

GENERAL AGREEMENT ON TARIFFS AND TRADE

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on 3 April 1990

Chairman: Mr. Rubens Ricupero (Brazil)

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1. Union of Soviet Socialist Republics
- Request for observer status (L/6654)

The Chairman drew attention to document L/6654 containing a request for observer status from the Union of Soviet Socialist Republics, and informed the Council that informal consultations on this subject were underway. He proposed, therefore, that in the meantime, the Council take note of the request and that this item remain on its agenda.

The Council so agreed.

2. Accession of Tunisia
- Time-limit for signature of the Protocol of Accession (C/W/623)

The Chairman recalled that on 12 March 1990, the CONTRACTING PARTIES had adopted a Decision (L/6655) to the effect that the Government of Tunisia may accede to the General Agreement on terms set out in the Protocol for the Accession of Tunisia, the text of which was approved by the Council on 20 February 1990 and circulated in document L/6656. He drew attention to a communication from Tunisia in document C/W/623 requesting that the time-limit in paragraph 5 of the Protocol of Accession be changed to 31 July 1990, and proposed that the draft decision annexed thereto be adopted.

The Council so agreed.¹

¹The Decision was subsequently issued as L/6665.

3. Accession of Guatemala
- Communication from Guatemala (L/6647)

The Chairman recalled that in June 1987 the Council had established a Working Party to examine Guatemala's application for provisional accession and that this Working Party had been carrying out its assigned task under the Chairmanship of Mr. Emilio Artacho (Spain). He drew attention to document L/6647, containing a recent communication from Guatemala, in which that Government had asked for full accession.

The representative of Guatemala, speaking as an observer, referred to his Government's decision in L/6647 to request full accession to the General Agreement and said that Guatemala had submitted, the day before, replies to questions on its foreign trade régime received from contracting parties, in order to accelerate the accession process. His Government also wished to initiate bilateral tariff negotiations and invited the submission of request lists from interested contracting parties as early as possible. He hoped for the full support from all in this endeavour.

The Council took note of the statement and agreed to change the terms of reference of the Working Party previously established to examine Guatemala's earlier request for provisional accession, as follows:

Modified terms of reference:

"To examine the application of the Government of Guatemala to accede to the General Agreement under Article XXIII, and to submit to the Council recommendations which may include a draft Protocol of Accession."

The Council also agreed that membership in the Working Party would continue to be open to all contracting parties indicating their wish to serve on it, and further agreed that Mr. Emilio Artacho would continue to serve as its Chairman.

The Chairman invited the representative of Guatemala to consult with the Secretariat as to further procedures to be considered by the Working Party.

4. Accession of Bulgaria
- Designation of Chairman of the Working Party

The Chairman recalled that at its February meeting, the Council had agreed on the terms of reference of the Working Party on the Accession of Bulgaria, and had noted that the designation of the Working Party's Chairman would be taken up at the present meeting. On the basis of informal consultations, he proposed that the Council designate Mr. Michael Lillis (Ireland) to serve as the Working Party Chairman.

The Council so agreed.

The representative of Bulgaria, speaking as an observer, thanked all those involved in the informal consultations for having prepared the ground for this decision, which resolved the remaining procedural considerations before the Working Party could begin its work. He recalled that at its meeting on 20 February the Council had been informed that Bulgaria would undertake to make available additional information related to the updating of the data provided in the Memorandum on³ its foreign trade régime.² His delegation had submitted this information³ to all contracting parties the day before, and expected that the Working Party's work, including the questions and answers process, would start accordingly.

The Council took note of the statement and agreed that membership of the Working Party would be open to all contracting parties.

5. Korea - Restrictions on imports of beef
- Follow-up on the Panel reports (L/6503, L/6504, L/6505, L/6641)

The Chairman recalled that at its meeting on 20 February 1990, the Council had considered this matter, together with the communication from Korea in L/6641 containing a progress report on consultations concerning its restrictions on beef imports. This item was on the Agenda of the present meeting at the requests of Australia, New Zealand and the United States.

The representative of the United States reported that during the consultations held on 19-21 March 1990 in Washington regarding Korea's beef import restrictions, the United States and Korea had reached an agreement in principle which addressed the key elements of interest to his Government. The terms of the ad referendum agreement were consistent with the recommendations of the Panel report⁴ as well as the balance-of-payments commitments undertaken by Korea during the October 1989 Balance-of-Payments (BOP) Committee consultation. This agreement reaffirmed Korea's GATT obligations and undertakings regarding the principle of liberalization, provided for access on a most-favoured-nation basis, included an annual access growth factor during the initial transitional period, and allowed for the introduction of a system which would provide for expanding direct access between buyers and sellers in Korea's market-place. The United States believed that the agreement offered significant opportunities for all interested foreign entities to participate effectively in the transition of Korea's market towards full liberalization. Signature of the agreement by the respective governments was anticipated later in the month, and the United States looked forward to full implementation of the terms of the accord.

²Accession of Bulgaria - Memorandum on Bulgaria's Foreign Trade Régime (L/6364 and Corr.1).

³L/6364/Add.1.

⁴L/6503.

⁵BOP/R/183 and Add.1.

This having been said, the United States was disappointed that Korea had not been prepared to go further. Immediate full elimination would have been a better outcome, and a set time-table towards full elimination would have been preferable to the two-step process envisaged in this agreement. Nevertheless, short-term practical realities had dictated caution. The United States believed that this agreement would lead to full liberalization within the reasonable period set out in the BOP Committee report referred to above. The United States would, however, continue to press for full elimination of the restrictions and to support efforts by the other parties to this dispute settlement process to secure further liberalization.

The representative of Australia said that, regrettably, no progress had been made since the February Council meeting -- when he had last reported on the subject -- in Australia's discussions with Korea aimed at securing a time-table for the liberalization of the latter's beef régime. He had indicated then that Korea's proposals for future market access did not reflect the market growth that would have occurred had imports not been prohibited in 1984. He had further pointed out that the suggested level only approximated current import performance -- around 55,000 tonnes of boneless beef in 1989 -- and was below the level immediately preceding the suspension of imports in 1984. It had been Australia's view that unless a time-table for a steady rate of market liberalization could be agreed upon, the possibility of reaching the July 1997 liberalization target -- a commitment made by Korea in the BOP Committee -- appeared unlikely. Another area of difficulty was Korea's unwillingness to engage in consultations on a time-table pending an in-depth study of its livestock industry.

Against the background of its own discussions with Korea, Australia noted with interest reports, confirmed at the present meeting, of an understanding Korea had reached with the United States. Australia expected that the details of the agreement would be submitted to the GATT in due course, in accordance with the dispute settlement procedures agreed as part of the Uruguay Round mid-term review⁶. Australia, of course, reserved its rights to raise issues pertaining to that understanding. While the arrangement was bilateral, he drew attention to the parties' assurances that the provisions thereof, as well as future understandings to be reached in accordance with it, were not intended to be discriminatory in theory or in practice, and would be consistent with the General Agreement. Australia was further reassured -- as possibly others were -- by the reports indicating that, as part of the bilateral settlement, Korea had reconfirmed its commitment already given to contracting parties that its restrictions on beef would be fully phased out by July 1997. This point was quite important in view of the interim nature of the United States/Korea understanding which appeared to remain silent on the broad outline of post-transitional arrangements. Australia hoped that its next round of

⁶ Improvements to the GATT Dispute Settlement Rules and Procedures - Decision of 12 April 1989 (L/6489).

discussions with Korea, planned for later in the month, would lead to a positive result on this important issue. Australia would report to the Council on the outcome of those discussions.

The representative of New Zealand said that since his last statement to the Council on this issue, New Zealand had also held a further round of bilateral consultations with Korea, pursuant to the Council's decision to adopt the Panel report on the restrictions imposed by Korea on access to its market for New Zealand beef exports (L/6505). The consultations had been held in Seoul on 23 February, prior to the Washington consultation referred to earlier.

Regrettably, New Zealand's consultations had made no substantive progress in reaching a mutually satisfactory solution. In the two rounds of consultations held so far with Korea, New Zealand had advanced four general principles as a basis for establishing a suitable framework for liberalizing Korea's beef market. These were, briefly, that: (1) Korea should establish an early date for the start of liberalization; (2) liberalization should be gradual but involve the phasing-out of all restrictions over an agreed period, until only a bound tariff applied; (3) liberalization should be on an MFN basis with no discrimination on grounds of product origin or specification and that no GATT-inconsistent border measures or mechanisms should be maintained by Korea on beef imports; and (4) the market mechanism should be permitted maximum operation. New Zealand remained committed to these principles as a basis for resolution of the beef-access issue. As regards the consultations between the United States and Korea, New Zealand had taken note of the outcome, and was currently examining the agreed provisions which had been outlined by the United States. In light of this evidence of initial progress towards liberalization, New Zealand considered it appropriate for New Zealand and Korea to hold a further round of bilateral consultations at an early date. Arrangements for this were now in hand. He expected to report further at the next Council meeting on the outcome of those consultations.

The representative of Korea said that in accordance with the recommendations of the Panel reports, his Government had submitted a progress report on 6 February on the results of its consultations with the three parties concerned (L/6641). His delegation had also made a statement at the February Council meeting on the status and schedule of consultations with those parties. Since then, his Government had held a second round of consultations with all three. In the March consultation with the United States, Korea had reached the agreement just outlined by the United States. His delegation would report on the details of this agreement to contracting parties after completing the necessary internal procedures. His Government had proposed that the third round of consultations with Australia and New Zealand be held during the week of 23 April in order to reach a mutually satisfactory agreement. He looked forward to making a final report on these consultations in the near future.

The representative of Canada reiterated his country's continued interest in this matter. Although Canada would have hoped for more, it noted with satisfaction that some progress had been registered and that

this could be seen as part of a broader process leading to full liberalization. Canada also attached importance to the fact, as had been confirmed at the present meeting, that the bilateral agreement between the United States and Korea would be applied on a most favoured-nation basis, and looked forward to seeing the contents of the agreement.

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

6. United States - Restrictions on the importation of sugar and sugar-containing products applied under the 1955 Waiver and under the Headnote to the Schedule of tariff concessions
- Panel report (L/6631)

The Chairman recalled that at its meeting in June 1989, the Council had established a Panel to examine the complaint by the European Economic Community concerning this matter. At its meeting on 20 February 1990, the Council had considered the Panel report (L/6631) and had agreed to revert to this item at the present meeting.

The representative of the European Communities said that action which should be taken in respect of a panel report was a matter of collective interest. The parties primarily concerned naturally had the greatest interest in the panel's findings, conclusions and recommendations. However, the findings on which the panel had based its conclusions and recommendations bound all other contracting parties, particularly if in future, similar cases arose. With that in mind, the Community wished to share with other contracting parties its doubts concerning the findings of this Panel. The first major doubt concerned the Panel's finding regarding the protection of the tariff bindings on sugar as contained in the US Schedule. The Panel had concluded that the product was bound, but not its maximum rate, which latter applied only when quantitative restrictions were applicable pursuant to the US Sugar Act of 1948, or pursuant to any other equivalent domestic US legislation. More clearly, therefore, the US tariff on sugar was not bound.

