GENERAL AGREEMENT ON

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MINUTES OF MEETING

Held in the Centre William Rappard
on 12 November 1991

Chairman: Mr. Lars E.R. Anell (Sweden)

1. Training activities (L/6925)

The Director-General introduced his annual report on the trade policy courses organized by GATT (L/6925). During 1991, in addition to the two regular trade policy courses for developing countries, a special course had been organized for the Eastern and Central European countries. The demand for participation in the trade policy courses had continued to increase, especially since the launching of the Uruguay Round negotiations and with the increasing number of contracting parties and of countries seeking accession to GATT. While the Secretariat was doing its best to satisfy this demand, the number of available places in the courses remained limited. He thanked the Governments of Canada and the United Kingdom for organizing and hosting study tours for the participants of the 1991 regular courses, and the Swiss Government for its continued cooperation in organizing tours in Switzerland, for its financial contribution which permitted the organization of a special workshop on trade negotiating techniques as part of the regular course programme, and also for its initiative and financial support for the organization of the special course for Eastern and Central European countries which had focused on problems related to the transition of centrally-planned economies to market-oriented economic structures. He also expressed gratitude to the international organizations and to the Permanent Missions of contracting parties in Geneva for their continued cooperation and valuable contributions to the Secretariat's training activities. Finally, he emphasized that this important activity of the Secretariat would have to be reconsidered in the context of the implementation of the results of the Uruguay Round. The trade policy courses were beneficial to the institution and contributed to a closer relationship between the GATT, the permanent representations, the trade policy officials of developing countries and in particular the new GATT members.

The representatives of Pakistan, Thailand on behalf of the ASEAN contracting parties, India, Argentina, Peru, Nigeria, Egypt, Romania, Sri Lanka, Tanzania, Myanmar, the Czech and Slovak Federal Republic, Madagascar, Chile also on behalf of Colombia, Morocco, Tunisia and Zimbabwe stressed the immense value of the trade policy courses to their respective countries' trade policy officials. They expressed appreciation and support for the courses and for the Secretariat's efforts in organizing practically-oriented programmes which embraced nearly all aspects of trade policy, international trade theory, real-life problems of trade conducted on the basis of the General Agreement, as well as issues under negotiation

in the Uruguay Round, in particular in the new areas. These courses provided developing country officials with a better insight and understanding of the rôle of GATT and contributed to the enhancing of the multilateral trading system.

The representatives of India, Peru, Nigeria, Egypt, Sri Lanka, Tanzania, Myanmar, Madagascar, Tunisia, Zimbabwe and the observer from China referred more specifically to the fact that their respective countries' officials had been beneficiaries of the courses.

The representatives of Pakistan, Thailand on behalf of the ASEAN contracting parties, India, Peru, Egypt, Romania, Sri Lanka, Jamaica, Myanmar, the Czech and Slovak Federal Republic, Madagascar, Chile also on behalf of Colombia, Morocco, Tunisia and the observer from China were of the view that the training courses should be strengthened and continuously upgraded, especially after the completion of the Uruguay Round, in order to foster a clearer understanding of the new subjects and of the improved GATT rules and disciplines.

The representatives of Pakistan, Nigeria and Madagascar hoped that the resources for this activity of the Secretariat would be significantly enlarged so as to provide for the participation of a larger number of officials from developing countries.

The representatives of Pakistan, Egypt, Romania, Tanzania, Jamaica, Madagascar, Chile also on behalf of Colombia, Morocco, Tunisia, Zimbabwe and Senegal expressed appreciation for the quality of these courses and for the Director-General's and the Secretariat's efforts in this area.

The representatives of Pakistan, India, Nigeria, Egypt, Tanzania, Jamaica, Chile also on behalf of Colombia, Zimbabwe and Senegal expressed gratitude to the governments of Canada and the United Kingdom for having organized and hosted participants' study tours this year, and to the Swiss Government for its continued support for the GATT training activities.

The representatives of Nigeria, Egypt, Romania, Jamaica, Chile also on behalf of Colombia, Zimbabwe, Senegal and the observer from China expressed gratitude to the international organizations and the governments for having contributed to these trade policy courses.

The representatives of Hungary, Romania and the Czech and Slovak Federal Republic expressed their deep appreciation to the Swiss government for its initiative and its financial support for the organization of the first special course for the Central and Eastern European countries. They welcomed Switzerland's recent announcement (C/M/252) that it was prepared to finance another such course. They underlined the importance of the knowledge acquired in these trade policy courses for their respective countries which were in transition toward market-based economies.

The representatives of India, Peru, Myanmar, Morocco and Tunisia expressed appreciation for the assistance programmes provided by the Technical Cooperation Division and for the information seminars and briefings it had organized on the Uruguay Round. These seminars had been very useful to smaller delegations which did not have a sufficiently large capacity to service all areas of the negotiations.

The representative of Egypt said that his delegation would be in touch with the Secretariat in connection with the elaboration of future training programmes.

The representative of Tanzania suggested that the recent unification of Germany and the immense cost associated with the integration of the former German Democratic Republic provided a strong case for introducing in the curriculum of the training courses the dimension of capital formation and its relation to the growth and competitiveness of developing countries.

The Council took note of the statements and of the report (L/6925).

2. Administrative and financial matters

(a) Committee on Budget, Finance and Administration

(i) Report of the Committee (L/6928)

Mr. Szepesi (Hungary), Chairman of the Committee, introduced the report in L/6928 on the matters considered by the Committee at its meetings on 10, 28 and 31 October 1991.

With regard to the budget estimates, he recalled that the Committee had examined the Secretariat's initial proposals for 1992 amounting to SwF 88,017,327 which had later been revised to SwF 85,973,327 following a series of informal consultations, and represented an increase in real terms of 1.2 per cent over the 1991 budget. He noted that the budget being proposed for recommendation at the present meeting was a compromise and, as in any compromise, all sides had had to give in on some points. The Committee was submitting to the CONTRACTING PARTIES for consideration and approval a draft resolution on the expenditure of the CONTRACTING PARTIES for 1992 and the ways and means to meet such expenditure (page 5 of L/6928).

With regard to the International Trade Centre UNCTAD/GATT (ITC), the Committee had been addressed by the ITC's Executive Director and had examined the proposed budget for the biennium 1992-1993. It had noted that both the Advisory Committee on Administrative and Budgetary Questions and the Committee for Programme and Coordination had recommended approval of the proposed budget at the level requested and the Committee had done likewise (paragraph 24 of L/6928).

With regard to the other business items considered by the Committee, two merited the Council's attention and called for decisions. The first related to the Final Position of the 1990 GATT Budget (L/6860) and the Recommendation by the Director-General with respect to the Uncovered Balance as at 31 December 1990 (Spec(91)80). The Committee had noted that the budgetary deficit of SwF 261,327 at the end of 1990 had been mainly due to Uruguay Round interpretation needs, and had made two recommendations to the Council for consideration (paragraphs 31 and 32 of L/6928). The second

item related to the recommendation in the report (paragraph 43) concerning Guatemala's assessment as a result of its accession to the General Agreement (L/6916).

The Council took note of the statement, approved the Budget Committee's specific recommendations in Paragraphs 24, 31, 32 and 43 of its report in L/6928, agreed to submit the draft resolution referred to in Paragraph 18 to the CONTRACTING PARTIES for consideration and approval at their Forty-Seventh Session, approved the Budget Committee's report and recommended that the CONTRACTING PARTIES adopt it at their Forty-Seventh Session, including the recommendations contained therein and the Resolution on the expenditure of the CONTRACTING PARTIES in 1992 and the ways and means to meet that expenditure.

The representative of Brazil said that in a spirit of cooperation, Brazil had not blocked the Committee's recommendations to the Council. Likewise, Brazil had not stood in the way of the approval of the Committee's report by the Council and its recommendation that the report be adopted by the CONTRACTING PARTIES at their Forty-Seventh Session. Brazil wished to refer, however, to the discussions on this subject in previous years when it had been made clear that expenditure had to be kept under a tight rein and that real growth in the budget could only be accepted on the understanding that it was exceptional. Brazil regretted that this rule was not being followed, with the result that some contracting parties which had already made their budgetary provisions could be put into a difficult position to meet their obligations.

The representative of the United States said that while the United States also had not sought to block consensus in the Council with regard to the Committee's report, it was very concerned over the real growth in the current budgetary proposals. The United States believed the GATT to be a very deserving institution and, in particular, in order to facilitate an early and successful conclusion to the Uruguay Round, it had not in the past been inflexible regarding necessary increases in the Budget. In 1990, for example, it had agreed to a budget that was 15 per cent greater than that in 1989. This year, however, the United States was concerned to see the large nominal increase of 9.2 per cent over the 1991 budget and, while it was willing to show flexibility by not blocking the consensus, it wished to make clear that the following year it would insist on zero real growth in the GATT Budget.

