stone in the present system; all were responsible and all should commit themselves to ensure that by the end of the Uruguay Round, there would be no possibility for any contracting party, large or small, to act outside the multilateral trading system once it had been appropriately strengthened. But political

will -- not yet seen either in the Round or in the Council -- was essential to this. In order for the Uruguay Round to be successful, subjects such as dispute settlement had to be concluded, with new, clear and positive rules; otherwise, the situation might be much worse and might even spell the end of GATT.

The representative of Hong Kong said that Hong Kong did not like being placed in the same sin bin as some contracting parties. It could, however, associate itself with Canada's statement. Hong Kong, too, was very concerned with the tendency toward unilateral action and, indeed, with any form of unilateralism, for example, in the interpretation of agreed rules in the Anti-Dumping Code.⁴ All unilateral acts resulted in friction, but more importantly, had a knock-on effect on the multilateral trading system. It was particularly worrying that if unilateralism was not checked, it would further sour the atmosphere for the remaining two years of the Uruguay Round. It was said that some of these unilateral actions were the consequence of perceived unfair practices. Even if this were so, unilateral action was not the answer, for the reasons he had given. Contracting parties should go to the root of the problem; GATT provided many procedures to help frustrated parties, but it was important that there be a political will to make them work. Hong Kong urged all contracting parties to refrain from unilateral action of any description.

The representative of Thailand, speaking on behalf of the ASEAN contracting parties, expressed their deep concern over this matter. Irrespective of the legal arguments and merits as stated by the parties to this dispute, contracting parties should not resort to unilateral action to settle a bilateral dispute. The ASEAN contracting parties did not approve of unilateral retaliatory or counter-retaliatory actions by contracting parties, as such actions would undermine the GATT system. They therefore urged the two parties in this dispute to resolve it in accordance with GATT procedures.

The representative of Switzerland said his delegation regretted that the problems between two contracting parties had reached a stage where unilateral measures contrary to the General Agreement had been taken by one of them. This problem had to be reviewed in a larger context, in the framework of the entire system. The present discussion, if unforeseen, was most useful in that it permitted the differentiation of the problem itself and the influence it would have on the trading system. Regarding the latter, Switzerland shared the concerns expressed by many previous speakers, in particular, the Community. Switzerland regretted any recourse to unilateral or bilateral measures, irrespective of the party taking them. Only those unilateral measures expressly foreseen in the GATT, for example Articles VI and XVI, were in conformity with the General Agreement.

He said that the origins of this discussion had to be kept in mind, and recalled that at the September 1988 Council meeting, his delegation had

⁴Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade (BISD 26S/171).

expressed its concern that the new US legislation would allow a unilateral interpretation of international rules, and that aspects of it might be protectionist. Two additional elements were (1) the relationship between these possibilities and the GATT rules, and (2) their relationship to the Uruguay Round. Switzerland had expressed the hope that the US legislation would be applied in conformity with the international rules governing multilateral trade, and that this would enhance liberalization of trade in goods and services and reinforce the credibility of the Uruguay Round.

He asked how the multilateral trading system could be strengthened if participants in the Uruguay Round negotiations had ever-increasing recourse to actions which were outside the system. This sort of attitude should be avoided and should not be allowed to spread to other countries. Measures such as those being discussed would not improve the delicate climate of the Uruguay Round and were not auspicious for a successful end to those negotiations. Efforts should be made in GATT to strengthen as much as possible all rules and regulations concerning international trade, in the interests of all participants in the Round.

The second element of concern related to the settlement of trade disputes within the framework of GATT. The dispute settlement procedures provided for in the General Agreement and in the Tokyo Round Codes were indispensable elements for protecting the predictability of international trade. GATT's dispute settlement system had recently been somewhat strengthened, and the results achieved at Montreal, when applied, would further improve it. Switzerland continued to hope that final solutions to the problems at the base of the present discussion would rapidly be found, within Articles XXII and XXIII of the General Agreement and also according to the appropriate elements of the Standards Code, in particular its Articles 13 and 14. The present discussion showed the degree to which contracting parties were concerned by the evolution towards unilateralism.