The Community's second doubt concerned the impasse the Panel had entered into. The Panel considered that the condition that the maximum rate on sugar applied only when quantitative restrictions were applicable, was admissible only if it could be applied in a manner consistent with the General Agreement. However, the Panel did not verify whether the condition was applied in this manner; instead, it merely presumed so, thus creating the impasse. The conclusion that the Community drew from the Panel's line of reasoning was that it would henceforth be possible to render totally ineffective any concession by means of a voluntary modification of domestic legislation.

The Community was also perplexed by some other questions. This Panel had been the first to examine the case of a waiver granted under Article XXV:5. Until the present time, panels had tended to interpret in a fairly restrictive manner exceptions to the provisions of the General

Agreement. The line pursued so far had been that the provisions of the General Agreement needed to be applied fully and, consequently, that one could not be too liberal regarding exceptions to the general rules. In the present instance, however, which involved a waiver -- in other words, an exception that was temporary and which benefited only a single contracting party -- the Panel had chosen to give an extensive interpretation to the waiver, by recognizing a large discretionary power in its application by the beneficiary thereof, i.e., the United States. This reasoning was all the more disconcerting because the Panel had recognized that the assurances given by the United States at the time the Waiver had been granted, could legitimately give rise to the presumption that the United States could use the Waiver in a different manner.

The Community had another question which related to the practice followed hitherto by panels when dealing with exceptions to the General Agreement. Panels dealing with matters relating to Article XI:2 -- the possibility to use quantitative restrictions, which was open to each and every contracting party -- had followed the fairly strict line of requiring criteria of proof from each party invoking the exceptions. In the present case, however, the Panel had considered that the burden of proof lay with the complaining party. What was behind all of this? Was the Panel impressed by the length of time this waiver had existed -- a temporary derogation that had tended to become the rule? Or was the Panel impressed by the economic and political weight of the United States, such that it felt that were it to adopt a position unsatisfactory to that country, it ran the risk of making waves? The Panel was, in addition, treading on the Uruguay Round negotiations and had, to a certain extent, placed a mortgage on their outcome.

The Community's provisional conclusion was that the US Waiver, no longer a simple derogation, had become exorbitant. And all had a responsibility to redress the situation. This matter was one of collective interest and the Community, for its part, wished to reflect further on it.

The representative of the United States noted that the Community had preached to others often in recent months about the importance of adoption of panel reports for the good of the system and he urged the Community, in this context, to give a favourable response to the question of adoption of this report at the present meeting. The United States continued to support adoption of this report, which it considered to be important, sound and well-reasoned. The report was important because it clarified a matter that had long been in dispute, namely the interpretation of the US Waiver. It was sound in that it was based on a careful analysis of the text of the Waiver, and the text and the long-standing interpretations of relevant GATT provisions and precedent. It was well-reasoned in that it dealt in considerable detail with all the arguments advanced by the parties before the Panel.

The United States wished to reiterate its strong support and respect for the dispute settlement process. The United States had, for its part, supported adoption in 1989 of two panel reports unfavourable to it, even

though these reports had concerned practices of major significance to the United States. He hoped that the Community would soon be able to do the same in the present case, and recalled that when in March 1989⁷ the Community had sought adoption of the Section 337 Panel report for a second time, its representative had stated before the Council that "under normal procedure and practice, a panel report should be adopted, at the latest, the second time it came before the Council".

Referring to the Community's statement at the present meeting, he wondered if other representatives had also found it ironic that the Community -- which maintained a system of prohibitively high variable levies and highly distortive export subsidies having a more damaging effect on trade in agriculture than any other contracting party's system, and one not subject to effective GATT discipline in any manner -- had decided to take a high moral tone in the Council on a matter involving agriculture. There were two important differences between the US Waiver and the Community's variable levy. First, the Waiver had been reviewed by a GATT Panel and found to be GATT-legal, while the variable levy had never been scrutinized by a panel. Second, and most importantly, the United States had put the Waiver on the table in the Uruguay Round in a clear and unambiguous manner, while the Community's position on the negotiability of its variable levy was less clear. He hoped that the Community's statement signalled its renewed interest in achieving true reform of agricultural trade rules in the Uruguay Round. The Common Agricultural Policy was not the only candidate for reform -- a number of other countries maintained systems which needed to be examined and changed. He suggested that all put their efforts into the Uruguay Round negotiating process, because the problem of inconsistent and varying obligations in agriculture could not be resolved through self-serving attacks in newspapers or in the GATT Council.

The representative of Australia said that, having examined the Panel report closely, Australia could find no reason to disagree with the Panel's conclusions and could support adoption of the report. It was clear to Australia that these conclusions gave support to the view that the CONTRACTING PARTIES would not continue to countenance an indefinite imbalance of obligations without a thorough review of the situation.

Australia had noted that the report contained three basic conclusions which reflected the Panel's findings. The first dealt with the conformity of the sugar measures with the conditions attached to the Waiver in terms of Articles II and XI. The second dealt with the potential relevance of United States' assurances to a decision on withdrawal or modification of the Waiver. In this regard, United States' failure to comply with its assurances, or in fact introduce any reform over thirty-five years, could be compared to the actions of other parties benefiting from waivers under Article XXV. It was instructive to note that most of these other waivers had lapsed due to adjustments made by the waiver holders. The third

⁷United States - Section 337 of the Tariff Act of 1930 (L/6439).

conclusion looked at the requirement for detailed justification to permit an examination under Article XXIII:1(b). This conclusion supported the right of parties to seek redress for the loss of opportunity caused by US restrictions under the Waiver over the last thirty-five years. As Australia had argued in its third-party submission to the Panel, the United States had a debt to other contracting parties resulting from the imbalance of obligations.

Australia had noted also that the United States had indicated its willingness to consider termination of the Section 22 Waiver in the context of a successful Uruguay Round outcome. Such a termination of the Waiver would constitute unilateral action -- it would require no payment from the United States' trading partners; rather, it would amount to a removal of the imbalance of obligations referred to earlier. It was Australia's expectation that measures taken under the Waiver, along with policies of similar effect practised by other countries -- reference to some of which had been made at the present meeting -- would be removed upon the implementation of Uruguay Round agreements. Australia, of course, reserved its right to address the continued accordance of the Waiver, if necessary in the light of the Uruguay Round outcome.

The representative of Chile asked whether a situation that had lasted for thirty-five years could still be considered as exceptional in terms of Article XXV:5 of the General Agreement.

The representative of Norway, speaking on behalf of the Nordic countries, said that these countries had found the Panel report to be extraordinarily complex and of particular importance for the future of the GATT. The crux of the problem faced by the Panel was outlined in paragraphs 5.14 to 5.16 of the report, in which the Panel provided arguments for the conclusion that the assurances given by the United States in the preamble of the Waiver were not legally binding on the United States. In this context the Panel had referred to the Working Party which had examined the US request for the Waiver⁸, and its conclusion could thus be said to be legally sound and correct.

The obvious next question then was what were the legal obligations imposed on the United States when it wanted to take action under Section 22? Here the Panel had again referred to the Working Party's report and quoted that "no international agreement entered into shall be applied in a manner inconsistent with the provisions of Section 22". This particular wording was precisely the reason why additional conditions proposed by members of the Working Party had not been included in the Waiver. This line of reasoning suggested that it was impossible to conclude that actions taken under the Waiver could be inconsistent with the GATT, because in fact it was the GATT which had to be consistent with such actions. The Panel's purely legalistic reasoning in this context seemed to end up in a vicious circle. Whether this was conducive to an effective and well-functioning GATT was for all to think about.

⁸BISD 3S/141-6.

This having been said, the Nordic countries noted with great interest the Panel's observations regarding the CONTRACTING PARTIES' power to modify or withdraw waivers, as well as the observation that the Community did not pursue a detailed justification to demonstrate nullification or impairment, whether or not the Waiver conflicted with the provisions of the General Agreement. The Nordic countries realized that the issue of non-violation cases was a particularly complicated one, but the overall impression they were left with after having examined the report was that it raised more questions than it answered.

The representative of New Zealand said that his country supported adoption of the Panel report. The Panel had regrettably concluded the inevitable -- New Zealand could not conceive of a finding different than that contained in paragraph 6.1(b), namely that the restrictions at issue were inconsistent with Article XI:1, but that they did not bring the United States into breach of its GATT obligations for the self-evident reason that the Waiver existed to relieve the United States of its full Article XI obligations. New Zealand was seeking comprehensive reform of agricultural rules in the Uruguay Round. This would involve negotiating transitional arrangements to get rid of this Waiver. If New Zealand's expectations of the Waiver's future were not borne out by the outcome of the Uruguay Round, then it might be that a detailed case of justification for a non-violation complaint under Article XXIII:1 could be explored in respect of a product other than those at issue in the present case. For the time-being, however, New Zealand was interested in reform and not in compensation for failure. It was therefore prepared to agree with the United States that the report be adopted forthwith.

The representative of the European Communities said that the statements by the previous speakers had not facilitated the Community's own reflection on the Panel report. It would be simple and expedient for the Community, and with no prejudice to it, to take a decision on the conclusions of this Panel at the present Council meeting. But this could have rather significant consequences for the future -- both for the dispute settlement procedures which were presently being negotiated in the Uruguay Round, and for the interpretation of some provisions of the General Agreement, not forgetting the question of the continued existence of this temporary Waiver. The fact was that in this Panel report the Community had found things that were not quite coherent, and which were even contradictory. While Norway had already referred to the Panel's comments in paragraph 5.16 of the report, there was also the question of the Panel's conclusions in paragraph 6.3. The Community was still reflecting on the best way to settle this matter and wished to revert to it at the next Council meeting.

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

7. United States Agricultural Adjustment Act

(a) Report of the Working Party appointed to study the twenty-ninth and thirtieth annual reports by the United States (L/6643)

The Chairman recalled that under the Decision of 5 March 1955, the CONTRACTING PARTIES were required to make an annual review of any action taken by the United States under the Decision, on the basis of a report to be furnished by the United States. He also recalled that in November 1987, the Council had established a working party to examine the 29th and 30th annual reports by the United States and to report to the Council. The Working Party's report was now before the Council in L/6643.

Mr. Lacarte-Muró, Chairman of the Working Party, introducing the report, said that the Working Party had held six meetings between February 1988 and February 1990. In accordance with its terms of reference, it had examined the reports of the US Government concerning import restrictions in effect under Section 22 of the US Agricultural Adjustment Act, as amended. The long time which the Working Party had taken to complete its work reflected, in part, the pressure of the Uruguay Round negotiations on its members. The report showed the thoroughness with which members had approached the task and he drew attention to the report's Annexes, containing written questions submitted to the US authorities and their replies. In respect of the Working Party's terms of reference, he recalled that when these had originally been proposed, the then Council Chairman had repeated the understanding, noted by the Council in 1986, that these traditional terms of reference would permit the Working Party to make appropriate recommendations. This statement had then been noted by the Council. The Working Party had discussed the question of conclusions and recommendations at length without being able to reach a consensus, and the various views of members on this issue were set out in paragraphs 36 to 43 of the report. While the discussions had elicited some clear and firmly expressed differences of view, the Working Party had, nonetheless, carried out its work conscientiously and constructively.

