

GENERAL AGREEMENT ON

RESTRICTED

TARIFFS AND TRADE

SR.46/1

1 February 1991

Limited Distribution

CONTRACTING PARTIES
Forty-Sixth Session

SUMMARY RECORD OF THE FIRST MEETING

Held at the Centre William Rappard, Geneva,
on Wednesday, 12 December 1990, at 3.30 p.m.

Chairman: Mr. John Weekes (Canada)

	<u>Page</u>
<u>Subjects discussed:</u>	
- Chairman's opening address	1
- Adoption of the Agenda	1
- Order of Business	2
- Presentation of Reports	2
- Central American Bank for Economic Integration	5
- Request for observer status	
- Accession of El Salvador	5
- Activities of GATT	7
- Report of the Council	10

Chairman's opening address

The CHAIRMAN welcomed Costa Rica as the one-hundredth contracting party.

The CHAIRMAN made an opening address (GATT/1498).

Adoption of the Agenda

The CHAIRMAN noted that the Provisional Agenda was contained in L/6760, and proposed adding the following items to the Agenda: "Central American Bank for Economic Integration - Request for observer status"; "Accession of El Salvador"; and "Salle Eric Wyndham White".

Mr. Ramsauer (Switzerland) proposed an additional item: "Trade and Environmental Policies".

Mr. Stancanelli (Argentina) proposed a further additional item: "Article XXIV:6 - Consultations between Argentina and the European Economic Community".

The Agenda was adopted, as amended (L/6786).

Order of Business

The CHAIRMAN drew attention to the Proposed Order of Business circulated in W.46/1 which gave an outline of the organization of work during the Session. He proposed beginning with the presentation of reports, followed by consideration of the request for observer status by the Central American Bank for Economic Integration, the report of the Working Party on the Accession of El Salvador, and then the general statements by contracting parties, followed later by consideration of the report of the Council, the proposal on the Salle Eric Wyndham White, Trade and Environmental policies, Article XXIV:6 Consultations between Argentina and the European Economic Community, and finally the dates for the 47th Session and Election of Officers.

The CONTRACTING PARTIES approved the Order of Business as proposed in W.46/1, as amended.

Presentation of Reports

Presenting the Council's report (L/6766 and Add.1), its Chairman, Mr. Ricupero (Brazil), noted that the Council's work had continued unabated during the previous year despite the accelerating pace of the Uruguay Round negotiations. This underscored the Council's important rôle in carrying out the day-to-day task of managing the multilateral trading system as it already existed, even as new and improved rules were being negotiated. The Council's intense and varied work also underscored its rôle as a forum for discussion on developments which had -- or might have -- a bearing on the multilateral trading system generally. However, as that system was gradually expanded and became increasingly global, the demands on the Council would be that much greater. He believed that the Council should remain capable of conducting its work smoothly and efficiently, without being overburdened.

He drew attention to three seemingly "routine" matters which would need to be addressed in the coming year: (a) how to deal with requests for waivers, keeping them from becoming semi-automatic while at the same time taking account of the different trade policy needs which gave rise to individual requests; (b) how to implement improvements in the practice of reporting on developments in regional agreements, the biennial calendars for reporting not having been followed in recent years; and (c) how to improve the procedures for derestricting documents as GATT became increasingly interesting to the press, the schools, private business persons as well as their lawyers, and the public generally.

Turning to dispute settlement, he said that the Council's level of activity during the past year had confirmed the confidence that contracting parties had placed in the improved rules and procedures adopted in 1989 (BISD 36S/61). It was also an indication of the importance attached by contracting parties to settling trade disputes within, and not outside, the GATT system. Experience had also shown that follow-up from earlier panels had benefited from the spirit of the new procedures. The Council had also

had its first experience with the arbitration procedure provided for in the new rules, which had demonstrated that arbitration could provide an alternative and expeditious dispute settlement mechanism in certain instances. On the other hand, while experience with the improved dispute settlement rules and procedures had been very positive on the whole, he recalled that the Director-General, in his two semi-annual progress reports, had expressed concern at certain instances of non-implementation. He viewed continued and increasing respect for the GATT dispute settlement procedures as crucial to the functioning of that mechanism and to confidence in the GATT system as a whole.

Since the previous Session, the Council had also held nine special meetings in its first series of reviews of trade policies and practices of contracting parties under the Trade Policy Review Mechanism (TPRM). Experience had shown that this mechanism was developing into a useful tool for the multilateral appreciation and assessment of individual contracting parties' trade policies, and an important source of transparency. Moreover, the enhanced surveillance that was also provided by the Council's overview of developments in the international trading environment had further strengthened the "early warning" aspect of these special Council meetings. He said that there was broad scope for continuous improvement in the TPRM, and that the Council had pursued efforts during the year to introduce new improvements with positive results. At a time when there was discussion of far-reaching changes in the institutional aspects of the GATT, a quiet revolution had been taking place during the past year in the form of the application of the TPRM.

The Council had met during the past year against the backdrop of profound changes in Eastern and Central Europe and of economic reform in other parts of the world, which had had an impact on its work. Four new contracting parties had joined the GATT during the past year, bringing its membership to the one hundred mark; two other governments had changed previous requests for provisional accession to full accession; the Soviet Union had expressed interest in accession and had been accorded observer status; Poland had sought to renegotiate its terms of accession as a market-based economy; lastly, the former German Democratic Republic had been integrated into the European Communities and consequently into the GATT system. All of these events had contributed towards the universalization of the multilateral trading system, invigorating it while at the same time posing challenges to it.

Mr. Benhima (Morocco), presenting the report of the Committee on Trade and Development (L/6744), said that the Committee had held two meetings in 1990, in June and in October. It had pursued its work in relation to both its regular and continuing responsibilities under its terms of reference, and to relevant aspects of the Uruguay Round negotiations of direct interest to developing countries, including the least-developed countries.

As in previous years, the Committee's activities had encompassed work in relation to the review of the implementation of Part IV and the operation of the Enabling Clause.¹ In this context the Committee had

¹Differential and More Favourable Treatment, Reciprocity and Fuller Participation of Developing Countries (BISD 26S/203).

considered and taken note of the notification received on the Global System of Trade Preferences Among Developing Countries (GSTP) (L/6564 and Add.1) as well as of the reports by the Member States of the Bangkok Agreement (L/6718) and of the Andean Group (L/6737). Finally, the Committee had adopted, for submission to the CONTRACTING PARTIES, the seventeenth Annual Report of the Committee of the Participating Countries on the operation of the Protocol Relating to Trade Negotiations Among Developing Countries (document L/6731 and addenda).