The representative of the Federal Republic of Germany (FRG) referred to paragraphs 17 and 18 of L/6928 and reiterated his Government's position that the trade figures of the former German Democratic Republic (GDR) could not serve as a basis for calculating the FRG's contribution to the GATT Budget. Trade figures relating to the territory of the former GDR should only be taken into consideration as from 3 October 1990 -- the date of German unification. The FRG was nevertheless prepared to pay its contribution to the 1992 Budget as calculated by the Secretariat. This contribution, however, was not to be construed as a basis for a legal obligation, nor did it constitute a precedent in equal or similar cases. Referring to the United States' statement, he said that in the FRG's view, real growth was acceptable only in exceptional cases and in which the

additional resources were directed clearly to priority areas. This requirement did not appear to have been met in the 1992 Budget estimates, although the FRG would not block a consensus thereon.

The representative of Nicaragua said that his Government too was very seriously concerned by the budget estimates before the Council. Nicaragua was currently undergoing a structural reform of its economy which involved trimming the domestic budget and which resulted in unemployment and a reduction in social programmes. It would therefore be very difficult for Nicaragua to accept estimates which involved an increase in its contribution. Nicaragua did not want to block the consensus, but joined others who had indicated that they were attached to the principle of zero real growth as stated in paragraph 19 of L/6928.

The representative of Venezuela associated itself with Brazil's and Nicaragua's statements. Venezuela was also extremely concerned at the larger figures put forward for the 1992 estimates. Venezuela's policy was to maintain zero real budgetary growth in international organizations such as the GATT but, despite its concern, it would not block the consensus which had led to the approval of this Budget.

The representative of Tanzania, referring to paragraphs 32 and 33 of the report, said that Tanzania had periodically drawn the Committee's attention to the difficulties which relatively more underdeveloped economies faced with regard to meeting their budgetary obligations. While Tanzania continued to meet the payments on its arrears, as well as its current obligations, it noted that many others, including other least-developed contracting parties, had not been able to do so (Annex I of L/6928). He recalled that the Committee had recommended in 1988 (L/6384 and C/M/226) that the Director-General report to it on the operation of the arrears repayment scheme that was to be implemented from 1 January 1989 and that the Director-General had kindly accepted to do so. While the Committee seemed to have agreed to return to this matter at the conclusion of the Uruguay Round, in the context of any changes in the work and functioning of the GATT and in the bases for assessment which might emerge therefrom, he hoped this was not intended to take away the decision which had been taken and which included the mandate for the Director-General to use his judgement and discretion in making such recommendations as he might wish to on the basis of the performance thus far. For its part, Tanzania intended to meet its current obligations and would continue to do so to the best of its capacity on the assumption that the annual budgets would be reasonably formulated and would not introduce sudden demands which might be difficult to manage.

The representative of Chile said that the outstanding contributions, according to his delegation's calculation, amounted to almost 40 per cent of the total budget.

The Council took note of the statements.

(ii) Membership
- Statement by the Committee Chairman

Mr. Szepesi (Hungary), Chairman of the Committee, recalled that at its meeting in July, the Council had invited him to hold consultations on the efficiency of the Committee's work, its size, composition and criteria for membership. His preliminary contacts with a limited number of delegations on this subject had suggested that the question of efficiency should be assessed against the particular nature of the Committee's tasks, i.e., its specific terms of reference. It did not seem to be contested that a certain kind of correlation might exist between the Committee's membership, size and the efficiency requirement of its work. The existence of this interlinkage was likely to be confirmed indirectly by a background note which the Secretariat was in the process of finalizing, following a request expressed by some participants in his consultations. A first reading of this draft paper indicated that bodies having similar or comparable responsibilities in other international organizations also had a limited membership compared to the overall membership of the organizations concerned.

At the same time, his consultations had suggested that an understanding or agreement acceptable for all regarding the issues involved, and in particular regarding the possible criteria governing the Committee's membership, were not yet within reach. The issues in question were not only complex and regarded as serious by a number of delegations, but it was also some participants' view that any possible outcome of these consultations might equally have somewhat broader implications. In this context, he noted that one was approaching the hopefully successful conclusion of a very ambitious round of multilateral trade negotiations, in the course of which it had also been proposed that the results of the Round should be incorporated into a strengthened institutional framework. It went without saying that he intended to pursue -- and broaden the participation in -- his informal consultations. He would report to the Council in due course on future developments and hopefully on some results.

The Council took note of the statement.

(b) Pension and salary matters

The Chairman recalled that the CONTRACTING PARTIES had agreed at their Forty-Sixth Session in December 1990 that the Council should take up in 1991 the matter of staff salaries and pensions. At the February Council meeting, he had undertaken to consult on this matter. His consultations as well as his study of the matter had confirmed his impression that serious problems existed with the salaries and pensions of professional staff in the GATT. They also confirmed that it was the common view of those to whom he had spoken that if one wished the GATT secretariat to remain one of high professional competence and morale, urgent action was required. The chief problems stemmed from the fact that the remuneration of the professional staff had declined in real terms. In the last seven years alone, the decline had been of the order of 20 per cent. Professional staff pensions had also suffered a significant decline. This

contrasted very unfavourably with the situation prevailing in some other intergovernmental secretariats. One effect was that it had become increasingly difficult to attract and retain staff of the calibre sought. Uncertain pension prospects could lead staff to hesitate to make a career in the GATT, or to leave prematurely. The Director-General had referred to this matter in his statement to the Council in February (C/M/247). A measure of the extent to which professional salaries and pensions were now out of line was provided by the growing overlap between the salaries and pensions of professional and secretarial staff. A top-grade GATT secretary, whose salary and pension were set on the basis of prevailing conditions in the Geneva job market, currently received a salary equal to that of a professional counsellor and a pension equal to that of a director.

He proposed that the Council agree to invite the Director-General to formulate proposals for rectifying this situation, and that the Director-General report back to the Council as early as possible in 1992, and in any event no later that at the Council's last meeting before the summer break. He appreciated that this set a tight schedule, but he assured Council members that most of the factual material was already at hand.

One point that had arisen in some of his consultations was whether such a proposal might be premature, given that the Uruguay Round negotiations might lead to important changes in the GATT as an institution. His own view on this was that one should view the exercise he had just proposed as complementary to the Uruguay Round. He believed it was warranted irrespective of whether the institutional arrangements of the GATT were modified, and that it would be all the more useful if major institutional reinforcement were to be agreed upon. It could then help to establish the ground-work that would enable the new institutional arrangements to include from the outset strengthened conditions of employment, and thus enable one to call on the human resources that the CONTRACTING PARTIES would need in the 1990s.

The Director-General thanked the Chairman for his statement and for carrying out the consultations on this very important matter. He recalled that at the February Council meeting he had said that the conditions of service of the professional staff had been in past years a permanent source of concern. He had referred then to the lack of competitiveness of the salaries and to the pressure felt by long-serving staff to leave the organization in order not to be penalized unduly by shortcomings in the pension system. But this was only part of the picture, and the Chairman had made a certain number of additional points. The picture had been demonstrated for the first time four years earlier in a study known as the Feij Report (Spec(87)10 and Add.1) after the name of the Chairman of the Group that had been instructed to initiate the study by the then Chairman of the CONTRACTING PARTIES. Since this first effort had led to no conclusion, he was now reassured by the renewed efforts which had taken place on the basis of the statement by the Chairman of the CONTRACTING PARTIES at the Forty-Sixth Session and the discussion in the Council in February. In order to offer the best possible basis to these efforts, he had set in motion a number of studies designed to do two things: firstly,

to establish the facts as accurately as possible; and secondly, to lay the grounds of possible proposals that could be made to the CONTRACTING PARTIES. He said that the timing suggested by the Chairman in his proposal was agreeable. He recalled that it had been agreed to carry out a review of the staffing and grading structure of the organization once the Uruguay Round was concluded.

The Council took note of the statements.

3. Czech and Slovak Federal Republic - Renegotiation of Schedule X - Request for a waiver under Article XXV:5 (C/W/685, L/6911 and Add.1)

The Chairman drew attention to the request by the Czech and Slovak Federal Republic (L/6911) for a waiver from the provisions of Article II of the General Agreement, and to the draft decision (C/W/685) which had been circulated to facilitate the Council's consideration of this item.