The representative of the European Communities recalled that the Council had agreed when establishing the Working Party, that it would be possible for it to make recommendations. He had appreciated, then, that the United States had not blocked the consensus on this approach. Accordingly, the Working Party had attempted to make recommendations. However, while it was true that it had not been possible to arrive at common recommendations, it was also true that the United States had blocked a consensus on recommendations agreed to by all the other Working Party members. The United States had therefore withdrawn with one hand in the Working Party what it had given with the other when that Working Party had been established. That was the situation now confronting the Council and he wondered what could be done about it. Could the Council, for instance, recommend that the United States not avail itself of the Waiver any longer? That was, in his view, the recommendation to be made, which was not to be confused with the adoption of a panel recommendation. Indeed, panels addressed recommendations to contracting parties. The situation at hand was different in that the United States had participated

in the Working Party's proceedings and as such it was both judge and defendant; was it therefore possible for the Council -- and was it sound for the system -- to endorse the conclusion contained in the Working Party report? Would the United States block the consensus, as judge and defendant at the same time?

The representative of Tanzania said that he merely wished to underline that the United States had needed thirty-five years to shelter under a certain amount of protection in the form of a waiver. In 1955 the United States had emerged from World War II after having supplied the arsenal to free the world -- a great act in itself, but one which implied a tremendous industrial capacity. He said this to underline the significance to be attached to developing countries' requests for time in relation to problems which were being discussed elsewhere but which bore relevance to the GATT system.

The representative of Canada said he suspected that the silence of many delegations in this debate was due to the fact that the position they had held in the Working Party remained unchanged. That was true for Canada. It was useful to reflect on the matter in the Council -- as suggested by the Community representative -- because, quite clearly, the issue at stake was of considerable importance and needed to be addressed at the highest level. Having said that, he felt that this issue, once again before the Council, confirmed the importance of the Uruguay Round negotiations, and of bringing them to a successful conclusion in time in Brussels.

The representative of the European Communities said that he had appreciated the two previous speakers' remarks. He believed that the Council had to play a rôle beyond that of being a simple recording chamber. A report was now before the Council. He, for his part, was prepared to disavow the position of the Community's representative to the Working Party, if political arbitration in the Council so required, and asked whether other delegations could do as much. He conceded that it was normal practice to uphold in the Council positions taken in other GATT bodies. The Council, however, was on a different level; it was something of a guardian. In this connection he wondered whether the US representative would find it sufficient to merely have the position taken by his representative in the Working Party rubber-stamped or whether he would be able to accept that the Council make a recommendation which he would then undertake to pass on to his authorities. The United States could, of course, simply accept a recommendation on the grounds that the Waiver was on the Uruguay Round negotiating table and that its removal was envisaged. Noting from the silence that representatives seemed to be avoiding discussion on this matter, he called on them to exercise their collective responsibility, in order to prevent the Council from becoming an impotent body. If a decision could not be reached at the present meeting, he would propose deferring further discussion on this item to the next Council meeting in order to allow delegations more time to reflect and find out what could be done to move out of this impasse. That was most important for the future of the Uruguay Round negotiations, in particular for those

contracting parties wanting a good solution in agriculture. Whether or not one had wished it, this Waiver had been at the root of the proliferation of the imbalances in the world agricultural economy for thirty-five years. For that reason, the Community attached great importance to an equitable solution to the matter before the Council.

The representative of Australia said that from time to time events before the Council and matters under negotiation in the Uruguay Round came together and the present meeting was probably one such occasion. Therefore, it was somewhat reluctantly that he was taking the floor. Canada had perhaps put forward one of the reasons why some people who had quite clear views on the Waiver issue were either reluctant to speak or were questioning what such a contribution might be if they did speak. He himself would at least place on record Australia's view on this issue. Australia was struck by the fact that for very many years, resources had been devoted to annual reviews and reports on the US Waiver. These efforts had become perhaps little more than annual jousting contests and Australia was, as anyone who had participated in the working parties on this issue, greatly dissatisfied with the nature and the outcome of that process. But participants in the most recent Working Party would clearly know Australia's views on the Waiver issue and, in fact, under the previous item, he had indicated what they were. Australia took it that the Waiver was on the table in the Uruguay Round and was negotiating in good faith on that score. Perhaps a little later when one looked at the question of another working party on this subject to examine future reports, he could anticipate that Australia's proposal might be that -- given what in the best of expectations could be seen as a result in the Uruguay Round and what that would mean in terms of the prolongation of the US Waiver -- any establishment of a working party be deferred until the outcome of the Uruguay Round when decisions could be taken or judgements be made on whether that would in fact be necessary. There was no sense of anyone being unprepared or unwilling to make one's views known on this issue, but when it had been occurring now for so many years, and one had an opportunity to do something about it over the next eight months in another negotiating forum, he really wondered what the Council could really achieve at the present meeting.

The representative of Finland, speaking on behalf of the Nordic countries, said that these countries had understood the debate so far to mean that the issues related to the adoption of this report would not be forced to a conclusion at the present meeting. This was to their satisfaction; forcing the issues to a conclusion might even have meant recourse to a vote, which would have led them to speak against such a course of action. The Nordic countries recognized that the Community seemed to be basically seeking a reconfirmation of the majority view that had prevailed in the Working Party and which largely reflected their own thinking on the existence and application of the Waiver. The circumstances had changed since 1955 and the Waiver had led to developments which could not have been foreshadowed at the time. The Nordic countries understood the need for border protection as an element of national agricultural policy, and recognized the validity of this point also in the United

States' case. While the Waiver had been necessary for the United States for a number of domestic reasons, it had also had considerable international ramifications. The fact that the international trading rules for agriculture had remained plagued for so long by complexities and inequalities could, at least partly, be traced to the existence of this Waiver. He noted that it had been agreed in Punta del Este in 1986, and in Geneva in April 1989, that an international reform of agriculture which would change those trading rules and lead to substantially reduced protection, would be sought. This was a concerted effort; all countries would have to make important adjustments in this process, and any meaningful result would have to include the removal of the US Waiver. One had to live with this present, admittedly unsatisfactory, situation. Pending future multilateral reforms, the Nordic countries trusted that the United States, enjoying the privilege of the Waiver, would show understanding towards the agricultural problems of other countries, including the Nordics, when considering actions recommended by panels or other GATT bodies.

The representative of the European Communities said that he had tried to spur the Council to action but that the time did not seem to be ripe for this. It had to be admitted that the Working Party had submitted a report which had concluded that it had not been possible to reach agreement and to formulate recommendations. Therefore, he asked whether one would have to wait for the Waiver to die of old age. One would have to draw the consequences thereof for the Uruguay Round negotiations, because in the context of the latter, compensation for the removal of the Waiver would be claimed from trading partners. As his earlier proposals had not been echoed, he emphasized that in no circumstances would he accept the conclusions of the report as they stood. For that reason he ventured the suggestion that the Council Chairman and the Director-General carry out consultations to determine whether paragraphs 37 to 42 of the report could not provide a common basis for presenting a joint recommendation that would break the Council's impasse and achieve consensus.

The representative of the United States said that he had attempted to give the Community representative a full stage to play upon at the present meeting to vent the Community's frustrations about the dilemma in which it found itself with respect to a panel report it found unacceptable and a working party report it found difficult to accept. In both cases, the Community representative had indicated that the Community was acting for the good of the system. The Community representative had also indicated that in the Working Party the United States had been isolated in its opposition to a majority view that the conditions under which the Waiver had originally been granted no longer existed. While all that the Community representative had said might be true, he was beginning to question the motives for the prolongation of the debate. The Community representative seemed to be urging the Council to make a decision on the degree to which various contracting parties maintained measures which created difficulties for other contracting parties in the realm of agriculture. If this was indeed the case, the Council could consider at its next meeting whether it would be appropriate to establish a working

party to examine the Community's variable levy and export restitution systems, and the degree to which contracting parties felt that those systems created difficulties in the field of agriculture. All of this would lead to an unacceptable result, i.e., an attempt to negotiate the very difficult question of reforming the GATT rules for agriculture in the GATT Council.

The Community representative seemed to have taken the approach in this matter that the best defence was a good offence; in other words, if one did not want to negotiate in earnest on matters found to be politically difficult domestically, one attacked others; attention was thus deviated from one's own intransigence. This was, it seemed, the crux of the issue. If the Community sought an end to the Waiver, he could suggest a very ready avenue to achieve that -- reforming the GATT rules for agriculture in the Uruguay Round; but if it sought the frustration of further negotiations within the Negotiating Group on Agriculture in the Uruguay Round, then he would suggest listening to the Community representative's suggestions on how to proceed on this matter. That would be a fruitless course, which would lead nowhere but into continued debate between the United States and the Community in the Council, when one could be devoting attention to more productive endeavours. He asked Council members to consider this when they heard statements from the Community over the next several months. If one found it difficult to confront the choices in the negotiating process, then one talked about the practices of others; if one found it difficult to confront the tough domestic decisions to be made in order to move the Uruguay Round negotiations forward, then one diverted attention into the GATT Council where a prolonged and agonising debate over one country's measures could be had.

In conclusion, the United States was obviously not prepared to accept the Community's suggestions made at the present meeting, and noted that paragraph 41 of the Working Party report had clearly stated the US position with respect to future discussion, future consultations, future negotiations with regard to a change in the US Waiver. He urged all members to consider that to be the prudent and useful course of action in the future.

The representative of the European Communities said that he could initiate negotiations with the US representative in the Council and that, in this respect, he would have much to say in particular on the ideas put forward by the latter. However, in order not to prolong this debate, he proposed that the Council agree that for lack of a consensus, it could not adopt the report at this time.

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

- (b) Thirty-first and Thirty-second Annual Reports by the United States under the Decision of 5 March 1955 (L/6442, L/6633)

The Chairman remarked that although it had been decided to deal with the two sub-items separately, the discussion on the first sub-item had

touched on both. In particular, it had been suggested in that discussion to defer decision on the establishment of a new working party to examine the two US annual reports in documents L/6442 and L/6633. For that reason, he proposed that this sub-item be concluded in the same way as sub-item (a).

The Council so agreed.

8. Switzerland - Seventh triennial review under Paragraph 4 of the Protocol of Accession
- Working Party report (L/6658)

The Chairman drew attention to document L/6658 containing the report of the Working Party established to conduct the seventh triennial review under paragraph 4 of the Protocol of Accession of Switzerland.

Mr. Alejandro de la Peña, Acting Chairman of the Working Party, presenting the report on behalf of its Chairman, Mr. Manuel Tello, said that the Working Party had held seven formal meetings and a number of informal sessions from February 1988 to March 1990. It had reviewed the application of the provisions of paragraph 4 of the Protocol for the Accession of Switzerland in the light of the annual reports submitted by the Swiss Government for the years 1984, 1985 and 1986 (documents L/6101 and L/6229). The Working Party's report included a number of specific questions posed to the Swiss authorities, and their responses. Supplementary information provided by the Swiss representative in accordance with requests from members of the Working Party were provided in the Annex. The report recorded the differing views on a number of points concerning both the observance of the terms of paragraph 4 of the Protocol and broader questions in the context of the Uruguay Round negotiations. He drew attention to paragraphs 122 and 113 of the report which summed up the main issues, and noted that the report ended with a unanimous reaffirmation of the agreed aims for the agricultural negotiations in the Uruguay Round.

