

GENERAL AGREEMENT ON

TARIFFS AND TRADE

RESTRICTED

SR.48/2

5 January 1993

Limited Distribution

CONTRACTING PARTIES
Forty-Eighth Session

SUMMARY RECORD OF THE SECOND MEETING

Held at the International Conference Centre, Geneva
on Thursday, 3 December 1992 at 10.15 a.m.

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

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Report of the Council (L/7125 and Add.1) (continued)

Point 1. Work Program resulting from the 1982 Ministerial meeting

Sub-point 1(i). Status of work in panels and implementation of panel reports

Mr. Ahnliid (Sweden) said that, regrettably, Sweden had once again to draw the attention of contracting parties to a Panel report concerning the imposition by the United States of anti-dumping duties on stainless steel pipes and tubes from Sweden¹, which during the past year had been discussed both in the Council and in the Anti-Dumping Committee. The report of this Panel had been issued after a lengthy process in mid-1990, and had since then been on the agenda of the Anti-Dumping Committee on several occasions without being adopted, as a result of the United States' refusal to agree thereto. This situation raised concerns about the functioning of the dispute settlement system. Since the efficient settlement of disputes in the anti-dumping field was of great importance, Sweden once again urged the United States to consent to the adoption of this report at the earliest possible occasion.

Mr. Abbott (European Communities) referred to the Panel report on Section 337 of the US Tariff Act of 1930 (BISD 36S/345), which had been adopted at the end of 1989, i.e., three years earlier. The Community was aware of the United States' view that this matter would be addressed and legislative changes introduced in the context of the results of the Uruguay Round. The Community had patiently been waiting to see whether this would be carried through. It was aware that some legislative initiatives had been taken by the US Congress. However, these were still

¹United States - Anti-dumping duties on imports of stainless steel pipes and tubes from Sweden (ADP/47).

under discussion and, in the Community's view, they were in any case totally inadequate to address the point which the Panel had quite clearly condemned, namely the discrimination as between the treatment afforded in domestic cases and in cases in which a foreign country was concerned. The Community therefore continued to urge the United States to take early action at least to introduce some draft legislation to correct this point three years after the Panel report had been adopted. He reiterated the Community's view that the present legislative initiatives did not adequately address the point which the Panel had condemned.

Mr. Asakai (Japan) said that Japan had repeatedly raised its concern at the United States' lack of implementation of the Section 337 Panel report. Japan was not satisfied with the progress thus far on this matter. He once again urged the United States to implement the recommendations of this Panel as early as possible. Japan was also concerned at the non-implementation of the Panel report on the Community's regulation on imports of parts and components (BISD 37S/132), and urged the Community to implement that Panel quickly. He added that while Japan was unsatisfied with the developments on the Section 337 Panel report, there had at least been some internal movement in relation thereto, and the United States had provided a status report on its implementation of this report, pursuant to paragraph I.3 of the April 1989 improvements to the dispute settlement rules and procedures (BISD 36S/61). In contrast, no such movement could be discerned on the Community's part, nor had it provided any written information as to the progress on the implementation of the Panel report on parts and components. This was indeed a very regrettable situation.

Point 6. Trade and environment (continued)

Sub-point 6(b). Group on Environmental Measures and International Trade

The CHAIRMAN recalled that the Chairman of the Group had informed the Council in November of his intention to report to the CONTRACTING PARTIES at their Session on the activities of the Group.

Mr. Ukawa (Japan), Chairman of the Group, said that he was making a report, on his own responsibility, to inform contracting parties of the work that had been undertaken by the Group since it had been convened. This progress report did not attempt to draw any substantive conclusions; it would be premature to do so, since further work was needed. He had advised both the Council and the Group of his intention to make this statement.

The Group had originally been established in November 1971 by a Council decision² and had been given the task of examining, upon request, any specific matters relevant to the trade policy aspects of measures to control pollution and protect the human environment, and to report back to

²See C/M/74, item no.3.

the Council. In October 1991, after a careful process of informal consultation undertaken at the request of the Council by the then Chairman of the CONTRACTING PARTIES, the Group had been activated for the first time. The Council had taken note of a statement by the CONTRACTING PARTIES' Chairman that agreement had been reached on an agenda of work, for the present, of three items, namely: (i) trade provisions of existing multilateral environmental agreements (such as the Montreal Protocol, the Basel Convention and the Convention on International Trade in Endangered Species (CITES)) vis-à-vis GATT principles and provisions; (ii) the transparency of trade-related environmental measures; and (iii) possible trade effects of packaging and labelling requirements.