The representative of Finland, speaking on behalf of the Nordic countries, expressed their serious concern that unilateral actions had been taken without any prior GATT authorization. It was regrettable that one of the most important trading nations in the world and one of the strongest supporters of GATT had taken such a step. Domestic law should be applied in a manner consistent with the General Agreement. At a time when contracting parties were engaged in precarious and difficult negotiations aimed at strengthening and improving the multilateral trading system, it was of paramount importance to adhere to GATT rules and regulations.

The Nordic countries believed that the measures in question and their implications should be addressed in GATT. However, for a ruling by the Council, it was customary GATT practice that the Council have a solid basis for taking such action, normally in the form of a report from a panel or a working party. The Nordic countries' primary interest in solving this dispute was to relieve the stress it caused GATT, the multilateral trading system and possibly even the Uruguay Round. They had carefully noted what the two parties had said at the present meeting, and appealed to them to find a mutually acceptable solution.

The representative of Nicaragua said that his country had been a victim of unilateralism; for this reason and out of its own conviction, Nicaragua condemned unilateral actions and any illegal measures which endangered the multilateral trading system. He reiterated his country's belief that the GATT dispute settlement procedures, although in need of improvement, should be utilized. Unilateral measures worked against the essence of the GATT system and should not be allowed to undermine it. He said that the GATT system worked when a large country took a position against a small country, but when it was the other way round, as was the case for Nicaragua, that system no longer worked; and when two major contracting parties took positions against each other, the system entered into a state of crisis. It was essential to ensure that the system worked in each and every case.

The representative of Indonesia, by way of supplementing Thailand's statement on behalf of the ASEAN contracting parties, said that this discussion should not be used as a finger-pointing exercise but to caution against problems which threatened basic principles. When a dispute involved major trading partners, a spill-over effect on smaller entities should be avoided. Indonesia urged the major trading nations not to take steps which would destabilize the delicate world trading system. Unilateral measures taken to settle differences did not help to strengthen GATT; thus, his delegation urged all contracting parties to refrain from actions which undermined GATT principles, irrespective of the merits or demerits of the technical issues currently being argued. The developing countries saw in unilateral actions the threat of trade harassment, which they had increasingly felt in recent years and which was of grave concern to them, especially as they were currently engaged in the Uruguay Round negotiations.

The representative of Hungary said that his country had experienced the effect of the application of GATT-inconsistent measures. Hungary was convinced that the greatest responsibility lay with the major trading partners who had to stick to multilateral disciplines and rules and to resist any temptation to take unilateral action or to introduce or maintain GATT-inconsistent measures. Hungary regretted that the Community and the United States had been unable to reach an agreement on the hormones issue, despite having had over a year to do so. It was equally regrettable that the Community had refused to subject its import ban to impartial scientific scrutiny under the Standards Code and that the United States had introduced the unilateral actions in 1989. Hungary's greatest concern, however, was that new trade frictions were appearing and deepening at a time when the Uruguay Round negotiations had reached a critical stage where the de-blockage of the agricultural negotiations was mainly dependant on the United States and the Community. Much was expected of GATT, which was increasingly in the public eye; it was up to the major trading partners to live up to their responsibilities and to ensure that GATT worked.

The representative of India said that his country shared the sense of crisis and deep concern over the threat unilateralism posed to the multilateral trading system. The GATT system had been receiving a battering for some time. Quite some time earlier, observers of GATT

affairs were speaking of decay and degeneration; the situation now was worse. One professor had recently expressed the opinion that GATT was dead. India did not share this view, nor even that it was dying, but did believe that the major trading powers had the ability to deal it a mortal blow, and that Section 301 of the US Trade Act provided a potential weapon for such a blow. Unilateralism was dangerous because it set at nought a major GATT obligation -- to seek prior authorization for retaliatory steps. India therefore joined the appeal that the unilateral measures taken so far be withdrawn and that contracting parties reaffirm their commitment not to take recourse to such measures. It was not necessary specifically to outlaw unilateral measures, because these were already inconsistent with GATT -- in letter and in spirit.