The representative of Switzerland said that his country was pleased that the Working Party had succeeded in finishing its review and submitting its report to the Council. The review had been a fairly lengthy process, reflecting the interest of some contracting parties in its deliberations. The work had been carried out in depth and in a constructive spirit by all the participants. The size of the report and the mass of information, questions and detailed replies bore witness to the concern for transparency shown by his delegation throughout the exercise. His delegation was delighted that the Working Party had recognized the special efforts made by Switzerland to enable the Working Party to carry out its task under the best possible conditions. Switzerland believed that on the whole this report correctly reflected the review undertaken by the Working Party and provided a balanced description of both the convergent and the divergent points of view expressed.

The representative of New Zealand said his country was pleased that the Working Party had been able to conclude the seventh triennial review. He wished to place on record New Zealand's view on one particular issue

which was reflected in the report. The review had been carried out against the backdrop of the negotiations on agriculture in the Uruguay Round. In New Zealand's view, paragraph 4 of Switzerland's Protocol of Accession provided broad terms of reference for a review every three years. Switzerland's reservation was couched in terms of the existing GATT rules on agriculture. It was therefore inevitable that a successful outcome on agriculture in the Uruguay Round, involving changes to the form or application of those rules, would have implications for the continuation of Switzerland's reservation, just as it would have implications for the agricultural régimes of all other contracting parties.

The representative of Australia said that his country welcomed the conclusion of the review and supported the adoption of the Working Party report. Australia had participated actively in the deliberations of this Working Party, but it would be misleading to conclude that Australia was particularly satisfied with its outcome. It was regrettable that the Working Party had not been able to reach conclusions on several key issues before it. It was, for example, unfortunate that it had not been able to conclude without reservation that measures implemented by Switzerland under its Protocol minimized the harm done to the interests of its trading partners. It was also of concern that some doubt remained over whether changes to Swiss legislation made since the Protocol was approved in 1966 might have altered the basis on which Switzerland's partial reservation had been granted. Looking to the future, however, he noted that it had not been possible in the Working Party to receive from Switzerland a clear indication regarding the future of its partial reservation, particularly in the light of Uruguay Round undertakings to which Switzerland had been party. It was Australia's expectation that a Uruguay Round outcome which committed all GATT members to a new and strengthened régime of rules and disciplines would see the termination of Switzerland's partial reservation. Indeed, Switzerland's active participation in the agricultural negotiations encouraged this expectation.

The representative of Uruguay said that his country's position on this matter was similar to that of Australia. Uruguay had carefully examined paragraphs 13, 14 and 113 of the report, which dealt with the link between the Swiss exemption and the Uruguay Round negotiations on agriculture. It had also noted Switzerland's statement to the Working Party that this exemption was part of GATT rules and hence was not a temporary exemption. Uruguay could not, however, agree with this interpretation -- the exemption was simply as temporary as would be decided by the CONTRACTING PARTIES. Switzerland had also said (paragraph 13) that at the end of the Uruguay Round, when the existing GATT rules had been revised, it would draw the logical conclusions and see whether, on the basis of the new rules, the Protocol should remain as it was or whether adjustments would be necessary. However, this was not a unilateral decision to be taken by Switzerland; rather, it concerned all contracting parties and, again, the link with the Uruguay Round could not be denied. Uruguay noted with satisfaction that Switzerland had re-emphasised its commitment to the Punta del Este Declaration and to the revision of certain rules on agriculture.

The report had noted (paragraph 113) that some members of the Working Party had expressed the view that fulfilment of the mandate for negotiations on agriculture, and of the decisions reached by Ministers in the context of the Uruguay Round, would alter the basis on which the reservation under Switzerland's Protocol of Accession had been agreed; this was also Uruguay's view. While Uruguay had no objections to the report being adopted, it wished to put on record its position that Switzerland's exemption was temporary and depended upon decisions taken by the CONTRACTING PARTIES on this point, and that the results of the Uruguay Round would have an effect on this exemption.

The representative of Switzerland said that in light of the statements just made, he had the following comments. First, the Working Party's terms of reference had been to "conduct the seventh triennial review of the application of the provisions of paragraph 4 of the Protocol for the Accession of Switzerland", with reference to the years 1984, 1985 and 1986. That had been the scope of the review. Switzerland's commitment to undergo periodically such a review resulted from the provisions of the Protocol, which had been negotiated with and accepted by all contracting parties and which, under contractual terms between the CONTRACTING PARTIES and Switzerland, established the conditions and indeed the basis of Switzerland's GATT membership. Second, with regard to the trade figures in the report, he called on members to recognize that Switzerland had continued to offer an important, dynamic, stable and predictable market for agricultural products. Third, even though in Switzerland's opinion the Working Party's terms of reference had been very precisely defined, Switzerland had noted that some participants had viewed the discussion as relating to a wider context, owing to the launch of the Uruguay Round negotiations. While Switzerland believed that the considerations relating to the Round clearly exceeded the Working Party's terms of reference, it had taken note of the points of view expressed in the course of the discussions. Switzerland had taken, and would continue to take, an active and constructive part in all aspects of the Round, and in particular in the agricultural negotiations; indeed, Switzerland had submitted several specific ideas for a system of strengthened and operational rules for agricultural trade. One of the main purposes of the agricultural negotiations was, indeed, to draft strengthened and effective rules which would be applicable to all.

The representative of the United States said that while his country was prepared to support adoption of this report at the present meeting, it shared some of the observations made earlier by New Zealand. He could not help but notice some similarity in the subject matter of the Working Party report discussed under the previous item and that of the present report; the legal issues, and those related to GATT provisions involved, were quite different, but interestingly, both involved very serious questions for contracting parties for the future agricultural régime they might find themselves in. In this regard, he endorsed Switzerland's comments with respect to the purpose of the Uruguay Round agricultural negotiations which should deal with contracting parties' inconsistent rights and obligations.

⁹ Item no. 7(a).

The representative of the European Communities asked for a clarification from the Secretariat on the difference between a protocol of accession and a waiver.

Mr. Lindén, Special Advisor to the Director-General, said that he understood the Community's question as referring to the difference between a waiver and an exceptional clause in a protocol of accession, such as had been incorporated in Switzerland's Protocol. Apart from some purely technical differences -- there might be differences amongst various waivers, of course, and amongst clauses in protocols of accession, regarding time-limits, reporting procedures and so on -- there were, from a legal point of view, the following differences: first, the manner of adopting, or approving, the two was somewhat different, in that a waiver had to be approved by a two-thirds majority of contracting parties, provided that such majority comprised more than half of the total number of contracting parties, whereas protocols of accession, on the other hand, had to be approved by two-thirds of all contracting parties. It could be argued, consequently, that a provision in a protocol of accession had a more qualified legal character because it had to be approved by a larger majority of contracting parties; second, a condition in a protocol of accession was part of the contractual obligations between the acceding contracting party and other contracting parties, whereas a waiver was not a part of a contractual agreement between the party to which it was granted and the other contracting parties.

The representative of the European Communities said that he had wanted a legal authority to confirm his own assumption that the fundamental difference -- not only a legal one but also a political one -- between a protocol of accession and a waiver was that provisions of the former were subject to negotiation and formed part of the overall balance of rights and obligations. While one could criticize the way in which an exemption covered by a protocol was being administered, it formed part of the contractual agreement between contracting parties, whereas a waiver was a derogation from this overall balance of rights and obligations. One should not confuse the two. The Community had, therefore, been selective in its reaction at the present meeting because the basis of the two situations -- the discussions on the US Waiver and on the Swiss Protocol of Accession -- was not identical.

The representative of Canada said that he would merely observe that participants in the Uruguay Round had agreed in the Mid-Term Review meeting that they would try to develop effective GATT rules which would be equally applicable to all contracting parties. He did not want to leave the impression that one should be thinking about a result in the Uruguay Round negotiations which would vary according to the type of provision that one used to cover one's agricultural protection at the outset of the Round. All were engaged in the Round in seeking rules which in the end would be equally applicable to all contracting parties. In other words, while different agricultural policies might still exist then, they would all have to be squared with one agreed set of rules in the GATT.

The Council took note of the statements and adopted the report in document L/6658.

9. European Economic Community - Regulation on imports of parts and components
- Panel report (L/6657)

The Chairman recalled that in October 1988, the Council had established a panel to examine Japan's complaint concerning this matter. The report of the Panel was now before the Council in L/6657.

Mr. Groser, member of the Panel, introducing the report on behalf of its Chairman, Mr. Greenwald, recalled that although the Panel had been established by the Council in October 1988, agreement on its composition and terms of reference had been reached only at the beginning of May 1989. The Panel had met with the parties to the dispute on 27 and 28 July 1989 and on 19 and 20 October 1989. Written submissions had been received by the Panel from Australia, Canada, Hong Kong, Korea, Singapore and the United States. The Panel had heard the delegations of Australia, Hong Kong and Korea at its meeting on 27-28 July 1989 and that of Canada at its meeting in October 1989. The Panel had submitted its report to the parties on 2 March 1990 indicating that, in the absence of a settlement between the two parties, it would be circulated to the CONTRACTING PARTIES on 16 March 1990. On 15 March the Panel had received a letter from the European Communities commenting on the Panel's findings and requesting the Panel to reconsider its conclusions. The Panel had examined the Community's comments in detail and had concluded that they did not warrant a change in its findings. It had therefore decided to circulate the report (L/6657) to the CONTRACTING PARTIES on 22 March 1990. The Panel's conclusions were contained in paragraphs 6.1-6.3.

He said that the Community's comments were directed principally at what it considered might be the wider implications for the GATT and the interests of other contracting parties arising from the Panel findings. To assist third contracting parties to evaluate the consequences of adoption of the Panel's findings, the Panel had concluded that it might be useful to draw the Council's attention to those parts of the report which related to the points that the Community had asked the Panel to consider. He stressed, however, that the Panel had completed its work with the circulation of the report and that the Panel's findings should be considered by the Council as they were set out in the report. Nothing which he would say at the present meeting was, therefore, meant to add to, or detract from, the Panel's findings in L/6657.

The first point the Community had raised in its letter was that the Panel's finding that the anti-circumvention duties were internal taxes within the meaning of Article III did not take into account that "importation is by no means synonymous with the crossing of a geographic frontier". The Community had further expressed the opinion that the Panel's interpretation raised "considerable doubts ... concerning the nature of customs duties, and, if appropriate, anti-dumping duties, which are collected following the grant of inward processing relief".

He said that the Panel wished to draw the Council's attention to paragraphs 5.5 to 5.7 of the report in which the Panel examined whether the anti-circumvention duty was a duty "imposed on or in connection with importation" within the meaning of Article II. In paragraph 5.5 the Panel noted that the anti-circumvention duties were imposed on products produced within the Community and that the latter nevertheless considered the duties to be imposed "in connection with importation". inter alia, because of the purpose of the duties and the assignment of their collection to customs authorities. The Panel then examined whether such factors could create the required "connection with importation" and concluded they did not. The questions of whether the imposition of duties falling under Article II had to take place when the products crossed the geographic frontier and of whether duties, to be considered to be imposed in connection with importation, had also to be collected at the time or point of importation were not dealt with in paragraphs 5.5 to 5.7.