The consultation process undertaken by the then CONTRACTING PARTIES' Chairman had been pursuant to the request of the EFTA countries at the Uruguay Round Ministerial Meeting in Brussels in December 1990 that the 1971 Group be convened to examine the relationship between environmental and trade policies. The consultations had also led to a structured debate on environment and trade in the Council in May 1991, which had formed the background for the three agenda items that had subsequently been agreed upon. At that time, many delegations had originally approached the proposed exercise with concern and misgivings. There had existed a wide divergence of views and positions among delegations not only on how to handle the exercise but also on what to seek by way of a possible outcome. He had accepted the Chairmanship of the Group with considerable hesitation.

The Group had held seven meetings thus far. Notwithstanding the original misgivings, the Group had been able to conduct an in-depth and wide-ranging deliberation in a constructive and pragmatic manner. The considerable goodwill exercised by participants had contributed to the progress made in identifying, clarifying and focusing on issues in this complex area, as well as to de-mystifying the subject and dispelling some of the original concerns. Many delegations had observed that one of the most valuable aspects of the Group's work was that delegations had had an opportunity to engage in an educational process and to broaden their knowledge in this area. That had helped to enrich the dialogue between government officials responsible for trade matters and their counterparts dealing with environmental matters, and to reinforce the process of exploring at both the national and the international level the scope that existed to improve policy coordination. Indeed, trade liberalization and the protection of the environment should not be considered as mutually conflicting objectives; they called for greater integration of environmental and trade policies at the national level, as well as for parallel efforts to promote international cooperation on the basis of multilateral rules both in the trade and environment fields.

The Group had proceeded in part on the basis of an evolving list of issues and questions that had been raised in the course of discussions. This approach had permitted the Group to address its subject matter flexibly, and had helped to bring about a better understanding of where the needs lay for improved policy coordination at the multilateral level in the area of trade and environment. The willingness of delegations to use the list as an evolving tool for analysis not only reflected the constructive spirit with which delegations, after their initial hesitation, had

approached the issues, but also had led to a process of confidence building. He had no doubt that all delegations shared the expectation that this constructive climate would prevail as the Group continued its deliberations, and would provide a solid basis on which to conduct its future work.

Attention needed to be drawn to the fact that, at a very early stage in its deliberations, the Group had come to a generally shared view that its rôle was not to pronounce on the consistency, or otherwise, of specific trade-related provisions in existing multilateral environmental agreements with GATT provisions. The view was also generally shared that the GATT was not the forum in which environmental standards should be established, nor global policies on the environment developed. In his view, the GATT did not question the right of contracting parties to have the highest possible environmental standards. A widely shared view in the Group was that GATT provisions provided for and permitted a wide variety of trade-related environmental measures. Article III, for example, permitted governments to apply the same internal taxes, regulations and requirements to imported products that they applied to domestically produced goods. Trade-related environmental measures could also be admitted as exceptions to GATT provisions under Article XX, as long as they conformed with certain conditions specified in that Article and its sub-paragraphs, such as that they should not constitute a means of arbitrary or unjustifiable discrimination nor a disguised restriction on international trade. In preliminary discussions, many delegations had emphasized the scope of exceptions to GATT rules available under Article XX and also the need to ensure safeguards against the misuse of those exceptions. There had been strong agreement that the risk of environmental objectives being used as a basis for protectionist trade actions had to be avoided. The conditions contained in Article XX reflected the checks and balances in the GATT system that were intended to prevent abuse which would be as detrimental to the environmental agenda as to the trade agenda.

Many delegations had expressed the view that resort to trade measures for environmental objectives should be weighed carefully before these were imposed to ensure they were consistent with the requirements and disciplines provided for in the GATT. Action that was not in conformity with GATT rules was an issue that had received extensive attention in the discussions. At the same time all delegations had stressed the importance of international cooperation for dealing with environmental problems of common concern, and that trade-related environmental measures designed to address global environmental concerns were best pursued through cooperative multilateral efforts. He emphasized that there was general agreement that environmental objectives and trade policy objectives could be, and had to be, mutually supportive. The view was widely shared that trade and the GATT trading system were supportive of better environmental protection at the national and international levels. Many delegations had observed that broadly-based trade liberalization in favour of all GATT trading partners, as was being pursued in the Uruguay Round negotiations, and the maintenance of an open and non-discriminatory trading system, could make significant contributions to sustainable development.