In the course of 1990, a principal area of work of the Committee had been technical assistance to developing countries in relation to the Uruguay Round. The Committee had continued to review periodically the technical assistance provided in GATT and had received information on technical assistance activities carried out by other international organizations. At its sixty-ninth session, the Committee had carried out a comprehensive review of the technical assistance provided by the GATT since the commencement of the Uruguay Round. It had been generally felt that the technical cooperation programme of the GATT had been successful and had played a very positive rôle in enhancing the participation of developing countries in the Round. Appreciation had also been expressed to donor countries which had provided voluntary financial contributions for technical assistance activities, as well as to UNCTAD and other organizations such as UNDP, FAO, World Bank, IMF and SELA for their technical assistance and support.

A large number of representatives had emphasized the need for continuing and intensifying the technical assistance provided by GATT and other international organizations, including through voluntary contributions by governments after the completion of the Round. This would be particularly useful for developing countries in helping them to analyze, assess and implement the results of the negotiations as well as to make use of those results. Toward this end it had been stressed that the capabilities of the GATT Secretariat to carry out technical assistance and training activities should be further strengthened by the CONTRACTING PARTIES.

The CHAIRMAN then drew attention to the following reports of the Committees and Councils charged with implementation of the MTN Agreements and Arrangements: Committee on Trade in Civil Aircraft (L/6767), Committee on Technical Barriers to Trade (L/6726), Committee on Import Licensing (L/6746), International Dairy Products Council (L/6743), International Meat Council (L/6740), Committee on Government Procurement (L/6768), Committee on Anti-Dumping Practices (L/6764), Committee on Subsidies and Countervailing Measures (L/6762), and Committee on Customs Valuation (L/6761). In connection with the report of the International Dairy Products Council, he informed contracting parties that the Committee of the Protocol Regarding Milk Fats had held a meeting that same morning, at which it had adopted a derogation concerning the sale of butter to the USSR. The Decision would be circulated in document DPC/PTL/16.

Central American Bank for Economic Integration
- Request for observer status

The CHAIRMAN drew attention to a communication from the Central American Bank for Economic Integration (W.46/5) requesting observer status at Sessions of the CONTRACTING PARTIES and at meetings of the Council and its subsidiary bodies. It was his understanding that contracting parties were in favour of this request, and he suggested that it be granted.

The CONTRACTING PARTIES so agreed.

Mr. Trejos (Central American Bank for Economic Integration), speaking as an observer, said that the Bank was an institution dedicated to the integration and economic development of Central America. In 1989, the Central American governments had signed a protocol to reform the Bank's status whereby membership in the Bank would be open to countries outside the region, and various countries from Latin America, Europe and Asia had already taken the necessary steps to become members.

The fact that the Central American countries had based the future development of their economies on the strengthening and improvement of their common market as well as on the liberalization of their foreign trade, explained their interest in active participation in the Uruguay Round and in negotiating their accession to the General Agreement. At the present stage of economic development in Central America, the Bank was playing an important rôle through the financing of regional projects aimed at export production, trade-related infrastructure, and currently with a particular programme of technical support for Central American governments aimed at putting into practice the new foreign trade policy of the Central American Common Market, an element of which was participation in the GATT. Having just been accorded observer status at GATT meetings, the Bank would better be able to carry out its rôle.

It was a happy coincidence that at their present Session, the CONTRACTING PARTIES would be receiving a report from the Working Party on the Accession of El Salvador and would be called upon to adopt the Decision authorizing that country to accede, as well as the corresponding Protocol of Accession. It was also a happy coincidence that the following day -- the final day of the present Session -- marked the thirtieth anniversary of the signing of the agreement creating the Bank and also of the General Treaty of Central American Economic Integration.

The CONTRACTING PARTIES took note of the statement.

Accession of El Salvador

The CHAIRMAN recalled that in December 1988, the Council had established a working party to examine El Salvador's application to accede to the General Agreement. He drew attention to the report of the Working Party and to the Schedule LXXXVII - El Salvador in documents L/6771 and Add.1. respectively.

Mr. Artacho (Spain), Chairman of the Working Party, said that pursuant to its mandate, the Working Party had carried out an examination of El Salvador's foreign trade régime and its compatibility with the General Agreement. During the examination El Salvador had supplied additional information and clarification regarding the different points raised.

The main points brought out in the Working Party discussion were set out in paragraphs 11 to 57 of L/6771. Matters taken up by members had related to El Salvador's tariff and customs régime, tax system for imports, import controls, anti-dumping and countervailing legislation, export promotion, government procurement and State-trading, MTN Agreements and trade relations with other countries.

Having carried out an examination of El Salvador's foreign trade régime and in the light of the explanations and assurances given by its representatives, the Working Party had reached the conclusion that, subject to the satisfactory conclusion of the relevant tariff negotiations, El Salvador should be invited to accede to the General Agreement under the provisions of Article XXXIII. For this purpose, the Working Party had prepared for the CONTRACTING PARTIES' approval a draft Decision and Protocol of Accession which were annexed to the report. Concessions resulting from the tariff negotiations between El Salvador and contracting parties in connection with its accession had been circulated in L/6771/Add.1, and had become an annex to the Protocol of Accession.

Mr. Quiros (El Salvador), speaking as an observer, said that the decision taken by El Salvador's present government to reaffirm its interest in maintaining and bringing to a conclusion its process of accession was based on the aims of the country's new economic policy to seek a greater and more efficient integration of its economy into the world market. As an element of that policy, El Salvador was firmly promoting a programme for the liberalization of its foreign trade. It was also pursuing the elimination of all types of discrimination, reducing the State's rôle in economic affairs and promoting the establishment of rules and disciplines in a fully transparent and equitable manner. He referred in this regard to the firm and open support given by El Salvador to the promotion of a healthy Central American Common Market, which would further reaffirm regional economic integration. He said that this new spirit had been present in the recent meeting of the Presidents of Central American countries and Panama in the city of Antigua, Guatemala, and that it would continue to prevail when the second such Presidential meeting was held shortly in Punta Arenas, Costa Rica.