The Community had further written that the Panel had taken the "narrowest possible interpretation of Article XX(d)" and that, if that interpretation of Article XX(d) were followed, "then all contracting parties' legislation on evasion of taxation and customs duties may not be in conformity with Article XX(d)."

The Panel drew attention to the need to distinguish in this context between the evasion and the avoidance of import duties. The imposition of an import duty might give rise to actions designed to evade a legal obligation to pay the duty, for instance by submitting an incorrect customs declaration. It might also give rise to actions designed to avoid that a legal obligation to pay the duty arose, for instance by transferring the production of the product on which the import duty was levied to the country levying the duty.

The Panel also drew attention to paragraph 5.17 of its report in which it was stated that the main function of Article XX(d) was "to permit contracting parties to act inconsistently with the General Agreement whenever such inconsistency is necessary to ensure that the obligations which the contracting parties may impose consistently with the General Agreement under their laws or regulations are effectively enforced." For example, if contracting parties -- within the constraints of Article II -- imposed the obligation on importers to pay import duties, they were permitted under Article XX(d) -- subject to the conditions set out in the Preamble of that Article -- to take measures inconsistent with the General Agreement that were necessary to prevent the evasion of that obligation, such as the imposition of charges inconsistent with Article II in connection with the importation of products for which an incorrect customs declaration had been made. According to the Panel's findings, Article XX(d) did not deal with governmental responses to actions by enterprises designed to avoid giving rise to a legal obligation to pay the import duty, such as the transfer of production into the importing country. The Panel drew attention to the last two sentences of paragraph 5.17 which explained why the rules of the General Agreement would no longer be effective if Article XX(d) were interpreted to permit contracting parties

to act inconsistently with the General Agreement for the purpose of preventing economic responses by enterprises to the incentives or disincentives created by their laws and regulations. For these reasons, the Panel was of the view that its interpretation preserved the contracting parties' right under Article XX(d) to take the measures necessary to prevent the evasion of tax and customs laws consistent with the General Agreement without, however, jeopardizing the integrity of the General Agreement.

The Community had written to the Panel that "Article VI expressly provides for the imposition of anti-dumping duties and, therefore, the enforcement of their collection" and that Article XX(d), as interpreted by the Panel, was "simply redundant". The Panel drew attention to the fact that Article VI, while permitting the levying of anti-dumping duties, did not permit other measures inconsistent with the General Agreement that might be necessary to secure the payment of anti-dumping duties. Such measures required justification under Article XX(d).

The Community had raised a very general question concerning the nature of the GATT and Treaty law, expressing the opinion that, "if there is a gap in a treaty, this does not normally imply that states cannot act. To the contrary, in such a situation, states have not given up their ability to act". The Panel drew attention to the fact that the General Agreement regulated the imposition of internal taxes on imported products, the levying of anti-dumping duties, and measures to secure compliance with regulations not inconsistent with the General Agreement. The Panel therefore did not face a "gap" in the General Agreement.

Finally, the Community had written that it was "perturbed by the narrow approach taken by the panel concerning a problem for which the need for a solution is now generally recognized". The Panel pointed out that it had been bound to follow the principle that Article XX(d), as an exception to the General Agreement, had to be interpreted narrowly. The Panel further drew attention to paragraph 5.28 where this important negotiating issue was highlighted. The Panel pointed out therein that: (1) it was aware that a number of participants in the ongoing multilateral trade negotiations considered that the increased internationalization of production processes had led to certain problems in the administration of their anti-dumping laws, and that these issues were presently the subject of these negotiations; and (2) its task had been limited to an examination of the measures taken by the Community in the light of the existing provisions of the General Agreement invoked by the parties to the dispute.

He concluded by repeating his earlier caveat concerning the Panel's findings in L/6657 that he had highlighted the parts of the report that related to the issues raised by the Community merely for the purpose of assisting contracting parties in making their own evaluation of the findings.

The representative of Japan expressed his delegation's deep appreciation to the Panel, which had carried out its responsibilities in a competent and professional manner, and to the Community for its full

participation in the Panel process. All the interested parties had been given the fullest opportunity to present all the arguments they had deemed relevant in the dispute and the Panel, in Japan's view, had reached its decision with scrupulous fairness. Japan believed that the Panel's decision was the correct conclusion and that it reflected a reasoned and balanced application of the rules of the General Agreement. The Panel's findings were of great importance for all who believed that international trade should be governed by GATT rules, and not according to unilateral interpretations of such rules. Japan, therefore, urged that the Panel report be adopted by the Council at the present meeting. Japan also considered it essential that the Community promptly take appropriate steps to implement the Panel's recommendation.

In this regard, his delegation drew attention to the Decision of 12 April 1989 (L/6489) concerning improvements to the GATT dispute settlement rules and procedures, which stipulated that the period from the request under Article XXIII:1 until the Council took a decision on a panel report should not exceed fifteen months. With regard to the present case, Japan had sought bilateral consultations under Article XXIII:1 over twenty months ago. Japan was aware that, strictly speaking, the new rules did not apply to this case. However, it believed that these new rules should be accorded due respect by all contracting parties. In this respect, Japan also noted that the Community had consistently emphasized the importance of early adoption of panel reports. He hoped that Japan's record for accepting panel findings unfavourable to it would add strength to its request for the early adoption of this Panel report.

Japan had heard the comments by Mr. Groser on behalf of the Panel for the first time at the present meeting, and would refrain from commenting on them at this stage as it had had no opportunity to study them. Japan would provide its own comments, if any, at an appropriate time in the future.

The representative of the European Communities said that the Community fully appreciated the work done by the Panel. It had studied the report carefully but had not yet finalized its position. At this preliminary stage, the report gave the Community serious concerns and raised many doubts and questions. On the one hand, the report did not address the question of the compatibility of the Community's anti-circumvention legislation with the provisions of the General Agreement in general. Nor did it provide any guidance as to how contracting parties should deal with the real-world problem of circumvention of anti-dumping duties through the subsequent establishment of "screwdriver" assembly plants, and the importation of component parts instead of the finished product. The Panel simply did not say how this serious and real problem could be handled in a practical, non-restrictive and GATT-consistent manner.

On the other hand, the report came to the conclusion that the Community's application of its anti-circumvention legislation was inconsistent with Articles III and XX(d) of the General Agreement. It did so on the basis of what appeared to be a very formalistic and certainly extremely narrow interpretation of GATT rules, which seemed not only

contrary to common sense but also contrary to established principles of interpretation of international law. In fact, this report raised questions far beyond the few answers it attempted to give. The Community had tried to bring some of these questions to the Panel's attention, but the Panel had, unfortunately, chosen to ignore them and had not given the Community the opportunity of an oral hearing. The Community would, of course, reflect on Mr. Groser's remarks at the present meeting as far as they related to these questions.

The Community had no choice but to put its concerns and questions before the GATT Council. If the adoption of panel reports by the Council was to have any meaning beyond that of being a blind rubber stamp, then one could expect serious consideration of these concerns and questions. These were, of course, preliminary, and the Community reserved its right to elaborate on them in writing.

The first issue concerned the distinction between a duty or charge levied "in connection with importation" and an internal tax. The Community had pleaded in favour of its duty in question being considered as the former; Japan, for its part, had not had any particular view on this; but the Panel had found that a duty imposed to neutralize the circumvention of an anti-dumping duty, on a product consisting of imported parts but assembled within the territory of the Community, was an internal tax rather than a duty levied in connection with importation. The Panel had done so on the basis of an abstract reasoning without attempting to work out the meaning in Article I of the term "in connection with importation". The extremely narrow interpretation of this term did not seem to take into account the complexity of present-day customs procedures under which customs duties were not necessarily imposed, much less collected, at the time the goods crossed the geographical border; rather, in numerous instances, there were collected at a later date. It seemed extraordinary to conclude that the purpose of a duty was simply irrelevant to the determination of its nature. This point seemed to be of general interest, far beyond the specifics of the present case, and merited careful reflection.

Even more worrisome was the Panel's interpretation of Article XX(d). By interpreting the meaning of the words "non-compliance" in Article XX(d) as referring exclusively to non-compliance with obligations imposed by laws or regulations, and by excluding any possible reference to the clear and stated legislative purpose and legitimate policy objective, the Panel had rendered this important GATT provision totally meaningless. If Article XX(d) was to be interpreted in this case to justify nothing more than the collection of an anti-dumping duty, then why was it necessary at all? If Article XX (d) was interpreted as not justifying any measures, however necessary, to deal with a clear circumvention case, then it was simply being interpreted out of existence. As had been shown in earlier cases, the criteria of Article XX(d) were very stringent and difficult to meet. The Community had always supported this strict interpretation; but it was now faced with an interpretation which appeared to reduce its scope to zero. This again had implications far beyond this particular case.

The Panel had chosen not to examine the consistency of the Community's measures with Article VI despite the facts that: (1) the complainant, i.e. Japan, had itself raised this issue; (2) the United States as a third party had argued that Article VI provided a legal basis for measures to prevent circumvention of anti-dumping duties; and (3) the Community had clearly stated that it was prepared to accept the US argument as an alternative legal basis in case the Panel did not follow its primary line of reasoning. In ignoring Article VI, the Panel not only appeared to have acted in a manner inconsistent with its terms of reference -- which were to examine the matter in the light of "all" relevant GATT provisions -- but seemed also to have violated the principle of "due process" of law. Or had the Panel merely invited the Community to change the GATT-legal basis for its legislation?

Finally, the Panel seemed to fundamentally misrepresent the very nature of the General Agreement and ignore the well-established principles of interpretation of international agreements. The Panel's reasoning apparently amounted to saying that, since the General Agreement did not provide for measures to counter the circumvention of the very purpose of its norms, such measures could not validly be taken. Such reasoning, in the Community's view, was contrary to the normal canons of treaty interpretation, according to which a treaty limited the freedom of action of the parties to it only commensurate to its overall scope and purpose. In such a situation, States could not give up their ability to act. This ability was restricted, or might be restricted only by the respect which they owed to the object and purpose of the treaty. It was, accordingly, inappropriate to take the view, as the Panel seemed to have done, that the GATT was a closed system beyond which contracting parties could not move even if the GATT did not legislate on the matter in question. The Panel report, therefore, raised fundamental questions of interpretation of the GATT as an international agreement.

In the absence of a proper appeals procedure, the Community appealed to contracting parties individually, and as a collective body, to take their responsibility seriously, to examine the merits of this report carefully and to come to conclusions which would render the General Agreement meaningful and capable of dealing adequately with real-world problems. This report came at a particularly inopportune moment since one was engaged in negotiations to strengthen the multilateral dispute settlement procedures. Because it indulged what the Community believed to be unsustainable interpretations, it was unfortunately grist to the mill of those who did not share this objective. The Community reserved its right to respond specifically to Japan's comments with regard to the application and implementation of the dispute settlement procedures.