The representative of the Czech and Slovak Federal Republic (CSFR) said that the radical political changes in his country in 1989 had created favourable conditions for taking essential reform measures in the economy. These could be summarized as follows: restrictive financial and fiscal policy; creation of new ownership relations and new economic entities through a process of privatization and restitution; and the radical opening of the Czechoslovak market to the world. This opening resulted from the introduction of internal convertibility of the national currency, the liberalization of foreign trade and the abolition of the former monopoly of large foreign trade organizations, and the creation of new legislation and favourable conditions for direct foreign investment. The most important break with the past trade régime consisted in the abolition of all quantitative import controls. A system of import licences remained in effect for a few items such as arms and ammunitions, crude oil, natural gas, narcotics and drugs. Thus, with the exception of a temporary import surcharge and a limited number of Article XIX measures, tariffs had become the only protection for domestic industry.

As a result of previous multilateral trade negotiations, the CSFR presently had very low tariff levels -- 5 per cent on a trade-weighted average basis -- and a very high level of tariff bindings -- 97 per cent of all tariff lines. These concessions had been made under an entirely different trade policy régime based on strict planning and state monopoly where tariffs had played practically no rôle. If the customs tariff was now to be the principal instrument of protection, rates had to be fixed at an adequate level and within a proper structure. A review of the customs tariffs had shown that protection of certain sectors of the domestic industry through tariffs was insufficient and was bound to result in serious difficulties for these industries. Moreover, the tariff structure did not correspond to the proposed structural adjustments of the economy. The CSFR had therefore decided to increase, as of 1 January 1992, part of its tariffs and at the same time to modify and in a few cases withdraw the corresponding GATT concessions in its Schedule X. Further details concerning the proposed changes could be found in document L/6911.

Agriculture, the situation of which was critical, was one of the sectors subject to tariff increases or withdrawal of concessions because the substantial reduction of domestic supports and very low tariffs had resulted in increased imports of agricultural products causing direct injury to farmers. The increase in tariffs in other sectors listed in the Annex to L/6911 was very modest and no concessions were being withdrawn thereon. Preliminary calculations showed an average increase of less than 1 per cent in the present tariff level of all bound items as a result of the proposed changes.

The CSFR had intended to have its request considered at the previous Council meeting but, as a result of a reservation by one contracting party in informal consultations, had agreed to defer the request to the present meeting. In further informal consultations with interested contracting parties it appeared that one contracting party continued to have reservations as to the proposed procedure and had suggested certain changes in the text of the draft decision in C/W/685. In this connection, he underlined that proposed changes in the CSFR customs tariff would result in an increase of the present weighted average from 5 per cent to approximately 5.7 per cent, and the CSFR would thus continue to belong to the group of contracting parties that had the lowest tariff protection. Its new rates would be applied in a non-discriminatory way to all contracting parties, and its Generalized System of Preferences scheme -- which remained in force -- would not be affected. While approximately 1,000 tariff items would be raised covering 20 per cent of all imports in 1990, a further 500 conventional tariffs would be lowered or even put to zero. The CSFR stood ready to enter into negotiations or consultations with interested contracting parties in accordance with Article XXVIII. He indicated that his Government had already submitted to the Secretariat its import statistics and a list of items on which tariff increases or withdrawal of concessions were intended.[1]

The representatives of the United States, Argentina, New Zealand, Poland, Nicaragua, Austria, Costa Rica, Thailand on behalf of the ASEAN contracting parties, Egypt, Mexico, Colombia, Hungary, Israel, Chile, Bangladesh, Switzerland, Morocco, Sweden on behalf of the Nordic countries, Canada, Australia, Japan, Korea, India and the European Communities expressed support for the ongoing reform process in the CSFR toward a market-based economy. They appreciated and understood the changed circumstances of the CSFR's foreign trade environment and that the Government needed flexibility to address the new trade situation it faced. They were all prepared in principle to support the CSFR's request for a waiver for a temporary suspension of its tariff rates.

The representatives of the United States, Argentina, Nicaragua, Costa Rica, Thailand on behalf of the ASEAN contracting parties, Egypt, Colombia, Israel, Chile, Bangladesh, Australia, Japan, Korea and India said that more time was needed for consultations with a view to defining

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[1]See L/6911/Add.1.

the terms of the waiver which would be acceptable to all, in order to address their respective trade interests as third countries in respect of preferential arrangements being contemplated by the CSFR and other European countries.

The representatives of New Zealand, Hungary and Canada reserved their Article XXVIII rights should subsequent study of the full documentation, some of which had only recently been submitted to the Secretariat, indicate a need therefor.

The representative of the United States said that consultations were necessary because the current text of the waiver decision did not sufficiently take into consideration the interests of all contracting parties, particularly those not currently engaged in the negotiation of a free-trade agreement with the CSFR. The European Communities and the EFTA countries were now engaged in negotiations with the CSFR to establish a free-trade area eliminating most import barriers to their trade in the CSFR market and, under these conditions, the CSFR's current GATT Schedule would become the maximum margin of protection against all other contracting parties resulting in discrimination of imports vis-à-vis the preferential trade. Therefore, the terms of the waiver took on added importance for the United States and other contracting parties. He recalled that the United States had strongly supported the efforts of the CSFR to reform its economic and trade structure, and had taken all possible steps over the previous year to open unilaterally its market to goods from that country. The United States now sought the CSFR's cooperation to deal with the United States' and other contracting parties' concerns in the matter at hand.

The United States recognized and strongly supported the current efforts to create a European continent with stronger political and economic cohesion. It also encouraged the reduction of intra-European trade barriers in a way that recognized the dynamic changes taking place all over the continent. But the GATT, and European contracting parties, had to recognize and be sensitive to the legitimate trade interests of those outside Europe. If matters were decided too quickly without taking account of others' concerns, then a resentment could develop that would be unfortunate.

The representative of Argentina said that the CSFR's proposed increases in tariffs on a number of items and the implementation of preferential arrangements under negotiation might lead to an alteration and modification in the existing situation as it related to GATT rights and benefits, unless the interests of third parties that did not benefit from these preferential arrangements were taken into consideration. Argentina therefore believed that the United States' suggestion was opportune and that the provisions of the General Agreement, in particular of Article XXIV:5 allowing contracting parties to establish consultations on these issues, were relevant in this case.

The representative of New Zealand said that his Government preferred the waiver itself to be time limited until 31 December 1992. New Zealand was concerned however at the issues raised by the United States and noted that it had not been possible for the United States and the CSFR to reach

agreement on the terms of the waiver. The points raised by the United States required careful consideration and his delegation had not yet had the opportunity to do so. He noted that, by an unfortunate coincidence of circumstances, it might be that the CSFR, through the exercise of its GATT rights, could be penalizing third-country exports to its market as a result of tariff increases under the waiver, while at the same time it was reducing tariffs to its European neighbours under a free-trade arrangement.

The representative of Austria said that the transformation of the CSFR's external trade system was a means to counter its difficulties, and that a waiver seemed to be justified in this context. The rigidities of the multilateral trading system had to be mitigated in exceptional cases such as the one at hand, and Austria considered that Article XXV provided sufficient flexibility therefor.

The representative of Costa Rica said that his delegation would be very concerned should the increase in tariffs envisaged by the CSFR become permanent.

The representative of Mexico said that his Government was quite certain that the liberalization that had characterized the CSFR's recent economic policy would not stop now, nor with the proposed tariff measures. In Mexico's view, the transition to a market economy was of even greater trade and political importance than the mere increase of some tariffs. One had to take into account the real reason for the CSFR's waiver request, as well as the rights and obligations of other contracting parties. Mexico was convinced that a solution satisfactory to all would be found. The object of the waiver was precisely to allow for time so that contracting parties could protect their interests.

The representative of Hungary said that his delegation understood the impact of and risks involved in shifting to a trade régime in which tariffs became practically the only protection for domestic industry. He noted with satisfaction that the CSFR had forwarded to the Secretariat information that was necessary for further examination. On the basis of the information in L/6911, it appeared that Hungary had substantial export interest in the CSFR market in a great number of products that would be subject to tariff modifications. Hungary believed that its export interests might be particularly affected by tariff increases foreseen in the agricultural sector. Regarding some of the observations made by a number of previous speakers, it was his delegation's preliminary view that Article XXIV negotiations were completely distinct from the issues raised by the present waiver request and by possible subsequent negotiations under Article XXVIII.

The representative of Bangladesh said that contracting parties with special difficulties came forward with special requests, and noted that Bangladesh, for one, had tabled special requests in many instances.

The representative of Morocco, noting that some contracting parties wished to postpone a Council decision on this matter so as to allow for an in-depth examination thereof to reach a compromise acceptable to all, said that this was fully understandable.