El Salvador hoped with these efforts to speed up its economic and social development to the benefit of all of its people and also to achieve peace and economic and social equality. It was fully aware that this was being done at a difficult moment in its history and of great concern in the world economy, but recognized that to do this later would mean greater efforts and sacrifices which might prove to be more costly.

In the light of the foregoing, it was only natural that El Salvador wished to come closer to GATT and to become part of this community of nations whose purpose it was to establish an open international trading system and to seek a greater liberalization and expansion of world trade to

the benefit of all. He recalled that it had been precisely at the time when these principles were being reaffirmed and when other countries were being invited to share them, namely at the time of the 1986 Punta del Este Ministerial Declaration, that El Salvador had taken the decision to initiate the process of its accession to GATT.

El Salvador was a country with a limited domestic market, which did not possess an abundance of natural resources of a strategic nature. The accession process had proved to be a fruitful experience for both its public and private sectors, involving consultations to ensure the compatibility of the principles and aims of its new economic policy with GATT principles. An important aspect of this process of consultation had been that El Salvador was able to reaffirm before the contracting parties its status as a developing country and to ensure that it received from its developed trading partners differential and more favourable treatment, in accordance with the terms of Part IV and other provisions of the General Agreement, and as stipulated in the Enabling Clause and further reaffirmed in the Punta del Este Declaration.

He noted that in the report, El Salvador's obligation to comply with its international legal obligations concerning economic integration with the Central American countries, and trade with other countries of the region, had been clearly stipulated. With its accession to GATT, El Salvador wished to support and further strengthen the GATT as a multilateral forum for trade negotiations and the settlement of disputes, and as a mechanism to promote trade and development growth on an equitable and balanced basis. It hoped that its autonomous efforts towards the liberalization of its economy, together with the concessions granted in the course of the accession negotiation process, would be recognized and given appropriate credit in the Uruguay Round.

The CONTRACTING PARTIES took note of the statement, approved the text of the draft Protocol of Accession, approved the text of the draft decision, agreed that the decision be submitted to a vote, and adopted the Working Party's report in L/6771 and Add.1.

Activities of GATT

The following general statement was received by the Secretary and circulated to contracting parties:

Mr. Adrian Constantinescu,
Director, Ministry of Commerce and Tourism of Romania SR.46/ST/1

The following general statements were made:

Mr. Rubens Ricupero,
Ambassador, Permanent Representative of Brazil SR.46/ST/2

Mr. Oswaldo de Rivero,
Ambassador, Permanent Representative of Peru SR.46/ST/3

Mr. Maamoun Abdel-Fattah,
Commercial Counsellor, Permanent Mission of Egypt

SR.46/ST/4

Mr. Miguel Rodríguez Mendoza
Comisionado del Presidente,
Asuntos Económicos Internacionales of Venezuela

SR.46/ST/5

Mr. Tran (European Communities) said that he had hoped that there would not be many statements made at the present Session giving assessments of the outcome of the recent Brussels meeting of the Uruguay Round Trade Negotiations Committee. He recalled having cautioned earlier that silence was necessary for the negotiations to proceed; that advice had not been followed, and one could now witness the results. The Community had wanted to engage in real and discrete negotiation. However, as a number of statements had been made in this regard, he would note and take them into consideration.

This was not the first time that an established deadline had not been met in a round of GATT negotiations. In the past, deadlines had been missed by months, even years; one should therefore not be too surprised or disappointed. This being said, however, while the world would not immediately change if the Uruguay Round were perchance to fail, the multilateral system would nevertheless become lethargic, and GATT would enter a state of hibernation and gradually disappear altogether. He stressed that the Community was placing its faith and hope in the GATT and in the multilateral system, and was not searching for something beyond it. Indeed, if the Uruguay Round negotiations were to succeed, the Community would be working towards the creation of a multilateral trade organization within the context of the negotiations and not outside it.

Mr. Sene (Senegal) said that having heard the Community statement, he would add that in the light of the major changes taking place in the world and of the interdependence of all economies, the growing interest in the multilateral system of developing countries and of countries the economies of which were in a process of transition, the Uruguay Round would without doubt have to provide the foundations necessary for stability within the context of this change. The objectives of the Uruguay Round had been very ambitious. The success of such an undertaking would undoubtedly consolidate the reconstruction of a multilateral system providing for the free exchange of goods for the coming decades. Of course, it had not been easy to find in Brussels solutions to problems which had been under discussion in Geneva for nearly four years, notwithstanding that that meeting had been held at the Ministerial level; however, Senegal believed that the spirit of cooperation which had prevailed in 1986 at the launching of the Uruguay Round in Punta del Este, as also in 1988 at Montreal during the Mid-Term Review, would help lead the negotiations towards a constructive conclusion. This undoubtedly would require reciprocal political will and joint efforts whereby everyone would make a contribution and assume obligations and responsibilities commensurate with their means and possibilities, in order to obtain in return an equitable share of the benefits.

With reference to the negotiations on agriculture, this was indeed a very difficult and sensitive area which required a realistic solution that

would take into account the multiple and complex aspects of the problem, both in terms of exporting and importing countries.

In certain other areas of the negotiations, such as textiles and the new subjects, which were just as important, rules were required which could prevent distortions to trade. But this should be done with full respect for freedom of trade and for the objectives of development which constituted a fundamental dimension of the task all had been working on since Punta del Este.

The Uruguay Round had now reached a critical stage. It was perhaps not yet the time to speak of a crisis, but in any case one had reached the moment of truth where the future of the multilateral trading system was at stake. It was important to avoid a trade war and the formation of protectionist-oriented blocks. Nothing was irremediable and Senegal believed that the time had now come to call on the powerful trading partners for a final effort to find a compromise, and thus to respond to the expectations of the developing countries from this Round. These countries, which were the most numerous in the GATT forum, had undertaken very difficult structural adjustment measures to liberalize their markets and to be integrated into a multilateral and equitable trading system, as a means of achieving economic development, and political and social stability.