The representative of Korea said that his country had a great interest in this case. In its third-party submission to the Panel, Korea had presented its view that the two practices under examination were incompatible with Article VI of the General Agreement and with the provisions of the Anti-dumping Code¹⁰. His delegation had examined the

¹⁰ Agreement on Implementation of Article VI (BISD 26S/171).

Panel report and although the report had not addressed the question of the compatibility of the Community's measures with GATT Article VI and the Anti-Dumping Code, it regarded its findings and conclusions as correct and sound on the issue of the inconsistency of the measures with Article III. Korea supported adoption of the Panel report without delay and called on the party concerned to implement the recommendation faithfully.

The representative of Hong Kong welcomed this authoritative report. Hong Kong was concerned with the potential for anti-dumping measures to be abused for protectionist purposes and with unilateral interpretations of the General Agreement and the Anti-Dumping Code. Hong Kong was pleased that these issues, among others, had been addressed by the Panel and was impressed by the latter's arguments, findings and conclusions. On this basis, Hong Kong was prepared to support adoption of the report. However, his delegation had noted the additional comments by Mr. Groser and the Community at the present meeting and would consider them very carefully. On one point raised by the Community -- the question of how to deal with the real-world problem of the circumvention of anti-dumping duties -- his delegation felt that paragraph 5.28 of the report was, of course, relevant. In this paragraph, the Panel noted that there were certain problems in the administration of anti-dumping laws and that these were the subject of negotiations in the Uruguay Round. It was important that these problems, and other issues relating to dumping, be settled in the multilateral forum. Hong Kong looked forward to a continuation of the present constructive negotiations in the MTN Agreements and Arrangements Negotiating Group.

The representative of the United States said that his delegation had listened carefully to the comments made. Having just recently received the Panel report, the United States was still studying its findings and recommendation. His delegation assumed from the Community's statement that this matter would be on the agenda of the next Council meeting.

The representative of Malaysia, speaking on behalf of the ASEAN contracting parties, namely Indonesia, Malaysia, Philippines, Thailand and Singapore, said that they had taken note of the Panel's findings that the anti-circumvention duties imposed under Article 13.10 of the Community's anti-dumping legislation were considered as internal taxes within the meaning of GATT Article III:2 and were inconsistent with that Article, and were, furthermore, not justified by Article XX(d) of the General Agreement. They had also noted the Community's claim that the anti-circumvention duties should be regarded as customs duties, designed to prevent what it considered to be circumvention of anti-dumping duties through the importation and subsequent assembly of parts and components. The ASEAN countries had an interest in this issue because of their concern over the dangers of unilateral interpretations of the General Agreement and of the Anti-Dumping Code. They had repeatedly expressed in different fora their concern over the abuse of anti-dumping rules as an instrument of protection. Attempts by certain contracting parties to expand the scope of the anti-dumping rules to address so-called circumvention problems were

also of serious concern because of their wide-ranging implications for ASEAN's exports and for the flow of foreign investments to the region. The ASEAN delegations had considered the comments made by previous speakers, especially those relating to the legal basis for the Panel's conclusions on this matter, and were of the view that it would not be appropriate for any contracting party to unilaterally "improve" upon such a situation. In their opinion, the Panel was entirely correct in the position it had taken in the report. In conclusion, the ASEAN countries supported the Panel's findings and urged the early adoption and implementation of its report.

The representative of Canada said that his country had made a third-party intervention in the Panel proceedings. Canada had not yet had time to adequately consider this important Panel report. The discussion at the present meeting would help his authorities in their deliberations.

The representative of Brazil said that his country had already indicated, in a preliminary way, that although the Community had the right to safeguard the legitimate interests of industries affected by the circumvention of anti-dumping duties, it had taken action which was in breach of some important aspects of the anti-dumping provisions of the General Agreement. First, each application of anti-dumping duties had to be preceded by a specific investigation relating to the imported product, which was to be different in nature to the one already subject to anti-dumping duties; second, the final product and the component imported products were certainly not "like products"; third, GATT Article VI applied only to products from one country introduced into the trade of another, and not to products assembled or produced inside the importing country; and fourth, the Community regulations seemed to be rather restrictive in relation to the concept of "local content". With these considerations in mind, Brazil would continue to study this important issue.

The representative of India said that his country was keenly interested in the subject matter of the Panel report as it believed that anti-dumping measures should be used only against genuine injurious dumping, and not as arbitrary measures for protection, or for harassing exporters in their use of normal commercial practices. India was also keen to ensure that no attempts were made to widen the scope of anti-dumping duty actions which undermined the basic principles of GATT. India also subscribed to the view that panel reports should be adopted without undue delay. However, this report was presently under consideration by his authorities and his delegation wanted to have an opportunity to comment upon its findings at the next Council meeting.

The representative of Australia supported early adoption of this Panel report. Australia's interests in the issues involved in this dispute had been set down in its third-party submission to the Panel. In the main, Australia's views had been supported by the Panel's conclusions. In brief, Australia had contended that the Community duties fell within the purview of Article III as internal charges and, as such, were contrary to the

provisions of Article III:2, because they were only imposed on a finished product which contained a particular proportion of imported components -- there was no equivalent charge applied on the like domestic product. Australia also considered that the Community had not satisfied the criteria for Article XX(d) cover for its measures. In particular, there was a strict obligation upon a contracting party resorting to Article XX(d) to demonstrate the necessity of its measures to secure compliance with laws or regulations. Australia also felt that the Community duties were inconsistent with Article I of the General Agreement, and that the requirements of Article VI had not been satisfied in this case. There was, therefore, no possibility of regarding the Community duties at issue as being anti-dumping duties in the terms of, and consistent with, GATT Article VI and the Anti-Dumping Code. For these reasons, Australia supported adoption of this Panel report.

The representative of Pakistan said that this Panel report was a timely clarification of some very important issues, as anti-dumping regulations were being increasingly employed, in many cases, even to restrict legitimate trade. Indeed, it was becoming a new and sophisticated instrument of protection. Pakistan had a very positive appreciation of the Panel's report which it found to be clear and succinct. Its findings were sound and well-reasoned, and its conclusions simple and straightforward. However, it recognized that the report had been circulated only recently, and that certain delegations had expressed the need for some further time to reach a definitive view. Pakistan could, therefore, agree to revert to it at the next Council meeting.

The representative of the European Communities said that this first exchange of views had been very interesting and enlightening. His delegation was under the impression that some of the interventions might have confused the issues before the Council and wished to clarify two points in this regard. First, the issues of anti-dumping as such and of the criteria for setting anti-dumping duties were not before the Council. The hypothesis, the basis of the Panel report, was that anti-dumping duties had been established in full conformity and consistency with the obligations and the procedures under the General Agreement and the Anti-Dumping Code; those duties had then, in the Community's view, been circumvented. The only questions before the Panel were, therefore, whether or not there was circumvention, and whether or not the General Agreement provided a legal basis and established criteria for dealing in a GATT-consistent manner with such circumvention. Second, there was some confusion owing to the fact that the Panel had not in any way addressed the question of the criteria of the Community's legislation with respect to defining local content or the concept of necessity in the context of Article XX(d). While everyone knew that these criteria were very strict, yet the Panel had not even come close to examining them. The Panel had concluded that there was no legal basis as far as it had examined these criteria, or that Article XX(d) did not provide for a legal basis, to deal at all with the problem. Delegations should take those points into account in their closer examination of the Panel report.

The representative of Japan said that his delegation had listened carefully to the two statements made by the Community. While he regretted that the Community was not in a position to agree to the adoption of the Panel report at the present meeting, he hoped it would be able to consider its position and favour adoption of the report in the very near future. Some of the points raised by the Community in the debate had, in Japan's view, already been raised and considered by the Panel in the course of its deliberations. His Government's view on these questions had also been expressed in the Panel's deliberations and were clearly referred to in its report. His delegation's view was that the essence of Mr. Groser's statement was addressed to that same effect. The most recent point made by the Community -- that the hypothesis of this Panel deliberation was that the Community regulations were in full conformity with the GATT -- did not lead to the conclusion that the regulations were therefore, in fact, in full conformity with the General Agreement. The Panel had been careful to record Japan's views in this respect (paragraph 5.13) in recalling, inter alia, Japan's doubts as to whether or not these laws and regulations were inconsistent with the provisions of the General Agreement. However, the Panel had noted that its terms of reference and the submissions by both parties had been limited to the anti-circumvention provision and its application. He emphasized that the Panel had therefore decided to assume that, for the purposes of its proceedings, the Community Council Regulations Nos. 2176/84 and 2423/88 were not inconsistent with the provisions of the Agreement in terms of Article XX(d). That was the hypothesis built into the deliberation and the Panel had emphasized that this assumption applied only to its proceedings and was consequently without prejudice to any examination of these regulations in any other dispute settlement proceeding.

He hoped that what the Community had said at the present meeting would not, contrary to GATT tradition, lead to a reopening of the same debate and of the technical issues involved in the much larger body which had created the Panel. He expressed appreciation to those who had supported the early adoption of the Panel report. On the other hand, Japan understood the need for more time to consider it in greater detail given the short time it had been available to contracting parties. He hoped that when the Council reverted to this item at its next meeting, it could find its way to adopting the report and also to an early implementation of the Panel's recommendation by the Community.

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

10. United States - Trade measures affecting Nicaragua
- Communication from Nicaragua (L/6661)

The Chairman said that this item was on the Agenda of the present meeting at Nicaragua's request. He drew attention to the latter's communication in L/6661.

The representative of Nicaragua said that the international community had welcomed the suspension of the trade embargo which had interrupted the flow of goods and services between Nicaragua and the United States since May 1985. Her Government had always wished relations of friendship and mutual respect and considered this suspension a first step towards the normalization of relations between the two countries. The satisfaction now felt by all was linked to the end of a war that should never have taken place and to the prospects for a better international legal order to which all aspired. As this item was now being considered for the last time in the Council, her delegation would make some remarks on the implications of the embargo's lifting for relations between Nicaragua and the United States, as well as some more general observations.

The reopening of the US market to Nicaragua's trade was obviously an important event, but it did not alone guarantee the equality of conditions which the basic GATT rules required, and which would enable Nicaragua to resume its trade with the United States under conditions of free-trade and non-discrimination. Her country considered additional measures to be urgently necessary, including the restoration of the sugar quota -- as requested by the CONTRACTING PARTIES in March 1984¹¹ -- and the restoration of its beneficiary status under the United States' Generalized System of Preferences (GSP) scheme, unilaterally withdrawn in 1987. These conditions were essential for Nicaragua's products to find a new foothold in the US market.

The circumstances in which the embargo had been lifted did not provide any guarantee for the future, and highlighted the limitations of the multilateral trading system and the need to improve it. She recalled that the CONTRACTING PARTIES had regrettably been unable to influence the imposition of an embargo which was blatantly contrary to the principles and objectives of the General Agreement. Clearly, the GATT did not have mechanisms to establish a proper balance between rights and obligations, and in particular adequate compensation for damages caused to a contracting party. Nicaragua considered that these important issues should be taken up in the context of the Uruguay Round. She expressed her country's satisfaction at the prospects for participation in the on-going multilateral negotiations. The lifting of the embargo offered hopes of greater trade liberalization for the benefit of all contracting parties.