The representative of Switzerland said that his delegation had assumed that the CSFR's request, which had been known for some time, would meet with the Council's understanding and speedy approval. He was therefore somewhat surprised at the lengthy discussion and in particular at the arguments presented. The Article XXIV negotiations now being undertaken between the CSFR and other European contracting parties were a separate problem and it was not appropriate to mix the two issues. The Article XXIV negotiations would be concluded as soon as possible and the agreements resulting therefrom would be examined by GATT on its own merits and not on the basis of the rationale for the present waiver request which was quite different. GATT was a trade and technical organization, and should not take into account political issues. It did seem, however, that even in special historical circumstances certain problems could not be separated from a certain political or even historical vision, and this was so in the case at hand. The CSFR's request was a unique case which deserved consideration on its own merits. Switzerland had already informed the CSFR bilaterally that it would consider with understanding a waiver request as long as two conditions were met: transparency and the possibility of recourse to Article XXVIII. These two conditions appeared to have been fulfilled in the draft waiver decision, and Switzerland could accept it without reservation.

The representative of Sweden, on behalf of the Nordic countries, said that they had come to the present meeting ready to support a consensus on the CSFR's request for reasons expressed by many speakers, particularly Switzerland. However, they noted from other statements that there was not yet a basis for such a consensus, and could only hope that a rapid solution would be found after consultations between the interested parties. It was clear from the CSFR's statement that this was a fairly urgent issue, and one could therefore only urge delegations to conduct these consultations very quickly.

The representative of Japan said that his Government welcomed the CSFR's announcement that it had submitted recently to the Secretariat certain documentation on the proposed changes. Japan had not had the opportunity of reviewing this documentation and would formulate its position on this matter only after its examination thereof.

The representative of India said that his Government wished to study the implications of the issues raised by the United States and other delegations as to the impact on third parties of the CSFR's joining free-trade areas in Europe. This was a matter of serious concern to India.

The representative of the European Communities said that his delegation had intended to intervene early to give its full support to the CSFR's waiver request, which it believed to be fully justified in the circumstances. It had not done so because there had unfolded a surprising and somewhat regrettable debate on the merits of this case which the Community thought was pitched at the wrong level. The CSFR was making enormous sacrifices to bring a centrally-planned economy to one based on market forces, and one had clear proof that liberalization of the import

régime had already reached a very high degree. This had to be acknowledged and in these circumstances, with only tariffs to protect the economy -- tariffs of the order of 5 per cent on a weighted average basis -- the case for a GATT-type adjustment under Article XXVIII was in itself perfectly justifiable and was in any case a sovereign decision of the CSFR. That this had to be done through a waiver at the present time also seemed justified, and the CSFR's request fell well within the criteria supported by the Community, namely that it be time-bound and designed to achieve a particular purpose.

The Community saw this as a self-contained operation arising very clearly out of the obsolescence of the CSFR's GATT schedule and in the context of a radical reform of its economic system with all that that entailed. The waiver request should be judged in that sense and on those merits -- if the CSFR could accept as part of subsequent Article XXVIII negotiations some reverse adjustments over time, that was a matter for negotiation under that Article. This request had nothing to do with other GATT provisions that were not directly and specifically linked to it. The reference to Article XXIV seemed to be erroneous in every sense, as such linkages did not exist and had never been requested hitherto. As far as his delegation was aware, none had asked that as part of the negotiating process, for example in the Uruguay Round, a linkage be established as between Articles XXVIII and XXIV, so why was this being made now? While one could understand the sensitivities and the legitimate interests of all parties, Article XXVIII took these into account. The Community believed that this debate was unfortunate and requested that favourable consideration be given to the CSFR's request for a one-year waiver in order to provide a basis for the Article XXVIII negotiations to follow.

The representative of the Czech and Slovak Federal Republic regretted to note from the discussion that another month would be lost before his Government's request could be granted. He reiterated the reasons for the waiver request, and said that an unfortunate coincidence of timing had led contracting parties to raise the question of interlinkages between Articles XXIV and XXVIII. His delegation could provide guarantees and evidence that these were two inseparable processes. He noted that one was faced, and would be faced, with effecting the tariff changes even if there were no free-trade agreement. He urged contracting parties to take into account that his Government was pressed for time. Indeed, it would look on this waiver as being something of an expression of goodwill on the part of contracting parties indicating that it could begin as soon as possible with a measure that was much needed. The CSFR also stood ready to comply with Article XXVIII procedures. However, the course of the discussion indicated that his delegation would have to request the Chairman, if possible, to act as an intermediary in settling the matter at hand between the CSFR and other contracting parties.

The Chairman said that he would not attempt to summarize the discussion and would refrain from making any kind of interpretation of the discussion on linkages. It seemed clear that there was a general sympathy for the reforms being undertaken in the CSFR, and that there was a general understanding, in principle, for the need for a waiver as well as a recognition that this was seen by the CSFR as an urgent matter. At the

same time, it was also clear that many contracting parties had asked for some more time to study their particular interests in the matter. At the present meeting, therefore, one could only agree to refer this matter to the CONTRACTING PARTIES for consideration at their Forty-Seventh Session. In the meantime, as requested by the CSFR, he would certainly offer his good offices with a view to finding a solution satisfactory to all prior to the forthcoming CONTRACTING PARTIES' Session.

The Council took note of the statements, including the Chairman's offer of his good offices, and agreed to refer this matter to the CONTRACTING PARTIES for consideration at their Forty-Seventh Session.

The representative of the European Communities asked what the Chairman would have done if, before the conclusion of the discussion, he had been asked to put this matter to a vote.

The Chairman replied that he would have referred this to the CONTRACTING PARTIES at their forthcoming Session.

The representative of the European Communities said that this would have been a calculated risk, because either the vote would have been a positive one, which would have demonstrated that the minor concerns would have vanished, or it would have been negative, in which case there would have been enormous political consequences. One could not in the GATT go against the tide of political developments. He had been struck by this totally incongruous situation whereby, on the one hand, one heard expressions of political goodwill while, on the other hand, there appeared to be little more than nit-picking when it came to action such as in the case at hand. All contracting parties would have to think this over. A number of economies were undergoing a transition and one should not tamper with this process. Democratization should not be made to wait. For its part, the Community intended trying to hasten the pace. This was a political operation whether one wished to recognize it or not, even though there was an important trade aspect.

The representative of the United States said that his country had a desire and willingness to resolve this matter on a mutually acceptable basis, but sought a recognition from its European partners that this was a matter of interest and concern to all contracting parties, and that one had to have an orderly process for resolving those concerns.

The Chairman said that he believed, and hoped, that although very serious, this matter was not really very difficult or intractable. Most representatives had said that they wanted some more time to look into the matter. With some flexibility on the part of all, one should be able to resolve this issue before the CONTRACTING PARTIES' Forty-Seventh Session. He added that there was a collective responsibility to do so because the problem should not be allowed to get out of hand. While it was unfortunate that a month had been lost, one would have to make the best possible use of the remaining time and try to resolve this as early as possible.

The Council took note of the statements.

4. Japan - Restrictions on imports of certain agricultural products - Follow-up on the Panel report (BISD 35S/163, L/6389, L/6810)

The Chairman recalled that the Council had considered this matter at its meetings in February, March, April, May, July and October, and in October had agreed to revert to it at a future meeting. It was on the Agenda of the present meeting at the request of Australia.

The representative of Australia recalled that at the October Council meeting his delegation had noted that in the three years since Japan had announced some import liberalization measures in relation to this Panel report it had not taken any further steps towards GATT-consistent liberalization in the dairy and starch sectors. This was despite Japan's clear obligations to do so in keeping with the CONTRACTING PARTIES' recommendations. In bilateral discussions some months earlier, Australia had indicated that it was prepared to be flexible in considering a proposed timetable and modalities for implementing the Panel's recommendations in the dairy and starch sectors. The responsibility now lay with Japan to come forward with proposals. At the October Council meeting, Japan had indicated its willingness to continue consultations. Australia stood ready to engage in such consultations on the assumption that they would contribute to attaining a satisfactory and GATT-consistent outcome. Australia would therefore appreciate confirmation that Japan was now ready to engage in consultations on possible ways of implementing the Panel's recommendations in the two product categories concerned.

The representative of New Zealand recalled that at the October council meeting, his delegation had noted that the United States and Japan were to meet for further bilateral discussions. It was his understanding that these talks had been held earlier in the month. He hoped that Japan had shown flexibility during those discussions and had given concrete indications that it was prepared to develop a satisfactory solution to the concerns of contracting parties. New Zealand looked forward to learning details of any progress that might have been made. New Zealand expected Japan to acknowledge its obligation to implement the Panel recommendations in full; this was fundamental. In particular, New Zealand also expected that Japan would make immediate and substantial market access improvements and present proposals for a timetable to achieve full, GATT-consistent implementation of the Panel's outstanding recommendations.

The representative of the United States said that his Government's position on this matter had been stated at earlier Council meetings, and that it would come as no surprise to Japan that the United States' position remained unchanged. His delegation strongly supported Austalia's and New Zealand's statements, and urged Japan to consider carefully what substantial steps it might take to implement the Panel report. In the meantime, the United States would continue to reserve its GATT rights and work closely with other interested contracting parties on this issue.