Mr. Henrikson (Sweden) raised the specific matter of Sweden's dispute with the United States regarding the latter's anti-dumping duties on imports of stainless steel pipes and tubes from Sweden. This matter, which had been reported on by the Director-General in document C/175, was of utmost importance to his authorities both generally and specifically: generally because it concerned vital principles, the credibility of the dispute settlement mechanism and the GATT as such, and specifically because a Swedish company was paying high anti-dumping duties and losing trade opportunities due to a measure which was inconsistent with the Anti-Dumping Code². He recalled that the company concerned had been subject to anti-dumping duties since May 1987 and that the issue had first been discussed in the spring of 1988 in the Committee on Anti-Dumping Practices established under the Code. In Sweden's view, these duties had been inconsistent with the Code, and a Panel had been established in early 1989 to settle the dispute. The Panel report³, submitted in August 1990, had indeed found the US duty to be inconsistent with the Code, and it had recommended revocation and reimbursement.

He noted, however, that although almost two years had passed since the Panel had been established, the dispute was not yet settled. The Panel report, in spite of its clear verdict, had not been adopted, let alone implemented. Sweden, as others, firmly supported the idea of a swift and binding dispute settlement mechanism in the GATT. Its belief in the GATT

²Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade (BISD 26S/171).

³United States - Anti-dumping duties on imports of stainless steel pipes and tubes from Sweden (ADP/47).

rules, however, had been badly shaken over the past few months due to the lack of progress in this particular panel process. Thus far, it seemed that Sweden had won the case only to be told that the United States could not in this instance accept the Panel's ruling. The message Sweden had received thus far was: "The rules of dispute settlement do not apply unless we want them to". This was unacceptable to Sweden, as, it was convinced, it was to the entire GATT system. Against this background, he strongly urged the United States to agree to adoption of the Panel report and to implement promptly the recommendations thereof. He did so not only because this was in Sweden's interest but also because adoption and prompt implementation of panel reports was needed to restore the credibility of, and to strengthen, the GATT.

Mr. Yerxa (United States) said that the United States had made clear that while it did not have major problems with the substance of the Panel's interpretation of the Antidumping Code, it had serious concerns with the Panel's having recommended a specific and retroactive remedy. He recalled that at the Committee's last meeting, the United States had requested that the latter amend the Panel's recommendations. The United States had taken this position on the grounds that the question of the appropriate remedy could only be determined by the US authorities, consistent with their sovereign right to determine how best to come into compliance with the Panel's findings and conclusions. He recalled that the Committee's Chairman had closed the meeting before the Committee had responded to the United States' request. The United States had not blocked adoption of the report. It stood ready to resume this debate in the proper forum, the Committee on Anti-Dumping Practices.

Mr. Ekblom (Finland), speaking also on behalf of Iceland and Norway, said that these countries strongly supported Sweden's urging that this Panel report be adopted forthwith.

Report of the Council (L/6766 and Add.1)

The CHAIRMAN referred to the report of the Council of Representatives on its work since the Forty-Fifth Session. A list of matters on which the CONTRACTING PARTIES were expected to take action of some kind had been circulated in L/6766/Add.1. He stressed that the report was not intended to reflect detailed positions of delegations, since the Council Minutes contained such information and remained the record of the Council's work.

Point 1. Work Program resulting from the 1982 Ministerial meeting

Sub-point 1(c). Export of Domestically Prohibited Goods and Other Hazardous Substances⁴

Mr. Sankey (United Kingdom), presenting a report on the work of the Working Group on the Export of Domestically Prohibited Goods and Other

⁴See also SR.46/2, page 4.

Hazardous Substances (L/6769), recalled that the Working Group had been established by the Council on 19 July 1989 and that its task had been to develop international rules on trade in such products while taking care that such rules neither created unnecessary obstacles to trade nor duplicated the work of other international organizations. On the basis of proposals made by various delegations, the Working Group had elaborated a draft Decision on Products Banned or Severely Restricted in the Domestic Market, for which there appeared to be a general consensus, although one delegation had reserved its position.

Referring to some features of this text, which was attached to document L/6769, he said that the Working Group had found it impracticable to draw up a comprehensive list of domestically prohibited goods because a product banned or severely restricted by one contracting party would not necessarily be banned or severely restricted by another. It had been agreed therefore that the draft Decision would apply when a contracting party had banned or severely restricted a product in its own domestic market or had determined such a product to be hazardous because it presented a serious and direct danger to human, animal or plant life or health, or to the environment in its territory. Each contracting party would thus have the responsibility for taking its own decisions as to which products it considered should be prohibited domestically. The draft Decision excluded fissionable materials, munitions, radioactive wastes and ship-discharged wastes.

Under the draft Decision, each contracting party would undertake three obligations whenever a product had been banned or severely restricted in a domestic market. First, the contracting party would consider whether the export of such a product should be subject to equivalent measures. Second, if such measures were not applied to exports, the contracting party would promptly notify the GATT Secretariat of the measures taken and the reasons therefor; the GATT Secretariat would forward all notifications received to the enquiry points to be established by each contracting party. Third, the contracting party would provide additional information on the handling of the products if asked to do so.

To avoid any duplication of effort, the draft Decision made clear that contracting parties already participating in notification schemes for particular products under existing international instruments would not have to notify the GATT Secretariat as well.

In conclusion, he said that the draft Decision represented a modest but important step forward in an area of importance in the environmental context. When adopted, it would mean that all trade in domestically prohibited goods would be under the auspices of either one of the existing international instruments or of this new GATT notification scheme. Importing countries would thus be better informed about the nature of such products and would be in a better position to decide whether to permit their importation and, if such imports were permitted, to take appropriate measures for the health and safety of their populations.

As he had stated earlier, the Working Group had not been able to obtain complete endorsement of the text from all delegations in the time

available. He therefore hoped that the CONTRACTING PARTIES would agree to a further short extension of the mandate of the Group until 31 March 1991 so that it could bring its work to a successful conclusion.

The CHAIRMAN proposed that the CONTRACTING PARTIES take note of the report by the Chairman of the Working Group in L/6769 and agree to extend the mandate of the Working Group until 31 March 1991.

The CONTRACTING PARTIES so agreed.

Point 2. Trade Policy Review Mechanism

Sub-point 2(b). Country Reviews

The CHAIRMAN recalled that the Decision of 12 April 1989 on the Functioning of the GATT System (BISD 36S/403: para.I.D.(vi)) provided for the reports by the contracting parties under review and by the Secretariat, together with the minutes of the respective Council meetings, to be forwarded to the next regular Session of the CONTRACTING PARTIES, which would take note of them. Accordingly, the relevant documents relating to the reviews of Australia, Morocco, United States, Sweden, Colombia, Canada, Hong Kong, Japan and New Zealand were before contracting parties, and he proposed that the CONTRACTING PARTIES take note of them.