The representative of the United States said that his country's President had determined that in light of changed circumstances and recent events, the conditions which had necessitated action under Article XXI of the General Agreement had ceased to exist. Accordingly, the national security emergency with respect to Nicaragua had been terminated and all economic sanctions, including the trade embargo, lifted. The United States would, furthermore, be taking the necessary steps to restore Nicaragua's sugar quota allocation, and was advising the latter's Government on procedures for becoming eligible for preferential treatment under the Caribbean Basin Initiative and the US GSP.

¹¹C/M/176.

The representative of Chile welcomed the lifting of the embargo, which would contribute to Nicaragua's economic development. He hoped that normalization of relations between the two countries would be effected as soon as possible.

The representative of Cuba said that her delegation had taken note of the lifting of the 1985 US embargo on Nicaragua's trade which had had serious economic consequences for the latter's people. This embargo had been imposed for political reasons and its lifting was a reminder of its political nature and coercive character. Her delegation was profoundly concerned with the application of economic measures for political reasons under GATT Article XXI. Cuba hoped that one result of the Uruguay Round would be the revision of this Article.

The representative of the European Communities said that while he had been particularly critical of the operation of the multilateral trading system under previous agenda items, he would pay homage to the same system under the present item. Since the time this issue had arisen, the Community had recommended patience on the one hand and a discretionary but not arbitrary use of the relevant provision on the other. The system as it was had made it possible to cushion the shocks and ultimately to find a solution to the problem.

The Council took note of the statements.

11. Thailand - Restrictions on importation of and internal taxes on cigarettes
- Recourse to Article XXIII:2 by the United States (DS10/2)

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

The representative of the United States said that since the United States and Thailand had been unable to reach a mutually satisfactory resolution of the issues through consultations, his country was again seeking the Council's authorization for the establishment of a panel to consider whether Thailand's laws and policies with respect to imported cigarettes were consistent with its obligations under the General Agreement. As had been stated at the previous meeting, the United States believed that Thailand's policy of prohibiting imports of cigarettes was in clear contravention of the General Agreement, particularly Article XI, and that Thailand's laws and practices relating to the internal taxation of cigarettes were inconsistent with Article III.

The representative of Thailand said that his Government could agree at this stage to the establishment of a panel to objectively examine the US complaint concerning Thailand's cigarette import measures, and to consider arguments and related issues to be presented by Thailand. Thailand's intention had always been to follow the GATT dispute settlement rules and procedures and it wished to demonstrate its strong support for these rules

and procedures despite the politically sensitive nature of this issue. It shared the hope with other small developing countries that, by agreeing to the multilateral rules and procedures, unilateral and bilateral pressures could be effectively prevented. Thailand regretted that despite its readiness to follow multilateral procedures, it was being led into bilateral procedures under the national laws of its trading partner. Thailand trusted that the procedures agreed for dispute settlement cases involving developing countries would be fully applicable, in particular paragraphs A.4 and F.(f)¹² of document L/6489¹² and paragraph 6 of the Decision of 5 April 1966¹³. It was essential that the manner in which the measures at issue were being applied and their impact on Thailand's trade and development should be taken into account during the panel process.

With respect to the disparity in Thailand's taxes on imported and domestically-produced products, he recalled, as the United States had, that the CONTRACTING PARTIES had decided on 17 June 1987 to extend the period during which Thailand could bring its taxes into line with Article III of the General Agreement until 30 June 1990. Cigarettes were included in the tax-alignment program implied by this Decision. He emphasized the need for an appropriate way to handle this case so that Thailand's rights, recognized by the CONTRACTING PARTIES, would not be undermined and that any subsequent decision in this regard would not be prejudged. In the forthcoming consultation on the terms of reference of the proposed panel, Thailand would be prepared to consider such terms as would take into account the specific circumstances surrounding this case. Thailand also took note of certain market-access issues alluded to by the United States during bilateral meetings and in the latter's request before the Council. Although Thailand found the concept of "effective equality of opportunities to compete in the market" to be quite new and to have far-reaching implications for certain basic principles of the General Agreement, it would not object to the Panel considering this concept in the light of existing GATT rights and obligations.

Finally, Thailand hoped that the Panel would be in a position to consult with other international organizations on matters which might be relevant to this case, in particular human health. Without the necessary information from competent international organizations, the reason and logic behind Thailand's policy on cigarette import measures would not be clearly understood. His delegation requested that his statement be fully recorded and circulated¹⁴.

The representative of the European Communities reserved the Community's right to intervene in the Panel proceedings.

¹² Improvements to the GATT Dispute Settlement Rules and Procedures - Decision of 12 April 1989 (L/6489).

¹³ Procedures under Article XXIII - Decision of 5 April 1966 (BISD 14S/18).

¹⁴ The statement was subsequently circulated as DS10/3.

The representative of the United States thanked Thailand for agreeing to the establishment of the Panel and reiterated the United States' willingness to work cooperatively with Thailand with regard to matters such as terms of reference and procedures followed by the Panel.

The Council took note of the statements, agreed to establish a panel and authorized its Chairman to designate the Chairman and members of the Panel in consultation with the parties concerned.

12. Canada/EEC - Article XXVIII rights
- Recourse to Article XXIII:2 by Canada (DS12/2)

The Chairman drew attention to document DS12/2 containing a communication from Canada on this matter.

The representative of Canada said that Canada had held Article XXIII:1 consultations with the Community regarding Canada's rights related to the export of grains to the Community. These consultations, and Canada's efforts to resolve with the Community the essentially technical issue of negotiating rights accruing to Canada as a result of the introduction of the Common Agricultural Policy (CAP), had been unsuccessful. Canada therefore requested, as set out in DS12/2, the establishment of a panel under Article XXIII:2 to examine its complaint with respect to the introduction of the CAP. Canada, however, remained open to other means of resolving this matter.

The representative of the European Communities said that the Community had taken note of Canada's request in DS12/2. In the Community's view, bilateral consultations between the two countries had not yet been exhausted and did not justify the conclusion that a mutually satisfactory solution was to be excluded. The Community intended to pursue bilateral consultations with Canada with a view to exploring other means of settling the dispute. For that reason, the Community asked that the Council revert, if need be, to Canada's request at its next meeting.

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

13. Training activities - Special course for officials from Eastern and Central European countries

The representative of Switzerland, speaking under "Other Business", said that his authorities were ready to finance a special course, within the framework of GATT's training activities, for officials from Eastern and Central European countries who were responsible for GATT matters. Switzerland hoped that this would be a useful response to these countries' particular needs in the trade policy area during their economic restructuring process. The exact form, scheduling and organization of such a course would still have to be worked out with the Secretariat and, of course, with the interested countries. He added that the proposed course would supplement, and not replace, other GATT training activities traditionally financed by Switzerland.

The representatives of Poland, Hungary, Bulgaria (as an observer), the European Communities and Romania, and the Director-General thanked the Swiss authorities for their initiative.

The representative of Poland said that this initiative was very timely because Poland, in the process of integrating into the world economy, felt the need for personnel skilled in international trade matters.

The representative of Hungary said that he would bring this matter to his authorities' attention without delay.

The representative of Bulgaria, speaking as an observer, said that this initiative supported the economic reform process in Eastern and Central Europe. He expressed his country's interest in participating in the proposed training course.

The representative of the European Communities said that in the Community's view, assisting the economic reform process in Eastern Europe was in the interests of all trading partners as it would increase trading opportunities. Trade was not a zero-sum game. At the same time, he agreed with Switzerland that any assistance program for Eastern-European countries should be in addition to, and should not affect in any way, efforts undertaken in favour of developing countries.

The representative of Romania said that this initiative, which he would bring it to his Government's attention, supported Eastern-European countries' efforts towards implementation of their structural economic reforms. Romania would be interested in participating in this new program.

The Director-General stressed that the organization of trade-policy courses was not only a financial but also an administrative problem. He recalled that the Secretariat had been able to draw on the contribution from the staff of a number of delegations in the regular trade policy courses, and expected that these and other officials would show the same cooperation in the administration of the proposed course which, of course, would be additional to the regular courses.

The Council took note of the statements.

14. Venezuela - Accession

The representative of Venezuela, speaking as an observer under "Other Business", said that his delegation wished to make a few comments in connection with the negotiation process leading to its accession to the General Agreement. This process had started in mid-1989 and was now in its final stage. The Working Party established to examine Venezuela's request for accession had completed the review of Venezuela's external trade régime, and tariff negotiations had started with a number of contracting parties. Venezuela had always been ready to enter into a constructive dialogue and to define, in a spirit of cooperation and understanding, the undertakings which it would be prepared to accept for its trade policy to

be fully compatible and consistent with the General Agreement. For this reason, Venezuela had been surprised by the attitude taken by a number of industrialized countries in the most recent meeting of the Working Party. These countries' demands bore no relationship whatsoever to the norms and principles of the General Agreement as regards developing countries, nor did they correspond to the notion that flexibility and progressivity should apply to any process of adjustment to the disciplines established by the General Agreement. Venezuela wished to reiterate in the Council its interest in acceding to General Agreement, but at the same time, to stress that it was not ready to accept undertakings or obligations which would be inconsistent with its level of development, or which would introduce serious distortions in the important process of trade policy reforms that it was currently carrying out. Venezuela had requested accession to the General Agreement as it presently stood, and not on the basis of any country's particular interpretation thereof.

The representatives of Colombia, Chile, Cuba, Peru, Uruguay, also on behalf of Argentina, Nicaragua, Mexico, also on behalf of Brazil, the Dominican Republic and Jamaica expressed their solidarity with Venezuela's accession process and supported fully its representative's statement. They expressed their respective delegations' surprise and concern with the position taken by a number of industrialized countries, and the nature of the demands they had made of Venezuela in the course of the most recent meeting of the Working Party. Those demands bore no relation to Venezuela's status as a developing country, nor to its current stage of development and trade capacity.

The representative of Colombia said that account should be taken that Venezuela was ready to accept important undertakings, and was already taking significant measures in order to be able to accede to the General Agreement. His delegation had been struck by the new attitude adopted by a number of industrialized countries, which provided another illustration of the way developing countries were treated in the present round of negotiations. It was to be hoped that what was being done in the case of the Working Party on Venezuela's accession would not be reflected in the rest of the Uruguay Round.

The representative of Chile reiterated his delegation's position in the Working Party that the developing countries could not develop without trade or, in other words, without access to the developed countries' markets for their goods. Who could throw the first stone as far as trade restrictions were concerned? At the present meeting, the Council had considered the problem of a waiver which had been applied now for 35 years; other countries had been applying restrictions without any waivers. Was one going to ask from Venezuela what had not been asked from others over the years -- others which were, under certain circumstances, exempt from the implementation of Part II of the General Agreement through the Protocol of Provisional Application? In the same vein, he thought that it was unfair at this stage of the Uruguay Round negotiations to block a country's accession or to take away its bargaining chips. Chile had always fought against the erroneous dichotomy between developing and developed countries,

a dichotomy which had not been created by the developing countries, but merely reflected the real-world situation. Venezuela's accession process had been changed at a turning point of the Uruguay Round negotiations. What was happening would be quite symptomatic of what lay in store for the other developing countries. Chile, therefore, requested the developed countries which were blocking Venezuela's accession to demonstrate, in the spirit of Part IV of the General Agreement, the greatest degree of understanding and generosity in this process.