His delegation agreed that in order to save the multilateral system, the Uruguay Round had to proceed and to succeed. It had been said that the Round was stalled because of the inability of the two major players to find common ground on agriculture. While it might take time to find solutions, time had to be allowed for the Round to progress. It would be counter-productive to take actions which imperilled the multilateral system, in the vain hope that this would give impetus to the Uruguay Round.

The representative of Chile said that there was a serious threat to the GATT system at present. In the dispute in question, there were, on both sides, violations of GATT dispute settlement procedures as well as of other provisions of the General Agreement. On the one hand, the Community had denied the legitimate right of a party to the Standards Code to have a group of technical experts examine this matter, and had thereby prevented the relevant body from adopting recommendations which might have led to a solution to this dispute. Because of this denial, the United States had, on a unilateral basis, imposed retaliatory measures without prior authorization from the CONTRACTING PARTIES, thus by-passing an approved procedure. Chile viewed this dispute with considerable alarm. The Uruguay Round, which was half-way over, offered the possibility of reaching certain agreements. It was highly important for the developing countries to have the certainty that any such agreements would be respected by the major contracting parties, and would not be binding solely on the weaker ones. Chile hoped that if the United States and the Community could not reach a solution to this dispute at the present meeting, they would continue bilateral efforts to do so and would inform the Council of the results at its next meeting.

The representative of Pakistan said that as a small country, Pakistan had to disapprove of unilateralism, which threatened to undermine the very foundations of the multilateral trading system and which tended to degenerate into discrimination -- which was equally, if not more, dangerous to the GATT system. Pakistan disapproved of unilateralism in all its facets and invited the parties to disputes, including the one under discussion, to use the GATT dispute settlement procedures, particularly at this critical juncture when all contracting parties were trying collectively to reinforce and strengthen the GATT dispute settlement system and procedures.

The representative of Peru associated his delegation with many of the previous statements. It was essential for all contracting parties, in considering their own individual economic interests, to resort to the dispute settlement provisions of the General Agreement when faced with trade problems among themselves, rather than to take unilateral measures which threatened the multilateral trading system as a whole -- which all contracting parties had an obligation to strengthen and respect.

The representative of Colombia said that contracting parties ran the risk of seeing this type of discussion crop up on a regular basis in the future unless they managed to ensure that in the course and by the end of the Uruguay Round, the legal impact and value of the General Agreement was the same for all contracting parties. This was the crux of the matter. Many contracting parties abided by the provisions of the General Agreement while others tended to apply provisions of their own domestic legislation which was not always GATT-consistent or in conformity with GATT rules. The US legislation allowed for trade harassment and for the application of GATT provisions in an arbitrary manner. This was the root of current difficulties. He reiterated that it was essential that by the end of the Uruguay Round, contracting parties be certain that they were on an equal footing in respect of the provisions of the General Agreement.

The representative of Uruguay said that one of the permanent guidelines for Uruguay's foreign, including trade, policy was respect for all the commitments and conventions to which it had subscribed. All contracting parties had accepted commitments under the General Agreement and should respect them. The general tenor of the present discussion had rightly been a rejection of the action taken, which was not in any way GATT-consistent. Uruguay hoped that the major trading partners would show more political will and determination to bring the Uruguay Round to a successful conclusion, and less enthusiasm for applying bilateral retaliatory measures which had an adverse effect on the atmosphere for those negotiations. The present discussion seemed to emphasize the general determination to respect and defend the principles and objectives of the General Agreement. In considering the points on the Council's agenda, contracting parties would have the opportunity to show that determination, and to contribute to the success of the Uruguay Round negotiations and to full respect for the General Agreement.