The CONTRACTING PARTIES so agreed.

Point 11. Recourse to Articles XXII and XXIII

Sub-point 11(a)(i). Canada - Import restrictions on ice cream and yoghurt

The CHAIRMAN recalled that this matter had most recently been before the Council at its meeting on 7 November, and had been referred to the present Session for further consideration.

Mr. Yerxa (United States) said that his authorities had completed a preliminary list of items for withdrawal of concessions in response to Canada's refusal to comply with the finding of the Panel which had considered this case (BISD 36S/68). Given the current state of negotiations in the Uruguay Round, the United States would defer any further efforts to obtain action on this matter until the next Council meeting by which time, it hoped, the outcome of the Round might be more evident.

With hopes for a successful outcome to the agriculture negotiations now in doubt, it was possible that a solution to this problem would not be found in the Round. In that light, the United States urged Canada to comply with the Panel report before the next Council meeting or at least to indicate at that meeting how it intended to comply, so that withdrawal of concessions by the United States would not be necessary.

Mr. Wright (Canada) recalled that Canada had indicated previously its intention to implement the Panel recommendations in the light of the outcome of the Uruguay Round. As all were aware, this issue was still

under negotiation, and Canada did intend to await the outcome of the trade negotiations before implementation.

The CONTRACTING PARTIES agreed to refer the matter to the Council for further consideration.

Sub-point 11(a)(ii). Canada - Import, distribution and sale of alcoholic drinks by provincial marketing agencies

The CHAIRMAN recalled that this matter had most recently been before the Council at its meeting on 7 November and had been referred to the present Session for further consideration. He drew attention to a request from the United States in document DS17/2 for a panel to examine the matter.

Mr. Yerxa (United States) said that the United States was concerned by repeated indications that Canada would not take meaningful steps in the foreseeable future to modify practices found by the Panel (BISD 35S/37) to be inconsistent with its GATT obligations, and bring them into compliance. Canada had repeatedly rejected US requests for Council affirmation of its rights with respect to the Panel report. Canada had implemented new restrictive practices since 1988, and a satisfactory adjustment to the matter through consultations in July 1990 had not been possible.

Accordingly, as set out in DS17/2, the United States requested that, pursuant to Article XXIII:2, the CONTRACTING PARTIES establish a panel to determine whether benefits accruing to it under the General Agreement were nullified or impaired as a result of practices maintained by Canadian marketing agencies with respect to the import, distribution and sale of beer, including those practices identified in the 1988 Panel report. The United States requested that, to the extent possible, the new panel be comprised of the same members as the previous one, and that the new panel complete its work on an expedited basis -- namely, within 60 days of its establishment.

Mr. Wright (Canada) noted that negotiations with the European Economic Community, the original complainant party in this matter, were ongoing, and that a further round was scheduled for early in 1991. Canada intended to consult further with the United States in the light of these negotiations and therefore did not consider that the consultation process had yet been completed. As Canada had stated previously, it intended to implement the changes resulting from these negotiations on a most-favoured-nation basis. He noted that Canada had received the written request for a panel from the United States only a few days earlier, and that the request had raised the question of other issues which had not been specified. Also, the practices at issue were provincial rather than federal, and Canada had not had an opportunity to consult internally on these questions. For all these reasons, and the fact that this was only the first time that a formal request for the establishment of a panel had been raised before contracting parties, Canada was not ready at the present Session to agree to the establishment thereof.

Mr. Hawes (Australia) said that in the light of Australia's commercial and policy interests in the matter, Australia reserved its rights to intervene in any panel proceedings which might arise.

The CONTRACTING PARTIES agreed to refer the matter to the Council for further consideration.

Sub-point 11(g)(iv). United States - Countervailing duties on fresh, chilled and frozen pork from Canada

The CHAIRMAN recalled that this matter had most recently been before the Council at its meeting on 7 November and had been referred to the present Session for further consideration.

Mr. Wright (Canada) recalled that Canada had previously noted its satisfaction with the Panel report on this matter (DS7/R). The Panel had upheld a very important principle in the application of countervailing duties, namely that before any countervailing duties are imposed, it was essential that an investigation prove that subsidies were being provided to an exported product. It was inadequate to determine that subsidization was taking place on the basis of mere allegations or assumptions. At the November Council meeting, the US representative had indicated that his authorities were continuing to evaluate the report. Canada urged the United States to agree to the adoption thereof at the present meeting.

Mr. Yerxa (United States) said that while the United States had had an opportunity to consider the Panel's findings and conclusions, it did not believe that the time was ripe for consideration of its recommendations because the case that had given rise to this dispute had not yet been completed under US domestic law. The determinations of subsidization and of injury in this case were under challenge before binational panels established under the Canada-US Free Trade Agreement; the decision on the determination of injury was due by 22 January 1991 and that on subsidization by 7 March 1991. It was possible that the decisions of these binational panels could result in a change in the current administrative ruling by US officials, rendering this case moot and removing Canada's grievance in the GATT.

The substantive issue addressed in the Panel report regarding processed agricultural products was complicated. Noting that processed agricultural products had been the subject of a number of challenges under the General Agreement and under the Subsidies Code⁵, he pointed out that none of these other panel reports had thus far been adopted. The United States believed that this bolstered the importance of awaiting the decisions of the binational panels before deciding on the matter in the GATT.

⁵ Agreement on Interpretation and Application of Articles VI, XVI and XXIII of the General Agreement on Tariffs and Trade (BISD 26S/56).

Since the United States believed that the dispute was not ripe for consideration by the CONTRACTING PARTIES at the present Session, it would not address any substantive issues raised by the Panel. However, the United States reserved the right to return to any substantive concerns it might have upon conclusion of the domestic review proceedings.

Mr. Wright (Canada) expressed disappointment that the United States was not in a position to adopt the Panel report at the Session. He noted that the report had been circulated in early September and had been discussed at two Council meetings. Canada considered that the United States had had sufficient time to analyze the report. Canadian exporters continued to suffer from these GATT-inconsistent countervailing duties, and he therefore urged the United States to agree to adoption at the next Council meeting.