In respect of Item 1 on its agenda, the Group had set about its examination of the trade provisions in existing multilateral environmental agreements in a generic manner. Many issues had been raised in the course of the discussions. At an early stage, the Group had taken up the issue of what guidance could be provided by the principles of international public law when considering the relationship between the trade provisions of multilateral environmental agreements and GATT provisions. In general, a later and more specific agreement took precedence over an earlier agreement, although certain conditions had to be fulfilled, including that the agreements address the same subject matter and have the same membership. Considerations raised in that context had led the Group into discussing what constituted the key characteristics of an international agreement. Mention had been made in that regard of the number of countries participating in the negotiation of the agreement, the number of signatories to it, how representative those countries were in terms of their various stages of development and their geographical diversity, and whether membership subsequently was open or restricted. Mention had also been made of how a regional agreement might be viewed in this context.

Related to these issues were important questions of the extra-jurisdictional application of trade measures in the context of dealing with global environmental concerns and the treatment of non-parties by trade provisions contained in a multilateral environmental agreement. Many delegations had focused on the difficult issues which arose when trade restrictions would be aimed at extending or enforcing environmental agreements, standards or processes and production methods vis-à-vis countries that had not accepted them. The relevance of considering the reasons why a party might choose not to accede to a multilateral environmental agreement had also been mentioned in this regard, for example when a party considered the environmental problem as having a relatively low priority, or believed that scientific evidence on the problem was not adequate or that the associated costs were prohibitive. More detailed analytical work was planned in these areas for further meetings of the Group.

The need to gain a good understanding of why it had been felt necessary for trade measures to be included in multilateral environmental agreements, and what purposes they were intended to serve, had been a subject of discussion, as had the need to examine the efficiency and effectiveness of using trade measures in this context. Many references had been made to the need for a common and more precise understanding about the applicability of various GATT provisions in the context of trade measures designed to address global environmental concerns. Mention had been made in particular of: Article I (most-favoured-nation treatment and non-discrimination); Article III (national treatment and non-discrimination, as well as its relationship to trade-related environmental measures that were based on processes and production methods); Article XI (elimination of quantitative restrictions on imports and exports); Article XX, particularly the terms "arbitrary or unjustifiable discrimination between countries where the same conditions prevail", "disguised restriction on international trade", "necessary to" in sub-paragraph (b), and "relating to" in sub-paragraph (g), as well as whether the language "human, animal and plant life and health" in sub-paragraph (b) covered fully the concept of environmental resources.

Under its second agenda item, the Group had been reviewing the scope and adequacy of the "transparency provisions" of the GATT and of prospective Uruguay Round agreements in the light of national environmental regulations that were likely to have trade effects. The publication and notification provisions of the GATT, in particular Article X and the 1979 Understanding Regarding Notification, Consultations, Dispute Settlement and Surveillance (BISD 26S/210), were recognized to play an essential rôle in facilitating the proper functioning of the multilateral trading system, building confidence in the security and predictability of market access and helping to prevent the emergence of unnecessary trade disputes. The "transparency provisions" that would be added by the Uruguay Round agreements -- for example the establishment of a Central Registry of Notifications under the Agreement on the Functioning of the GATT System with its indicative list of notifiable measures -- were expected to reinforce the scope and implementation of existing GATT provisions in this area. Notification of a trade-related regulation prior to its adoption was called for under the specific transparency provisions of the Agreement on Technical Barriers to Trade, and this feature had attracted favourable comments. It provided an opportunity for prior consultation with trading partners and would allow time for producers to adjust to new market conditions. It had been observed from the experience of the member countries of the Group that a draft regulation could often be modified so as to take account of other parties' trade or other concerns without sacrificing the original objective or effect of the regulation, and that this could help prevent potential trade disputes from developing. A large number of national trade-related environmental regulations had been notified already under existing GATT provisions, many prior to their adoption.

The Group had approached the subject covered by its third agenda item by preparing for a generic examination of the trade effects of mainly new forms of packaging and labelling requirements aimed at protecting the environment. Packaging requirements had taken on increased environmental importance in the context of national waste management policies, and environmental labelling was already used widely to enhance environmental awareness among consumers. While noting the environmental purposes that were designed to be served by the introduction of these measures, many delegations had observed that the potential trade effects of certain types of measures in this rapidly developing area of environmental policy-making could be considerable, and they had pointed to the need to undertake a close and careful examination of this aspect of the measures in the course of the Group's further work.