The representative of Cuba said that her country, which had been the victim of a unilateral measure, was against any action of this nature, which went against the very credibility of the multilateral trading system and confidence in the successful conclusion of the Uruguay Round. This was not the first time that contracting parties had been confronted with unilateral measures, and the Council should disapprove of them in all cases.

The representative of Israel said that his delegation shared the concerns expressed regarding the implications of unilateral measures and unilateral retaliation for the multilateral system, the good functioning of which was of vital importance to small trading countries like Israel. That system provided mechanisms for the resolution of disputes, which had

proved, over the years, to be fair and efficient, provided there was the political will to use them and to abide by their results. It was Israel's permanent position that disputes between contracting parties should be solved through the appropriate GATT procedures and mechanisms.

The representative of Egypt said that his country rejected unilateralism, and urged all contracting parties to refrain from such action and to make use of GATT dispute settlement mechanisms.

The Director-General noted that the Council was following an unusual procedure at the present meeting. He would like to think that in so doing, it was complying with one of its responsibilities, namely, multilateral surveillance. Moreover, he thought that it was always very productive when contracting parties examined collectively the shortcomings of their policies. The Council was a privileged forum for such examinations -- particularly so if governments acted with the declared aim not only of becoming conscious of the profoundly negative effects of their behaviour on the multilateral system, but also when the CONTRACTING PARTIES drew conclusions from the discussion. Allusions had been made to the death or life of GATT. He noted that there were many seminars around the world on this subject, but the present meeting was not a seminar; the CONTRACTING PARTIES were gathered together to draw conclusions. His own conclusion was to remind governments that the cornerstone of cooperation under the GATT was their readiness to submit their differences of views as to the GATT-conformity of their measures to the process of consultation and dispute settlement provided by the General Agreement.

He considered it his duty to refer to what the drafters of the Havana Charter had in mind when they had evolved this concept of cooperation through the use of the process of consultation and dispute settlement, and in particular in respect of the recourse to unilateral measures. He quoted Clair Wilcox, one of the drafters of the Havana Charter, who had said "we have introduced [in the Havana Charter provisions corresponding to Article XXIII:2] a new principle in international economic relations. We have asked the nations of the world to confer upon an international organization the right to limit their power to retaliate. We have sought to tame retaliation, to discipline it, to keep it within bounds. By subjecting it to the restraints of international control, we have endeavoured to check its spread and growth, to convert it from a weapon of economic warfare to an instrument of international order". (E/PC/T/A/PV/6, p.4)

As for "finger-pointing", he said that he had no fingers but he did have the General Agreement by which all contracting parties were bound. This Agreement said that discriminatory import tariffs were contrary to its Article I. There was no exception in the General Agreement which could justify discriminatory import tariffs imposed for the particular purpose of inducing another contracting party to bring its trade policies into conformity with the General Agreement. The CONTRACTING PARTIES could, however, -- in particular where it was found that a contracting party was maintaining measures contrary to the General Agreement -- be requested to authorize, in accordance with Article XXIII:2, the suspension of obligations towards a contracting party failing to observe its obligations under the General Agreement.

The representative of the European Communities stated that he was greatly impressed by the Director-General's statement. The Chairman now found himself with the difficult task of summing up the discussion, which had been noteworthy, in its high level and its political value. This was the kind of discussion that the Community had wished to obtain. It had not been his intention to point the finger at anyone, but to bring about a general awareness of the current situation and to avoid a crisis of confidence in GATT. He hoped that the discussion would contribute to the preparation of a satisfactory Ministerial meeting on both sides of the Atlantic in order to reduce tensions and solve problems. It would be over-simplifying to ask who did what and when. What had to be said was that nothing could justify unilateral measures.

Concerning the claim that the Community had blocked examination of the scientific justification for its Directive, he wondered why, if that had been the case, the United States had not notified its measures and why it had not sought prior authorization of the CONTRACTING PARTIES for its retaliatory measures. The Community simply wanted to obtain from the Council a disavowal of unilateral measures, and more specifically those taken by the United States, and a request that they be withdrawn.