The CONTRACTING PARTIES agreed to refer the matter to the Council for further consideration.

Point 13. Waivers under Article XXV:5

Sub-point 13(e). Harmonized System

The CHAIRMAN drew attention to the following documents containing requests from the Philippines (W.46/3), Malaysia (W.46/6), Bangladesh (W.46/7) and Colombia (W.46/8) for either a waiver or an extension of an existing waiver.

He said that the documentation still to be submitted and any negotiations or consultations that might be required should follow the special procedures relating to the transposition of the current GATT concessions into the Harmonized System, adopted by the Council on 12 July 1983 (BISD 30S/17).

The Decisions were adopted as follows: Philippines (L/6788) by 58 votes in favour and none against; Malaysia (L/6789) by 59 votes in favour and none against; Bangladesh (L/6790) by 59 votes in favour and none against; and Colombia (L/6791) by 59 votes in favour and none against.

Sub-point 13(f). German unification: Transitional measures adopted by the European Communities

Mr. Ricupero (Brazil), Chairman of the Council, recalled that at its meeting on 7 November, the Council had agreed that he should conduct informal consultations on this matter with interested contracting parties in the interval before the present Session. He reported that three rounds of very intensive consultations, with broad and active participation, had been held on this matter, and that discussions had been very lively at times. The last of these consultations had taken place the afternoon of the previous day, and he considered it appropriate for the parties directly concerned to inform the CONTRACTING PARTIES on the results thereof.

Mr. Tran (European Communities) recalled that the Community wished to obtain a temporary derogation from the provisions of the General Agreement,

definitely limited in time until 31 December 1992, in order to allow for a certain number of transitional measures to be taken to ensure the successful and adequate integration of the former German Democratic Republic (GDR) into the Community, and accordingly into the multilateral system. He stressed that the derogation was being requested to allow for this integration and not to allow the Community to sidestep its existing obligations.

Following the very intensive consultations just mentioned by the Council Chairman, a compromise had been reached which would make it possible for the CONTRACTING PARTIES to take a decision on the matter at the present Session. Under this compromise, the CONTRACTING PARTIES would be asked to take a roll-call vote on the draft waiver decision in document C/W/661/Rev.1, while at the same time the Community would be ready to accept the establishment of a working party with the terms of reference as suggested by the United States in document L/6751, with the minor modification that it would examine the matter also "in light of the waiver decision" being submitted to the CONTRACTING PARTIES.

He was aware that a certain number of the Community's partners might have some concerns with regard to their trading relations with the former GDR, and assured them that the Community was ready to take their concerns into consideration in as favourable a manner as possible, given the provisions of the draft decision, in particular paragraphs 4 and 6 thereof, which should provide full assurances in this regard.

The Community did not want to see any harassment in regard to its trading relations with the countries referred to in the draft decision; it therefore wished to have a very clear outcome at the present Session in order that the fledgling democracies of the countries concerned, which were now being restructured towards a market economy, could proceed in that direction. If wrong signals were given, or if there was a failure to approve the draft decision, this would prove very costly for the international community as a whole. Once again, therefore, he made a formal request to the CONTRACTING PARTIES to adopt the draft waiver decision by roll-call vote; he hoped that all would cast a positive vote so that the present process of history in the countries of Eastern and Central Europe would not in any way be hampered by procedural considerations in the GATT, and that the vote would indicate further formal support to the democracies emerging once again in that region.

Mr. Yerxa (United States) said that he had listened very carefully to the Community's statement and had also spoken informally with him and with a number of other representatives on this matter. He would make a few statements for the record to clarify for all participants the position of the United States on this entire question.

First, the United States' general position with respect to the granting of waivers which involved substantial derogations from fundamental GATT provisions had been stated very clearly at the November Council meeting. Since that time, the United States had engaged in both informal and formal consultations with a number of interested contracting parties

under the chairmanship of the Council Chairman, and recognized that the majority of delegations had taken the view that one should not await the report of a working party on this matter before making a determination on the waiver request.

In the light of that prevailing attitude, the United States had not sought in any way to block procedurally the adoption of the waiver decision at the present Session, and to that end, as he understood from the Community's statement, there would be a roll-call vote very shortly. He wished to make clear for the record, however, that while the United States was not going to seek to prevent a vote on this matter, it would not vote in favour of this waiver. This should not be interpreted by anyone as arising from any disagreements between the United States and the Community over matters unrelated to the waiver. The United States was taking this position simply because of its concern about what it believed should be the appropriate and the most expeditious and fair consideration of waivers involving substantial trade effects and a substantial derogation from GATT obligations. The United States had been among the strongest and most active supporters of German unification and recognized the serious situation which had encouraged the Community to grant trade preferences on a transitional basis to certain of its trading partners as a result of that unification. It could not agree, however, that basic GATT rights and obligations should be suspended with no discussion or review, and with no reference to standard GATT procedures. The United States believed that the appropriate avenue was to have such an examination and careful review prior to a vote on a waiver, and it would take this position whether it was the Community or another contracting party requesting this action.

He recalled that in 1956, the CONTRACTING PARTIES had adopted guiding principles to be followed in cases of request for waivers (BISD 5S/25). One of them was that the party seeking a waiver should engage in full consultations with other contracting parties on the substance of the request; over the years, the normal way of affording such consultations had been through the mechanism of a working party. The Community had suggested in earlier statements on this matter that there had been exceptions to the practice of establishing a working party in the case of waivers. This was indeed true; but if one set aside the routine waivers, such as those granted in cases involving Article XXVIII, the general rule had been that waivers were only granted after a working party had examined the matter. Every important waiver from obligations under Article I of the General Agreement had been the subject of consideration in a working party. By way of illustration, this was true of waivers granted in respect of the Caribbean Basin Initiative (BISD 31S/20), the United States/Canada automotive agreement (BISD 14S/37), and Section 22 of the US Agricultural Adjustment Act (BISD 3S/32) as well as other cases.