The representative of Argentina noted that consideration of this item coincided with the part of the Council's Agenda which dealt with the non-implementation of panel reports. Argentina fully endorsed the previous speakers' statements on the importance of implementing fully this Panel's

recommendations. He recalled that Japan had expressed its readiness at the October Council meeting to continue consultations on this matter with the contracting parties concerned. Argentina wished to participate in such consultations and considered it important that Japan hold them.

The representative of Uruguay expressed her delegation's support for the previous speakers' statements. As Uruguay had stated at earlier Council meetings, it was concerned that in the more than three years since this report had been adopted, Japan had as yet not implemented fully its recommendations nor even submitted a programme for implementation in the remaining product categories. Uruguay had participated in plurilateral consultations with Japan and stood ready to continue such consultations. She reiterated Uruguay's concerns that non-implementation of panel recommendations had serious implications for the GATT's dispute settlement mechanism and thereby for the multilateral trading system itself, and also that compliance with panel recommendations had to be based on existing GATT obligations.

The representative of Japan said that Japan and the United States had held bilateral consultations one week earlier, and that both parties had recognized the need for these to continue. As Japan had stated at previous Council meeting, it stood ready to continue consultations in the hope that they would result in a solution satisfactory for all.

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

5. European Economic Community - Payments and subsidies paid to processors and producers of oilseeds and related animal-feed proteins - Follow-up on the Panel report (BISD 37S/86, L/6933)

The Chairman recalled that the Council had considered this matter at its meetings in April, May, June and October, and in October had agreed to revert to it at the present meeting. He also drew attention to a recent communication from the United States in document L/6933.

The representative of the United States recalled that at the October Council meeting, his delegation had proposed that the original Panel in this matter be reconvened for the purpose of assisting CONTRACTING PARTIES in determining whether measures being taken by the Community would bring its regulations into GATT conformity and would eliminate the impairment of the Community's tariff concessions on oilseeds. In subsequent bilateral consultations, the Community had stated that it was unwilling to agree to the United States' request prior to the formal adoption of its oilseeds regulations. Since this could occur before the end of the Forty-Seventh Session of the CONTRACTING PARTIES, the United States wished to indicate its intention to request approval at that Session of the following draft decision by the CONTRACTING PARTIES:

> "Paragraph I.3 of the Improvements to the GATT Dispute Settlement Rules and Procedures adopted 12 April 1989 (BISD 36S/61) provides that the Council shall monitor the implementation of recommendations and

rulings adopted under Article XXIII:2. Acting pursuant to this provision, the CONTRACTING PARTIES hereby request the Director-General to reconvene the members of the Panel on 'European Economic Community - Payments and subsidies paid to processors and producers of oilseeds and related animal-feed proteins' adopted on 25 January 1990 (BISD 37S/86), for the purpose of examining whether the measures taken by the European Community in its regulation comply with the recommendations and rulings as expressed in the conclusions (paragraphs 155 to 157) of that Panel report as adopted on 25 January 1990. The original panel members shall provide such findings as will assist the CONTRACTING PARTIES within ninety days of this decision."

The United States had been patiently awaiting movement from the Community on this matter. In the event that the matter remained unresolved by the time of the CONTRACTING PARTIES' Session, however, the United States reserved fully its GATT rights and would decide on what course of action to take at that point. The United States was a strong believer in the multilateral system, and hoped that this matter could be resolved in the context thereof.

The representative of Canada supported the United States' request to reconvene the Panel, and said that his Government had strong long-term interests in securing access to the Community's market for oilseeds. Canada had reserved its third-party rights before the original Panel and had made a submission thereto, and it would take the same course of action if and when the Panel was reconvened. He urged the Community to agree, once its regulations had been adopted, to reconvening the Panel.

The representative of Argentina recalled that his country had an interest in the issues dealt with by the Panel and had also made a presentation thereto. Argentina believed that it was very important to examine whether the measures adopted by the Community complied with the Panel's recommendations that it bring its regulation into conformity with Article III and eliminate the impairment of other contracting parties' rights. Argentina supported the US proposal which would be helpful in determining whether there had been compliance with the Panel recommendations as adopted by the CONTRACTING PARTIES, and reserved its right to make a presentation to the Panel if and when it was reconvened.

The representative of the European Communities acknowledged that his delegation had previously indicated that the matter would be settled before the end of October when the Community's new oilseeds régime was supposed to have been adopted. The matter was still under consideration, however, and trading partners would therefore have to be patient. The Community could not see the justification for the views of some that the new régime might not be consistent with the Panel's recommendations. Such a view could, furthermore, prejudice the internal discussions underway in the Community and spoil the atmosphere in the Council at a time when there was a renewed trust on both sides of the Atlantic that could be of particular importance for the success of the Uruguay Round. He said that there was a "golden rule" whereby contracting parties refrained from taking action in regard to

others' proposed measures until these had been decided upon or enacted. Examining and discussing proposed or envisaged trade policy measures could take place in GATT in the framework of the Trade Policy Review Mechanism which had been established precisely for that purpose. While the United States had thus far followed that rule, the fact that it had presented a proposal for action with respect to the Community's oilseeds régime at the present time constituted a form of harassment. The Community continued to believe that there was no point in discussing the proposed reconvening of the Panel until the Community's new oilseeds régime had been formally decided upon. Any discussion of the matter at the present stage could only prejudge its careful consideration by the CONTRACTING PARTIES in accordance with the recommendations contained in paragraphs 155 to 157 of the Panel report. He indicated that the Community expected a decision regarding its oilseeds régime prior to the forthcoming CONTRACTING PARTIES' Session. The Community noted that the United States intended to use its GATT rights on this matter and stressed that any action by contracting parties should take place within GATT and not outside it.

The Council took note of the statements and agreed to refer this matter to the CONTRACTING PARTIES for consideration at their Forty-Seventh Session.

6. Dispute settlement

(a) Status of work in panels and implementation of panel reports - Report by the Director-General (C/180)

The Director-General said that one year earlier, as contracting parties were preparing to go to the Uruguay Round Ministerial meeting in Brussels, only one GATT panel had been active. Today, as all redoubled their efforts to bring the Uruguay Round to a successful conclusion, eleven panels were active, with up to five new panels likely to join the list over the following months. The eleven active panels had all resulted from decisions to establish taken in 1991. Until July, five panels had been established, all but one under the General Agreement. Since July, six new panels had been established -- two each under the Subsidies, Anti-dumping and Government Procurement Agreements.[2] This shift to Tokyo Round instruments was partly due to the large number of cases -- six in all -- related to subsidies and dumping. The active panels had proceeded in timely fashion, respecting, as a rule, the deadlines provided for. He could therefore conclude that the dispute settlement mechanism, from the establishment of a panel until submission of the report, was working in a satisfactory manner. The same could not be said, however, of the implementation phase. He recalled that in introducing his two previous

[2]Respectively, the Agreement on the Interpretation and Application of Articles VI, XVI and XXIII (BISD 26S/56); the Agreement on the Implementation of Article VI (BISD 26S/71); and the Agreement on Government Procurement (BISD 26S/33).

periodic reports, he had alerted the Council to the increasing problem of conditional and incomplete implementation of panel reports.[3] Also, in July, the Council Chairman had reported on his efforts to solve this very problem. Regrettably, the situation did not appear to have improved. His current report referred to nine disputes in which implementation had been the subject of discussion in the Council over the past six months. He had also noted with disappointment one significant fact: of those GATT panel cases which had been adopted over the past two years, and had required domestic action to implement their recommendations, only one -- out of eight -- appeared thus far to have been implemented completely.

He reiterated that panel reports interpreted existing rights and obligations, and therefore needed to be implemented regardless of the progress of the Uruguay Round. It should also not be forgotten that the negotiation by contracting parties of new obligations was not made easier by the knowledge that existing rights were not being protected effectively through the dispute settlement process. He noted that Canada, the European Community, Japan and the United States were involved in over 95 per cent of all GATT panel disputes, and that each had decided to delay the implementation of certain panel reports. In his view, it was particularly important that these contracting parties, which relied so heavily on the GATT dispute settlement mechanism, made a concerted effort to face up once again to this important issue.

The eleven panels currently active would soon be submitting reports for adoption. In view of what had been happening, or rather not happening, in terms of implementation of previous panel recommendations, one could well ask if further reports were going to be added to the list of non-implemented panel reports. While procedural rules were important, it should indeed not be forgotten that a dispute settlement mechanism could only be effective if there was a consensus on the value of the substantive rules and in their bona fide application. Whatever procedural improvements were achieved in the Uruguay Round, they would be no substitute for the determined application of rules agreed upon by "contracting" parties.