In conclusion, he stated that there were neither large nor small GATT contracting parties. They were all equal in their rights and obligations under the General Agreement, and all bore a collective responsibility. Did the Community have the right, in order to satisfy the concerns and interests of its consumers, to apply a directive which concerned both domestic and imported meat, independently of the question of its scientific basis? Moreover, could another contracting party, in contesting this right, invoke its own legislation and impose unilateral and discriminatory measures against the Community without the prior authorization of the CONTRACTING PARTIES?

The representative of Jamaica said that when his country addressed rules and procedures which conditioned and governed behaviour and practices in GATT, it recognized neither big nor small. Jamaica appreciated that the Community, as a big trading partner, had not presumed itself to be above the law. Contracting parties had to act jointly and collectively in the Council on issues that came before it, in the spirit outlined by the Director-General. But the equality of contracting parties could not be assumed; it had to be demonstrated by a strict approach to procedure and practice. Jamaica did not believe that unilateralism in the abstract was the issue currently before the Council, nor was bilateralism, as a concept. The issue was the practical application of multilateralism -- the joint action by the CONTRACTING PARTIES in the Council. If the rules or disciplines were deficient, they should be strengthened. If the procedures existed -- and they did -- they should be used. The present discussion was useful if it allowed for conclusions to be drawn. When the Council's agenda items were taken up later in the meeting, it would be seen what conclusions had jointly been drawn. At that time, Jamaica would address each item on its own merits, consistent with the principle of mutual benefit and firmly rooted in the balance of rights and obligations.

The representative of the United States said that his country was prepared to withdraw its retaliatory measures, but this would have to be accompanied by the Community's withdrawal, or putting into abeyance, of its unilaterally implemented decrees banning hormone-fed beef. It would seem appropriate that both the United States and the Community begin, at the present meeting, to prepare the ground for the discussions between Ministers of the two parties scheduled to take place shortly, perhaps by announcing simultaneously that each side had withdrawn its measures.

The representative of the European Communities said that a unilateral measure taken as "a sanction" should not be confused with a measure of domestic policy. Without any multilateral consideration of the Community Directive in terms of its GATT-consistency, the United States alone had decided that the Community was in the wrong, and was taking justice into its own hands. It would be very difficult to defer the Directive in question, because it had been uniformly applied internally and externally and was a priority concern for the European Parliament and European consumers. It would be very simple, however, for the United States to withdraw its measures, which constituted a kind of punishment. The Community could not accept this notion of punishment, when its entire internal sovereignty was at stake. That sovereignty was, of course, limited by its international obligations. The Community had not discriminated in any way against anyone. His reply to the United States was that the Community wanted this Council meeting to give a clear signal so that the two parties could find a solution at the political level. That signal should be rejection by the CONTRACTING PARTIES of all kinds of unilateralism whatever their origin, form or justification.

The Chairman said it seemed to him that the Council had held an important discussion, which had begun with the Community's expressing its concerns about unilateralism and the dangers posed to the GATT by such actions, particularly those of one contracting party. The Community had made specific proposals, and the United States had made a different proposal. In the ensuing discussion, it had become clear that there was widespread and deep concern about certain recent developments in the trading system. That concern was not limited to practices by any one contracting party. It had been remarked, however, that both the United States and the Community bore a special responsibility in the current situation. Several delegations had noted that GATT's dispute settlement procedures should be used by contracting parties when disputes arose; those procedures, however, had to be allowed to work. It had also been noted that in the first instance, it was incumbent on the parties to a dispute to seek to resolve it bilaterally.

While on balance it might be a good sign that contracting parties had raised in the Council matters of real concern to them, it had to be recognized that there were obvious limits to what the Council itself could do to facilitate resolution of such disputes. A number of delegations had referred to the important current stage in the Uruguay Round negotiations and had stressed the importance of moving forward quickly in the Round, where long-term solutions to many current problems were being sought. In conclusion, he said that after listening to the last few remarks, he hoped that when the Council met in March, the situation would have improved.