He had looked carefully at the language of the waiver proposed by the Community; while he found that there was an honest intent and an honest effort therein to assure other contracting parties that there would be adequate recourse to a remedy should any actions arising out of these transitional measures affect their rights and obligations, he still believed that one could only be certain what possible actions would arise and what the consequences would be for all, if one had a period of more

detailed examination of the nature of these arrangements. In this regard, he noted that the trade measures proposed by the Community had only recently been approved in the Council of the European Communities, and it was not certain even now how the trade in question was to be confined to the territory of the former GDR or how it would be limited to traditional trade flows that had occurred in the past. The United States was also not certain what tariff items would be covered or on what basis these items had been selected. There were a number of other concerns which it believed should be examined prior to the granting of this waiver.

Understanding that that was not the sentiment of contracting parties at present, the United States was prepared to proceed to a vote on this matter although it would not be able to support the waiver at the present time. As he understood the Community's proposal, following the vote on the waiver, and if it was approved, there would then be a decision taken to establish a working party with standard terms of reference to examine the transitional measures adopted by the Community and their potential implications for other contracting parties. After the waiver decision had been disposed of, the United States would be prepared to support establishment of this working party.

Mr. Ukawa (Japan) said that Japan had felt that the proper procedure to deal with this request for a waiver was the traditional establishment of a working party, so that one could look at the details. In fact, Japan had been prepared to shorten the time span involved and, in view of the circumstances, to approach that examination in a very positive manner. As he understood it, the Community was now requesting a roll-call vote on this request. Lacking the establishment of a working party, Japan would not be able to support that request at the present time; this should not, however, be interpreted as reflecting on Japan's attitude toward the desirability of German unification or the course of action proposed. Japan would be supportive of a working party, after the waiver decision had been taken, so that this matter could be examined in greater detail. He reiterated that Japan did not feel that it had sufficient details to take a position on the waiver issue at the present time.

Mr. Lanús (Argentina) said that although in principle Argentina recognized the Community's need to adopt measures which would take account of the impact of German unification, it nevertheless believed that existing GATT mechanisms allowed for the implementation of such measures without the need for resorting to a waiver from the application of Article I. If the intention was to take into consideration the trade flows which had been generated by bilateral agreements which existed between the former GDR and other countries, tariff quotas could be established on an autonomous basis over the transitional period on an erga omnes basis -- in other words, respecting the principle of non discrimination. Furthermore, it would be healthier for the system if any waiver from GATT obligations, in particular those of Article I, were in fact preceded by a working party which would examine the conditions and any possible repercussions of such a waiver. In this particular instance, and given the prevailing circumstances, one might even have considered the immediate establishment of such a working party, with the request that it complete its work in as short a time as possible, for example 60 days.

Another means which could have been used in this situation to take account of the interests of third countries would have been for the Community to have committed itself to ensuring that imports from the countries referred to in the draft decision would be destined only for those provinces which were part of the former GDR. In this way, it could have been ensured that such imports would not substitute for those coming from other contracting parties into the Community.

Argentina wished to place on record that while it would not stand in the way of any consensus which might emerge on this issue, it would not be able to support the Community's waiver request; it would, however, agree to the establishment of a working party.

Mr. Lacarté-Muró (Uruguay) said that he wished to address a question to the Community on a matter which was related to that presently under consideration. Given that the Community's common external tariff would be applied to the territory of the former GDR, that modification of import treatment could very well have an influence on Uruguay's existing trade flows with that territory. While these trade flows involved products which did not compete with those from central Europe or from the USSR that were covered by the draft waiver decision, they were of interest to his country. His question, therefore, was whether the working party which was being contemplated at present would include in its terms of reference consideration of the cases of the sort he had just outlined, namely pre-existing trade flows to the former GDR involving products which were not covered by the waiver but which would be influenced or affected by the application of the Community's common external tariff. Put in another way, would this be the way in which countries like Uruguay could raise any possible concerns, or would their only recourse be to Articles XXII and XXIII?

Mr. Broadbridge (Hong Kong) said that Hong Kong had argued on previous occasions that the unification of Germany should not adversely effect traditional trade flows between the former GDR and its trading partners. A working party to study the trade effects of unification was therefore something that Hong Kong supported; this was also in line with normal GATT practice in the case of a waiver request. Accordingly, Hong Kong favoured the creation of a working party before taking a decision on a waiver from the provisions of Article I in respect of the Community's transitional measures. It would, therefore, not vote in favour of the requested waiver, but would not stand in the way of any consensus.

Mr. Tran (European Communities) said that the requested waiver concerned trade with countries listed in the draft decision (C/W/661/Rev.1) and concerned the maximum quantities and values foreseen in agreements between the former GDR and those countries. If there were any problems with regard to the products covered, then he would refer contracting parties to paragraphs 4 and 6 of the draft decision. The request covered very specific issues which were clearly identified and very limited in scope. He noted that some contracting parties had raised parallel issues which did not come within the purview of this request. In response, he would say simply that the Community's external tariff would be applied to the territory of the former GDR, and that if there were any problems, then

the Community would agree to follow the customary procedure in GATT, namely recourse to Articles XXII and XXIII. As far as product coverage was concerned, the contractual agreements which had been entered into between the sovereign states concerned would be taken into consideration. One was not speaking of trade flows which might be more or less clandestine or more or less transparent, but only those coming under agreements which had been duly concluded and which were in effect between two sovereign states, one of them being the former GDR. He reiterated that the Community would be quite flexible as regards any other aspects and would certainly not wish to see a disruption of trade flows for its trading partners; any problems would be dealt with under the mechanisms provided for in the GATT.

Mr. See (Singapore) asked whether it was the CONTRACTING PARTIES' practice to use a roll-call vote. His delegation was assuming that, as in the past, decisions would be taken by consensus. In the light of the request for a roll call, however, Singapore asked for a secret ballot.

The SECRETARY said that while there was a longstanding practice in the Council of deciding on the basis of consensus, votes were regularly taken at Sessions of the CONTRACTING PARTIES, notably on waivers. As for the use of ballots and roll calls, he referred to a 1961 note on voting procedures by the then Executive-Secretary in which he had said that "In view of the increasing number of occasions, at sessions of the CONTRACTING PARTIES, when representatives are called upon to participate in formal voting, and in view of the difficulty of taking an accurate count of the votes cast when representatives are asked to raise cards, it is proposed that, in future, voting on decisions, declarations etc., should be done by ballot. On each occasion when a formal vote is required, ballot papers will be distributed... . It will of course remain open to any representative to request a vote by the raising of cards or, in accordance with normal practice, by roll call." (L/1477).