The representative of Cuba said that her delegation had participated in the Working Party and had felt that the atmosphere therein had been far different from that which should have prevailed in a working party on the accession of a developing country, and had resembled more that of a tribunal. Venezuela's accession to the General Agreement should be seen against the backdrop of the economic and social crises in countries of the Latin American region, the underlying origin of which was a massive external debt. She hoped that any future debate in the Working Party would bear in mind the constructive will shown by Venezuela in its efforts to adhere to the rules governing the international trading system embodied in the General Agreement.

The representative of Peru said that his delegation had from the outset taken an active part in the Working Party and could not help but voice its perplexity over what had occurred at the most recent meeting. His delegation felt that Venezuela had worked most constructively in the process. It had been forthcoming with all the information requested of it. It was prepared to take on commitments which represented a great deal for a developing country suffering from serious domestic economic problems owing to a massive readjustment program. It was indispensable that Venezuela should receive the GATT treatment it deserved as a developing country, and that the commitments asked of it be related to GATT principles and standards and not to the ideas of certain delegations which wished to ignore the reality of the differences between developed and developing countries. He appealed to all contracting parties in the Working Party to permit Venezuela to accede in the shortest possible time under the normal conditions applicable to developing countries.

The representative of Uruguay, speaking also on behalf of Argentina, said that their respective delegations had had from the outset the clear opinion that Venezuela was seriously facing up to and dealing with all matters relating to its accession negotiations. Venezuela had been present whenever it had been called upon to do so and its delegation had replied to each of the numerous questions addressed to it. GATT negotiations were tough, both for accession and in the Uruguay Round negotiating groups. There had been an imbalance in the functioning of the Working Party. There was no doubt that certain countries' attitudes reflected a legitimate interpretation of their interests. Argentina and Uruguay respected this, but they wished to join other speakers, including Venezuela, in hoping that in the very near future the definitive conditions governing Venezuela's accession might be agreed by all.

The representative of Nicaragua said that her delegation had noted Venezuela's concern at the increasing requirements in the negotiations on terms of accession for future contracting parties, many of which were Latin-American countries. She did not think it was possible to require commitments of developing countries which had never been sought from developed countries. One was faced with the paradoxical situation that many developed countries enjoyed privileges which were not covered by the General Agreement, while those developing countries presently acceding were being requested to enter into commitments which went beyond the stipulations of the General Agreement, and which did not take account of a series of problems, in particular those of balance-of-payments. Not so long ago it had been Costa Rica's case; now, it was Venezuela's, and shortly it would be Guatemala's and El Salvador's. These countries were living through major economic crises; that situation had to be taken into account in the examination of their request to accede to the General Agreement.

The representative of Mexico, speaking also on behalf of Brazil, recalled the Community's statement under agenda item no. 8 that a protocol of accession was a political document which sought, and hopefully achieved, a balance of rights and obligations for the subscribing parties and for the other parties in relation thereto. As it was a political document, it had to be looked at as such and be conceived of in the political atmosphere which surrounded it. If modernization and economic reform measures of the very wide-ranging type that Venezuela was taking were not directly related to what was discussed in GATT, they nevertheless had a direct relation to the political commitment Venezuela had undertaken unilaterally, i.e., one of the most ambitious monetary, fiscal and trade reform programs. Notwithstanding the serious problems this entailed, which should be recognized by all present, Venezuela had persevered in its firm desire to accede to the General Agreement. He submitted that the question of recognition and support for the types of measures undertaken by Venezuela had been forgotten in the accession negotiations, and he recalled the direct evaluation of the program which Venezuela had put to the contracting parties. He considered it symptomatic that the present meeting seemed very exceptional for the countless allusions to the Uruguay Round, in which the developing countries were reminded, often if not continuously, that significant concessions and contributions were expected of them. Was it not sufficient that the most recent members of GATT had stricter conditions in their protocols of accession and had to make greater contributions than was the case for others who had been in the GATT much longer? It was neither just, nor correct, and not a proper incentive to the late-comers, to enter that discrimination, which was often invoked as one of the defects of the system. As time went by, the fences were set ever higher. He appealed to all contracting parties to welcome Venezuela with the best terms that could be offered.

The representative of the Dominican Republic said that his delegation insisted, as had others, that any precedent that might be set in erecting barriers to Venezuela's accession to the General Agreement might well serve

as a deterrent to other Latin-American countries which were showing an interest in GATT's work and in accession. He observed that their accession could not but strengthen this organization.

The representative of Jamaica said that it was clear that Venezuela's Government and people had been going through serious measures of reform in order to satisfy GATT conditions. Yet the questions asked and attitudes exhibited during the most recent meeting of the Working Party conveyed the impression that Venezuela, and perhaps developing countries, were no longer welcome in this body. Clearly, this should not be the case and, although accession negotiations were understandably difficult and tough, one should not leave a working party with the impression that one was not really wanted. Therefore, Jamaica viewed Venezuela's case with great sympathy, and gave its absolute support to the latter's efforts to join the GATT. It was also a very unfortunate development that the Working Party had given the impression that what was being considered was not GATT as it was, but as it was envisaged for the future by some of the participants. Jamaica hoped that this situation would not continue to prevail.

The representative of Bolivia, speaking also on behalf of Costa Rica, speaking as countries which had concluded their accession process and were in the process of ratifying it, and which as such might be considered as contracting parties in essence, expressed their solidarity with Venezuela and their regret that the GATT accession process was becoming ever harder and more difficult. Like Venezuela, they had suffered from the increasing tendency on the part of certain industrialized countries to demand conditions incompatible with their status as developing countries. They hoped that this did not mean a hardening of the GATT and an attempt to prevent its enlargement. This was a matter of concern because many countries in the Latin-American region were in the process of beginning to accede to GATT. Costa Rica and Bolivia were concerned that this process might come to an end if the tendency referred to above were to continue.

The Council took note of the statements.

15. EEC - Restrictions and charges on imports of ovine meat (DS15/1)

The representative of Chile, speaking under "Other Business", said that, pursuant to his Government's request (DS15/1), the European Community had held consultations with Chile on the 10 per cent discriminatory customs duty applied to Chile's ovine meat exports. As the Community had proceeded with the suspension of this duty, he wished to inform the Council that this matter should now be considered as closed. He thanked the Community for its action.

The Council took note of the statement.

16. Application of Article XXXV

The representative of the United States, speaking under "Other Business", said that, having examined Article XXXV of the General Agreement, the United States had concluded that some previous rulings and interpretations had not been definitive. It believed that contracting parties should have a better understanding of their rights in this regard, particularly in view of the current long list of applications for accession to the General Agreement. The United States would therefore be requesting the Secretariat's assistance in determining, as clearly as possible, the actual intent and meaning of Article XXXV provisions on the necessary conditions for invoking non-application. In reviewing the intent and meaning of the Article, the United States would ask the Secretariat to indicate, wherever possible, how the Article could be interpreted and, as appropriate, where its provisions were unclear. The Council might be asked to take a decision on this issue at a later time.

The Council took note of the statement.

17. Norway - Restrictions on Imports of Apples and Pears
- Follow-up on the Panel report (L/6474, L/6651)

The representative of the United States, speaking under "Other Business", said that on 27 February, the Government of Norway had notified contracting parties (L/6651) of its intention to implement a change in its import policy for apples and pears, in response to the Panel finding in June 1989 (L/6474) that its current policy was inconsistent with its GATT obligations. The United States was pleased that Norway was giving consideration to bringing its import policy into compliance but, as had been expressed to Norway's representative, the United States was seriously concerned with the GATT-consistency of the proposal. In that regard, consultations between the two governments were scheduled for the following day, 4 April. He raised this issue at the present meeting because it was his understanding that Norway intended to implement this new policy on 1 May. The United States urged Norway to postpone implementing this policy until sufficient discussions could be held to resolve the question of whether this policy met the criteria of Article XI.

The representative of Norway said that his country attached great importance to its GATT obligations and to the dispute settlement process. For that reason, it had not blocked the adoption of the Panel report in June 1989, and had worked hard in order to implement its recommendations. He pointed out that none of the ten panel reports adopted in 1989 had yet been implemented and several reports predating 1989 still remained to be implemented. Norway had always stressed the fact that implementation was what counted in the dispute settlement system. The GATT was not particularly credible when a series of panel recommendations that had been adopted were not being implemented. Indeed, this seemed to be the main problem of the GATT's dispute settlement mechanism. It was then all the more frustrating that when one took on the particularly difficult task of seeking implementation, and got into tough domestic battles to convince constituencies that changes were necessary, one was met thereafter with

criticism that this was being done too quickly -- the GATT seemed to be breaking new records when a party was being urged to postpone implementation of panel recommendations.

Norway's new régime for imports was based on Article XI:2(c), and he assured the Council that Norway had taken the utmost care to fulfil all the requirements of this provision. Taking account of the fact that one was at present in the middle of a multilateral round of negotiations, Norway had stated explicitly in its notification that the system being introduced would be reviewed in light of the outcome of the Uruguay Round.

The representative of the European Communities said that the Community had also taken note of Norway's notification of quantitative restrictions to be implemented under GATT Article XI:2(c) for imports of apples and pears. As the principal supplier of such products to Norway during the period concerned, the Community had a particular interest in the future régime Norway envisaged for imports of apples and pears. The Community, therefore, wished to examine Norway's proposed system in detail and reserved its right to revert to this issue, if need be.

The Council took note of the statements.

18. Schedule LXXVII - Mexico: Article XXVIII:5 Renegotiation - Newsprint
(SECRET/330)

The representative of Mexico, speaking under "Other Business", informed the Council that on 28 March, a communication had been sent to the Secretariat notifying contracting parties of Mexico's intention to modify some concessions in its GATT Schedule LXXVII, in accordance with Article XXVIII procedures (SECRET/330). The proposed changes affected four sub-headings of Chapter 48 of the General Import Tariff, which referred specifically to newsprint. In its accession negotiations Mexico had undertaken to provide for each of these sub-headings a minimum-access quota and a zero tariff, which reflected to some extent the fact that all these products were basically imported by a single State-owned company -- the "Productora e Importadora de Papel S.A." (PIPSA). The need to now modify these concessions stemmed from a Presidential decision to privatize PIPSA, which was taken in the general framework of Mexico's continuing efforts to improve public finances and strengthen both private initiative and the freedom of the press. As a result of this decision, the applicable tariffs needed to be adjusted in order to offer the industry concerned economic conditions similar to those enjoyed by the country's other manufacturing industries.

Mexico was keenly interested in carrying out the renegotiation of these concessions as rapidly as possible, and the modifications consisted essentially of tariff increases, for which it was prepared to compensate the parties concerned with "substantially equivalent concessions", in conformity with Article XXVIII. Mexico did not rule out, however, the possibility of finding some other solution satisfactory to all.

The Council took note of the statement.