As requested by and on behalf of Mexico and the United States, the Chairman made the following statement in connection with a panel mentioned in the Director-General's status report:

"The Mexican and the US delegations wish to express their recognition to the Panelists and to the GATT Secretariat for their outstanding, professional work contained in document DS21/R. Their tireless efforts will certainly help both countries to arrive at a mutually satisfactory solution in this difficult and important case. Mexico and the US authorities are examining the Panel report with the greatest of care, as are all interested entities in their respective countries. Indeed, in order to permit fuller information and a better understanding of the complex issues involved in this case, the two delegations have requested the derestriction[4] of the report."

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[3] See C/M/246 and C/M/251.

[4] See L/6902, L/6903 and L/6914.

The representative of Argentina recalled that his delegation had on several occasions addressed the subject of non-implementation of panel reports. Argentina agreed with the points made by the Director-General in the introduction to his report, including that it would be very healthy for the multilateral trading system based on the GATT for contracting parties to have an increasing recourse to the dispute settlement mechanism thereunder. Argentina was concerned that the non-implementation of panel reports would affect the credibility of the GATT system and also the application of the improvements to the dispute settlement mechanism which might be agreed in the Uruguay Round negotiations. It would be extremely difficult to institute an improved mechanism if in practice the existing mechanism was not being respected, particularly through the non-implemention of panel recommendations. Argentina considered it important to retain this subject on the Council's agenda, and to urge that all contracting parties concerned comply with panel recommendations. This was of paramount importance in order to strengthen the multilateral trading system of the GATT, which, indeed, was the goal that all were trying to achieve in the Uruguay Round.

The representative of Canada, referring to the Panel report on its measures affecting the sale of gold coins (L/5863), recalled that Canada had not agreed to adoption of this report, although it had quickly been implemented, due to concerns over certain parts thereof. However, in the light of the final outcome of the Uruguay Round, Canada would expect to be in a position to agree to adoption of this report. With regard to another Panel, established in March 1985 to examine US restrictions on imports of sugar-containing products (C/M/186), he noted that the Panel had not yet met. Although the issue which had given rise to the Panel had not yet been resolved to Canada's satisfaction, Canada was prepared to have the Council agree to removing the Panel from its unfinished business list, but would reserve the right to revert to the issue that had given rise to this complaint under the normal dispute settlement procedures.

The representative of Venezuela expressed his delegation's full support for the Director-General's statement in respect of the non-implementation of panel reports. Referring to the Panel on the United States' restrictions on imports of tuna, established at the request of Mexico (paragraph A.5 of C/180), he said that this was a matter of deep concern to Venezuela since the restrictions had also been applied to its tuna exports since March 1991. Venezuela had of course made a third-party submission to the Panel. He noted that the Panel had found the United States restrictions to be inconsistent with the General Agreement and that its report had been circulated some months earlier. It was therefore opportune to urge the United States to make all necessary haste on the legislative side so that these restrictions could be lifted as soon as possible. Such action by the United States would contribute to reinforcing the confidence and credibility which the multilateral trading system of the GATT merited, and which would benefit all contracting parties.

The representative of Australia recalled that in addressing the Director-General's previous report on the status of work in panels (C/178 and Add.1) at the July Council meeting, his delegation had indicated that

there remained certain outstanding questions relating to the implementation of the Panel reports on Korea's restrictions on imports of beef (BISD 36S/202, BISD 36S/234, BISD 36S/268), and on US import restrictions on sugar (BISD 36S/331). Nothing had occurred in the interim to change Australia's views on these cases. Therefore, pending further developments, Australia requested that these Panel reports be retained in future status reports by the Director-General.

The representative of Uruguay said that the dispute settlement system was one of the basic pillars of the multilateral trading system. Uruguay shared the Director-General's concerns regarding the non-implementation of panel reports, a matter which went to the heart of the problem concerning the lack of credibility in the system. One could believe in an improved system only if the commitments based on the existing one were fulfilled. Uruguay considered it appropriate to retain this matter on the Council's agenda.

The representative of New Zealand said that the two preceding items on the agenda clearly illustrated some of the problems facing the GATT's dispute settlement system. As the Director-General had highlighted, the solution to these problems lay mainly in the hands of the major trading nations which needed to deliver a consistent message of respect for the integrity of the dispute settlement system if it were to be effective. She recalled that New Zealand had presented a proposal on rollback to the Uruguay Round's Surveillance Body[5] which addressed some of the questions plaguing the dispute settlement mechanism, and hoped that it would be considered by the Trade Negotiations Committee (TNC) subsequently. New Zealand also hoped that members of the TNC would use the proposal as a means to address concretely some of the problems in this area. Smaller and medium-sized trading nations, such as new Zealand, relied on the GATT's dispute settlement system to safeguard their legitimate trade rights. New Zealand hoped therefore that all the outstanding panel recommendations would be implemented promptly, and that such implementation would be fully consistent with GATT. This would be an important element in maintaining the integrity and effectiveness of the system for all contracting parties.

The representative of Korea shared fully the Director-General's concerns regarding the non-implementation of panel recommendations. The weaknesses and strengths of any legal system could be tested by its dispute settlement procedures. If that mechanism did not function properly, the system was in trouble, and vice versa. The viability of the GATT system hinged upon how effectively its dispute settlement mechanism performed in resolving disputes among contracting parties. He agreed with the Director-General that whatever procedural improvements were made in the Uruguay Round negotiations, they would not substitute for the determined application of the rules by the contracting parties. While the direction of the ongoing negotiations was towards improvement of dispute settlement procedures, Korea wished to stress that the cultivation of an atmosphere of

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[5] See MTN.SB/18.

strengthened political will on the part of contracting parties to comply s with current GATT dispute settlement rules and procedures was more important than institutional changes in the system. As to the Panel reports concerning Korea's restrictions on imports of beef, to which reference was made by Australia, he said that the first stage of implementation had been agreed upon and was well underway. Korea's beef régime for 1993 and beyond would be subject to further consultations with the parties concerned before July 1992. There were still several months to go and Korea would counsel all to be patient. A satisfactory solution to the matter could surely be found within the agreed time-frame.

The representative of South Africa said that his delegation had noted Canada's statement in respect of the Panel report on its measures affecting the sale of gold coins, and looked forward to the rapid conclusion of the Uruguay Round.

The representative of Japan, referring to the Panel report on the European Community's regulation on imports of parts and components (BISD 37S/132), reiterated that this report should be implemented quickly. Referring to the implementation of the Panel report on Section 337 of the US Tariff Act of 1930 (BISD 36S/345), he said that Japan continued to be concerned by this matter. At the April Council meeting, his delegation had indicated that the United States had initiated a specific investigation under Section 337 in respect of a Japanese company. More recently, on 10 October, another investigation under this Section had been initiated, and it appeared that certain other countries had also been subjected to action under Section 337 since the adoption of the report thereon. Such actions underscored Japan's concern with regard to the implementation of this report.

The representative of the European Communities said that if Japan were really concerned about the implementation of the Panel report on the Community's regulation on imports of parts and components, it should make the concessions the Community was requesting in the Uruguay Round negotiations on anti-dumping.

The Chairman said that the question of non-implementation of panel reports would be retained on the Council's agenda in the sense that any contracting party could ask for a renewed discussion thereon at the appropriate time.

The Council took note of the statements and of the Director-General's report in C/180.

(b) Roster of non-governmental panelists
(i) Proposed nomination by Brazil (C/W/689)
(ii) Proposed nomination by Norway (C/W/687)

The Chairman drew attention to documents C/W/689 and C/W/687 containing proposed nominations by Brazil and Norway to the roster of non-governmental panelists.

The Council approved the proposed nominations.

7. Canada - United States Free-Trade Agreement
- Report of the Working Party (L/6927)

The Chairman recalled that in February 1989, the Council had established a working party to examine the Canada - United States Free-Trade Agreement which had entered into force on 1 January 1989.

Mr. Hawes (Australia), Chairman of the Working Party, introduced the Working Party's report in L/6927. The Working Party had held five meetings between March and October 1991, on the basis of a communication from the delegations of Canada and the United States (L/6464 and Add.1), the text of the Agreement, and the replies to questions which been asked by contracting parties (L/6739). The parties to the Agreement had stated that it was fully consistent with Article XXIV requirements and that it had created a free-trade area compatible with the General Agreement. Other participants had recognized generally that, in terms of its coverage, the Agreement established one of the most comprehensive free-trade areas to be brought under the GATT thus far, and had welcomed the attempt of the two parties to enter into an agreement consistent with the General Agreement.