Mr. Morales (Chile) said that Chile had always supported the terms of Article XXV which defined the voting practices to be followed by the CONTRACTING PARTIES. He stressed that the provisions of that Article should be implemented fully.

The CHAIRMAN then proposed that the CONTRACTING PARTIES proceed with a roll call vote on the draft decision in C/W/661/Rev.1 and subsequently, depending on the outcome of that vote, agree to establish a working party with the following terms of reference: "to examine the matter in light of the relevant provisions of the General Agreement and in light of the waiver decision in C/W/661/Rev.1, and to report to the Council."

Mr. See (Singapore) noted that his delegation had asked for a vote using ballots but that the Chairman had then proposed that the vote be taken by roll call, and asked about the procedure to be followed in such a case.

The SECRETARY recalled that at the Fortieth Session in November 1984, a question had arisen as to how to proceed with a vote concerning a request for a waiver, which had been referred to the CONTRACTING PARTIES by the

Council. Whereas the usual practice would have been for the vote to be taken by ballot at the Session itself, the requesting contracting party asked that the matter be postponed to the next Council meeting so that the vote could be taken by postal ballot. After discussion on this procedural issue, the Chairman had said that it was up to the contracting party requesting the waiver to decide whether it wanted to put the request to a vote at that session. (SR.40/2, page 12).

Mr. Ekblom (Finland) said that he did not know precisely which rules of procedure were applied in GATT, but that in the United Nations system, a request for a secret ballot took precedence over any other mode of voting.

The CHAIRMAN said that the rules of procedure applicable to sessions of the CONTRACTING PARTIES were those in BISD 12S/10.

Mr. Perez Novoa (Cuba) said that in view of the circumstances, his delegation wished to express a formal reservation concerning all of Cuba's rights in terms of its relations in the past with the former GDR.

Mr. Bin Hitam (Malaysia) referred to the statement by Finland and said that the ASEAN contracting parties supported Singapore's request for a secret ballot on the matter at hand. If there were no precedents in this regard, the request itself should be put to a vote.

Mr. Barnett (Jamaica) suggested that action on this matter be deferred until the following day to allow for further reflection on the procedural issues under discussion.

Mr. Morales (Chile) asked what Singapore meant by a secret ballot.

Mr. See (Singapore) said that it was a misnomer. His delegation favoured the use of ballots bearing the contracting parties' names, on which they could vote either for or against, or abstain.

The CHAIRMAN recalled that the European Communities had asked for a roll-call vote, and noted that it was understood that contracting parties' representatives attended sessions with the necessary authority to perform the functions indicated in Article XXV of the General Agreement. Under the authority given to the Chairman in Rule 17, he then ruled that a roll-call vote be taken on this matter.

The SUMMARY RECORDS OFFICER called the roll of the contracting parties.

The Decision (L/6792) was adopted by 56 votes in favour, 3 against and 5 abstentions.

Mr. Kartadjoemena (Indonesia) said that it was his understanding that on important issues, the CONTRACTING PARTIES tried to take decisions on the basis of consensus. This was especially necessary when GATT was

endeavouring to strengthen itself as an institution and to gain support for its policies and decisions. His delegation was concerned about the need to find consensus when important issues, such as the matter at hand, were considered. He underlined that his Government was sympathetic to and supportive of German unification, and that his concern here was procedural and related to the work of the GATT. His delegation was also concerned about countries which had trade with the former GDR; attention needed to be given to this.

Mr. Hannah (New Zealand) expressed regret that the decision had not been taken by consensus, which was preferable for the reasons cited by Indonesia. While New Zealand had been prepared not to oppose the granting of a waiver, it had voted against the decision for wider reasons and on the basis of an understanding whereby a working party would be established with the terms of reference as proposed, including the preservation of contracting parties' rights to have recourse to Articles XXII and XXIII, these rights being essential to safeguarding their interests. New Zealand considered that the decision should have followed the guiding principles for consideration of requests for waivers adopted by the CONTRACTING PARTIES in 1956 (BISD 5S/25). This having been said, his delegation wished to stress and reiterate the very warm welcome that New Zealand had extended to the achievement of German unification at the October Council meeting.

Mr. Yerxa (United States) said that he was prepared to accept by consensus the establishment of a working party with the terms of reference as proposed earlier by the Chairman, i.e., those in L/6751 as modified by the European Communities. The United States understood that this would enable the working party to examine the relationship of various measures adopted by the Community to relevant GATT Articles, including Article I, and to provide any relevant recommendations or rulings with regard to inconsistencies.

As for the decision just taken to grant the waiver requested by the Community, the United States would have preferred this to have been done on the basis of consensus; nevertheless, it had been both the right and the obligation of his Government to state frankly and freely the procedures it believed should be followed prior to granting a waiver. He noted that the CONTRACTING PARTIES voted routinely on requests for waivers, as reflected by the regular use of ballots. The only difference in the present case was that the vote had been taken by roll call, at the Community's request. Clearly the establishment of a working party prior to any such determination would have made it easier to achieve a consensus, but the United States respected the CONTRACTING PARTIES' judgement as well as the Community's right to have this kind of procedure followed. He hoped that there would be no misinterpretation of his Government's desire to resolve the matter expeditiously and fairly. In his view, the procedure just followed by the CONTRACTING PARTIES showed not that GATT had fundamental flaws but rather that it was capable of working in a manner which resolved the interests of all contracting parties.

Mr. Tran (European Communities) said that he could well understand why some contracting parties had voted against granting the Community's request, and could understand even better the reasons which had prompted

the abstentions. It was in this context that he wished to comment on the issue of consensus, which was often misused, particularly when employed to obstruct or divert consideration of a matter, or even as a form of veto. In his view, the future strengthening of the GATT system should entail a revision of this all-too-easy approach. Having acquired some experience in this matter in the context of the European Communities, his delegation could assure contracting parties that consensus was more sensitive than it might seem, and that it should be used only on matters of crucial importance, not to obstruct or to raise procedural hurdles. In his view, the compromise reached at the present Session augured well for GATT's future.

The CONTRACTING PARTIES took note of the statements, agreed to establish a working party with the terms of reference as proposed earlier by the Chairman, and authorized the Council Chairman to designate a chairman in consultation with contracting parties.

The meeting adjourned at 6.45 p.m.