In the discussions, some members had expressed concern about certain questions which remained outstanding in terms of the relevant GATT requirements, such as: (i) the limited availability of detailed statistical information to appreciate whether the Agreement had a trade-liberalizing or trade-diverting effect; (ii) the exceptions allowing trade restrictions between the two parties in certain agricultural products, in the light of the Article XXIV requirement to eliminate "substantially all" trade barriers between parties to such agreements; (iii) the lack of a clear plan and schedule for eliminating barriers on a number of agricultural products covered by emergency clauses; (iv) the restrictive effects of provisions on other regulations of commerce including rules of origin, suppression of the duty-drawback scheme and of the export-based duty remission in the automotive sector, and the United States' waiver of customs user fees on imports from Canada; and (v) selective non-application of global emergency action to the other party and the relationship between Articles XIX and XXIV. Concern had also been expressed regarding the precedence of the rules in the Agreement over those in the General Agreement, and the implications of its dispute settlement provisions on the functioning of the multilateral dispute settlement system. The extent to which results of the Uruguay Round would be incorporated into the relevant provisions of the Agreement was another area of uncertainty.

The Working Party had noted (paragraph 98) that examination of the Agreement had brought to light some features which, in the view of some members, remained questionable in terms of GATT requirements, and also that some members had reserved their rights under the General Agreement. The Working Party had been unable to reach conclusions as to the consistency of the Agreement with the General Agreement; its report therefore summarized the views expressed during its discussions. It had agreed to forward the report to the Council and had recommended that the CONTRACTING PARTIES invite the parties to the Agreement to furnish reports on the operation of

the Agreement in accordance with the relevant Decision of the CONTRACTING PARTIES (BISD 18S/38), with the first such report to be submitted in 1993.

He then commented on the procedures for examinations of agreements submitted under Article XXIV, which were prompted by his experience of chairing the Working Party and not by any particular features of the Agreement under consideration. The Working Party on the present agreement had not only operated under standard terms of reference but had also reached standard conclusions in its report. Over fifty previous working parties on individual customs unions or free-trade areas had been unable to reach unanimous conclusions as to the GATT consistency of those agreements. On the other hand, no such agreements had been disapproved explicitly.

The trend to regional trading arrangements clearly was important. Most contracting parties with a significant portion of world trade were currently parties to one such agreement or another. In the following year or two, the Council would be asked to examine the many new customs unions or free-trade areas that were currently being negotiated or envisaged in various parts of the world. While contracting parties engaged in such negotiations would make efforts to reach GATT-consistent agreements, only limited guidance would unfortunately be available to them from past reports of GATT working parties on such agreements. One might therefore question what point was there in establishing a working party if no-one expected it to reach consensus findings in respect of specific provisions of such agreements, or to recommend to the participants how to meet certain benchmarks. It might not be irrelevant that the Working Party on the Agreement under consideration commenced work only after a delay of more than two years. As further agreements came along, there might be a risk that they would be treated increasingly superficially and that contracting parties would lose -- if they had not already done so -- the ability to distinguish between agreements of greater or lesser GATT consistency.

While he had no ready-made solutions to these problems, he noted that some reservations expressed in the examination of the Canada - United States Agreement, as well as of earlier agreements, had been concerned primarily with possible future effects of the agreements. This suggested that greater reliance might be placed on a review of how such agreements were actually implemented. He noted that a draft Uruguay Round decision on Article XXIV would not only re-establish and reinforce present review procedures, which seemed to have fallen into disuse, but would also underline that dispute settlement provisions remained available to resolve any matter arising from the application of the relevant Article XXIV provisions. Given these enlarged opportunities to respond to future problems, he hoped that it might prove easier for future working parties to reach unanimous conclusions on new agreements submitted under Article XXIV. He suggested that the Council give some thought to how working party examinations of such agreements should be conducted and, in particular, to the kind of conclusions they could most usefully seek.

The representative of Canada said that this Agreement was central to his Government's trade strategy for the 1990s. Canada pursued the objective of trade liberalization through bilateral, regional and multilateral negotiations that were complementary and mutually reinforcing.

A freer global trading climate, combined with domestic measures such as tax reform, deregulation of key industrial sectors, privatization and an enhanced investment climate, was essential for Canada's future economic prosperity. Canada was among those countries most dependent on trade; its earnings from trade accounted for over one quarter of its Gross National Product, and over 75 per cent of its exports went to the United States.

As reflected in the Working Party's report, this Agreement was one of the most comprehensive to be examined in the GATT and set a new standard for agreements concluded thereunder. It was GATT consistent and complemented innovative initiatives being developed in the Uruguay Round. The Agreement was also the first to include services, and covered more trade and trade-related issues than any previous trade agreement. It reflected the firm commitment of both parties to fight against protectionism and to liberalize trade, and did not increase barriers to third countries' trade. Indeed, it enhanced third countries' trading interests by lowering barriers and securing access to the United States' market for foreign investors and exporters doing business in Canada. Canada, therefore, remained convinced that the only proper conclusion for the Working Party examination was that the Agreement met the requirements of Article XXIV and was fully GATT consistent. It was disappointed that the Working Party was unable to reach such an agreement, and believed that failure to do so called into question the whole process of examination of such agreements. His delegation therefore supported the Working Party Chairman's remarks on this matter. In conclusion, he said that the success of the Agreement had reinforced his Government's view that a successful conclusion to the Uruguay Round was of utmost importance to the future of GATT.

The representative of the United States said that the Agreement more than met Article XXIV criteria and came closer than any previous such agreement to the goal of genuine regional free trade. Both the text of the Agreement and its operation during the past two years provided an excellent practical demonstration of "the desirability of increasing freedom of trade by the development, through voluntary agreements, of closer integration between the economies of the countries parties to such agreements," and that the "purpose of a ... free-trade area should be to facilitate trade between the constituent territories and not to raise barriers to the trade of other contracting parties with such territories" (Article XXIV:4). In accordance with Article XXIV:4 and 5, the Agreement had not raised barriers to third-country trade, either directly in the context of the phased-in implementation of its provisions or indirectly as a consequence of the negotiations. All United States - Canada trade in dutiable goods would be duty-free within ten years, under a set schedule that had already been exceeded in actual implementation of the Agreement. Furthermore, there was provision for the elimination of significant non-tariff barriers in trade between the two parties in areas both within and outside of the current scope of GATT provisions. There was no evidence that trade had been diverted to the detriment of third countries as a result of the Agreement, and nothing therein supported this as a possibility or a goal. The Agreement was complete, and its full implementation would occur over a ten-year period.

The Agreement constituted the most comprehensive free-trade agreement ever presented for review under Article XXIV. No major sectors of trade had been excluded from the elimination of duties, non-tariff barriers had been sharply curtailed and, with this Agreement, a new, broader definition of the term "free-trade area" had been functionally established under GATT auspices. Nevertheless, the Working Party had refused to declare the Agreement as consistent with Article XXIV, which made the review process rather pointless and further weakened the credibility of Article XXIV at a time when regional trade arrangements were proliferating. Not all purported free-trade agreements deserved that appellation or GATT approval simply because their participants claimed the title, and all contracting parties had a stake in strengthening GATT rules regarding the formation thereof. It was difficult to reconcile the rhetoric of many contracting parties concerning the importance of Article XXIV provisions with their unwillingness to use this Agreement as a benchmark in this regard. If this were the inevitable outcome of Article XXIV working party deliberations, then it was extremely unlikely that any agreement could ever meet the test. It was perhaps time for contracting parties to decide whether the substantive provisions of Article XXIV, as opposed to the notification and review provisions thereof, had any meaning. The United States would be giving serious consideration to this question. It was extremely disappointed at the outcome of this review, and at the lack of foresight shown by Working Party members with regard to the damage being done to the credibility of the process by their actions. The United States would not block adoption of this report but, in the event that it negotiated other such agreements in the future, would have to question the creation of a working party to examine whether their provisions were consistent with the General Agreement.

The representative of India expressed disappointment with the report because it did not pronounce on the GATT consistency of the Agreement. As his delegation had pointed out in the Working Party, at the time the General Agreement had been negotiated there had been only one or two limited economic integration arrangements in sight. Since then, regional and sub-regional integration arrangements purporting to be consistent with Article XXIV had grown in number and in significance, with the result that m.f.n. trade had contracted considerably. It was more disturbing to note that beginning with the examination of the Treaty of Rome establishing the European Communities, almost no examination of agreements under Article XXIV had led to a unanimous conclusion or specific endorsement by contracting parties that all the legal requirements of that Article had been met. Unfortunately, examination of the Agreement under consideration had not turned out to be any different either. The absence of a unanimous conclusion or specific endorsement by the contracting parties had given the parties forming such arrangements a virtual "carte blanche", which could endanger multilateralism. At a time when several contracting parties seemed poised to enter into new agreements and enlarge existing ones, the failure to reach a conclusion on the GATT consistency of this Agreement did not augur well for the multilateral trading system. In the Uruguay Round negotiations on GATT Articles, his delegation had formally made a reservation on the failure to address some of the glaring deficiencies of existing Article XXIV provisions. This was worth recalling at the

present time, when contracting parties were considering yet another Working Party report that had failed to pronounce on the substance of the issue.

The representative of the European Communities said that while his delegation questioned the GATT consistency of certain provisions in the Agreement, it had sympathy for the two parties thereto since the Community had found itself in a similar situation previously. The parties to this Agreement had had recourse to the same arguments used by the Community in the past which they had sometimes criticized. The Community reserved its rights in regard to the Agreement until a greater clarification of issues pertaining to Article XXIV could be reached. He noted that the Community too had been convinced of the conformity of its free-trade agreements with Article XXIV when these had been examined in GATT, but that its view had not been shared fully by other contracting parties. Referring to the more general comments on Article XXIV made by the Working Party's Chairman, he said they deserved further reflection with a view to finding solutions to these types of problems in future.

The representative of Japan said that although the Agreement had a lot of merits, his Government had some doubts as to the GATT consistency of certain provisions, and these had been reflected in the Working Party's report. Japan also attached importance to the reference in the report to periodic reviews of the Agreement; given the disturbing strong trend toward regionalism it was particularly important to conduct periodic reviews of such agreements, and his delegation therefore supported the remarks by the Working Party's Chairman concerning the need for greater emphasis in this regard in future.

The representative of Sweden, on behalf of the Nordic countries, said that the remarks of the Working Party's Chairman deserved careful consideration. He added that while working party work might be time-consuming because of the question-and-answer procedure involved, this could in fact be beneficial to the multilateral trading system because such detailed work promoted transparency in regional agreements. This was an additional positive aspect of the review process which should not be overlooked. Among the issues for consideration in future was how to deal with regional agreements that were basically in line with the objectives of Article XXIV but which involved certain aspects -- such as for example the treatment of customs user fee in the Agreement under consideration -- which did not seem to be GATT consistent.

The representative of Australia said that the Working Party should be commended for the efficient way it had undertaken the task of analyzing and preparing a comprehensive report on this important trading arrangement. The Agreement was particularly significant because it brought together more comprehensively and formally two large economies which were already substantially integrated. Its entry into force, at a time when the multilateral trading system itself was being tested, heightened its significance for the GATT and the future direction of that system. It was particularly comprehensive, developed as it had been through extensive consultations and covering nearly all trade in goods between the parties. Nonetheless, as had been noted in the Working Party itself, there were significant exceptions which, for example, allowed continued application of

trade restrictions on a number of agricultural products. The Agreement had also failed to establish a clear timetable for phasing out certain restrictive measures that were justified on emergency or safeguards grounds. Certain other provisions also remained questionable in terms of their GATT consistency and Australia accordingly reserved its rights under the General Agreement.

Australia was also conscious of the history of GATT working parties on customs unions and free-trade agreements and of the need to address evident shortcomings in this area of GATT work. However, it was important to bear in mind that there was considerable value in allowing contracting parties to undertake a first-hand and detailed examination of regional arrangements. It would be misplaced if the GATT's assessment thereof were to take on a more automatic character. Australia supported the idea of exposing Article XXIV-type agreements to regular and ongoing review if only to ensure that, with maturity, they did not degenerate into convenient preferential trading régimes bearing little resemblance to their original concept or to that envisaged by the GATT.

The Council took note of the statements, adopted the report in L/6927 and agreed to revert at a future meeting to the question of how examination of agreements submitted under Article XXIV might be made more meaningful.

8. Appointment of presiding officers of standing bodies
- Announcement by the Council Chairman

The Chairman recalled that at the CONTRACTING PARTIES' Forty-Fourth Session in 1988, the Council Chairman had suggested that "in future, at the first Council meeting each year, on the basis of a consensus which would have emerged from consultations, the Council Chairman should propose the names of the presiding officers of the Committee on Balance-of-Payments Restrictions, the Committee on Budget, Finance and Administration and the Committee on Tariff Concessions for the current year. This would not preclude the re-appointment of an incumbent" (SR.44/2). The proposals would be preceded by consultations, open to all delegations, and conducted so as to ensure transparency of the process. In the light of the foregoing, he announced that such consultations would be carried out in due course by his successor, and asked the Secretariat, in consultation with the next Council Chairman, to make the necessary arrangements and to contact delegations. These consultations would be open to all delegations.

The Council took note of this information.

9. Harmonized System
- Request by Chile for extension of waiver

The representative of Chile, speaking under "Other Business", noted that the waiver extension granted to his Government in connection with its implementation of the Harmonized System (L/6857) would soon expire. Chile had received comments from some contracting parties in relation to the

lists it had published under the Harmonized System exercise, and this process was taking time. Accordingly, Chile would request an extension of its waiver at the forthcoming Session of the CONTRACTING PARTIES in December.

The Council took note of the statement.

10. Romania - Reform for transition to a market economy (L/6838 and Add.1)

The representative of Romania, speaking under "Other Business", recalled that in April 1991 his Government had notified the main legislative measures adopted in the framework of its reform programme for transition to a market economy (L/6838). Since then new measures had been introduced testifying to Romania's firm and irreversible commitment to the transition to a market economy (L/6838/Add.1); this reform was being implemented at an accelerated pace in spite of significant internal and external economic and non-economic difficulties.

Among the new measures and regulations adopted since April 1991 was a law on privatization of commercial companies which ensured the expansion of the private sector. One feature of this law was the transfer of 30 per cent of State-owned stock to all Romanian citizens aged eighteen as at 30 December 1990 with the remaining 70 per cent being sold to Romanian and foreign natural or legal persons. Another law on foreign investments provided for up to 100 per cent foreign-capital participation and a number of fiscal incentives to attract foreign investment; some 6,300 companies with such participation had been established by the end of September 1991. A new customs tariff based on the Harmonized System had also been adopted and would enter into force on 1 January 1992. The tariff was designed to be Romania's main trade policy instrument. Accordingly, a new and liberal import licensing system had been adopted and already notified (LIC/1/Add.51). Other significant measures adopted since April 1991 related to prices and wages, public finance, the fiscal and banking and credit systems, as well as intellectual property rights. Most recently, the previous system of dual exchange rates had been abolished and limited internal convertibility of the national currency had been introduced. Romania remained committed to GATT rules and disciplines and would continue to ensure the necessary transparency of its reform process. Romania also reiterated its desire to initiate shortly the renegotiation of its Protocol of Accession (BISD 18S/5).

The Council took note of the statement.

11. US/EEC Agreement on EEC enlargement

The representative of the United States, speaking under "Other Business", informed the Council that the United States and the European Community had agreed to extend through the end of 1992 the provisions specified in the Annexes to the 30 January 1987 Agreement for the conclusion of Article XXIV:6 negotiations between the two parties, and that

this was without prejudice to either party's interpretation of Article XXIV. Both parties reserved their GATT rights, including those which would otherwise be time-limited.

The representative of the European Communities confirmed that the two parties had so agreed.[6]

The Council took note of the statements.

12. Group on Environmental Measures and International Trade - Chairmanship

The Chairman recalled that at the October Council meeting, he had been authorized to designate, in consultation with interested parties, a new Chairman of the Group on Environmental Measures and International Trade, since its present Chairman, Mr. Kaya, was no longer available. Following his consultations, it had been agreed that Mr. Hidetoshi Ukawa (Japan) be designated as Chairman of the Group.

The Council took note of this information.

13. Report of the Council (C/W/688)

The Secretariat had distributed in C/W/688 a draft of the Council's report to the CONTRACTING PARTIES on matters considered and action taken by the Council since the Forty-Sixth Session.

The representative of Chile referred to point 3 of the report - "Tariff matters", and reserved his Government's Article XXVIII rights in respect of the Harmonized System tariffs of Japan, the European Communities, the United States and other contracting parties which had not initiated or concluded negotiations with Chile.

The representative of Peru referred to point 5 of the report - "Committee on Balance-of-Payments Restrictions", and requested that the reference by the Committee's Chairman at the February Council meeting (C/M/247) with regard to Argentina's and Peru's withdrawal of all restrictions previously applied under Article XVIII:(b) be included in the Council's report.

With reference to point 20 of the report - "Restrictions on exports from Peru following the cholera epidemic", she recalled that the Community and Austria had submitted notifications under the streamlined mechanism for reconciling interests of contracting parties in the event of trade-damaging acts (BISD 36S/67), and requested that reference also be made to them in the report.

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[6] A joint communication from the United States and the European Communities regarding this matter was subsequently circulated in L/6944.

The Chairman proposed that the Council take note of the statements and that the report, together with appropriate additions that the Secretariat was requested to make, be approved. It would be distributed and forwarded to the CONTRACTING PARTIES for consideration at their Forty-Seventh Session.

The Council so agreed.