At the Group's request, the Secretariat had prepared a factual background paper on environmental packaging and labelling requirements, using information readily available from published sources. The paper provided a typology of such measures and permitted distinctions to be drawn, for example between those of a mandatory nature and those of a voluntary nature, or between those of a regulatory nature and those which worked directly through the price mechanism and market forces. The Secretariat's paper was being supplemented and enriched by delegations providing, on a voluntary and informal basis, information related to their national experience with such requirements. An exercise of that nature was not usual in GATT, and the fact that the Group had engaged upon it was a

clear reflection of the constructive and non-confrontational spirit which had marked discussions in the course of 1992. The exercise was expected to lead to a better understanding of the trade effects of packaging and labelling requirements, and provide guidance on where future discussion in the Group should be focused.

The next meeting of the Group had been scheduled tentatively for early February 1993, taking into account developments in the Uruguay Round. There was wide support for the current tempo of meetings to be maintained in 1993. In conclusion, he stressed that there was a widely shared view among delegations that there was a broad range of measures for the protection of the environment that could be taken in conformity with GATT provisions, or when necessary as an exception to GATT provisions provided that certain conditions were respected. The rule-based framework of the GATT provided safeguards against the misuse of trade measures for protectionist purposes. It had enabled enormous growth in trade in the post-war years and had been an effective underpinning for upholding international commerce and global economic well-being.

Delegations believed it essential to dispel any misperceptions that the GATT contradicted or put in jeopardy collective efforts to address environmental problems. The seriousness with which the Group's deliberations were being conducted, as shown in the impressive preparation and thought invested by delegations in meetings, testified to the fact that environmental concerns were deeply shared by delegations and that there was a strong desire to search for constructive solutions. He had no doubt that environmental concerns would continue to play an increasingly important rôle in future GATT activities.

Mr. Girard (Switzerland) said that, as contracting parties were aware, Switzerland attached great importance to issues relating to trade and the environment. Switzerland welcomed the work that had been accomplished in the Group and although the results of that work had not yet met all the expectations, it nonetheless represented an encouraging first step. With regard to the objective of the Group's work, he emphasized that there was an emerging awareness that measures taken to protect the environment were not without an impact on the conditions in which international trade operated. Therefore, if one wished to avoid, in future, a conflict between the international trading system and the measures taken for environmental protection, it would be desirable that such measures be taken in full respect of the underlying principles of the multilateral trading system, bearing in mind the m.f.n. clause and the principles of national treatment and non-discrimination, for example.

In this respect, the Group's discussions and the GATT annual report on International Trade 1990-1991 had already shown the need for working in this particular direction. On a more general plane, it seemed that it was possible to substantially limit, if not eliminate, the conflict between environment and trade, while at the same time ensuring that environmental measures respected the general principles of law, such as proportionality, legality and transparency. On these conditions Switzerland believed that the basic principles of the law of the environment -- e.g., the "polluter pays" principle -- could be respected without bringing about any trade

distortions. Going beyond these general matters, he recalled that the United Nations Conference on Environment and Development (UNCED) had called for concrete action to be taken by the CONTRACTING PARTIES. In particular, Agenda 21 of the UNCED Declaration and its catalogue of measures called for coherent action to be taken by GATT, which would only be effective if a common approach were adopted. In this regard, Switzerland believed that the principles to be identified should be valid for all contracting parties. As regards the actual implementation of any action, account would have to be taken of the particular situations that different countries had to face, in particular the developing contracting parties and those that were in a transitional phase. In this context, one counted on the active participation in the future work of the Group of environmental experts from those two groups of countries.

Switzerland believed that this distinction should be reflected in the way in which future work was organized. The Group should, therefore, play an important rôle in the UNCED follow-up, while at the same time cooperate with the Committee on Trade and Development. This Committee could, in particular, make its contribution to the overall process, within the purview of its competence, by examining the specific modalities of the application of general principles by developing contracting parties, as well as any accompanying measures which it might be felt advisable to elaborate, particularly in the area of technical assistance.

Mrs. Deustua (Peru) said it was very important for GATT to be the forum that dealt with those aspects of Agenda 21 which related to its work. Peru supported the proposal made by the Council Chairman under sub-point 6(a). It agreed that GATT's competence in the field of environment and trade should be limited to trade policies and to those aspects of environmental policies which could have a significant effect on the trade of contracting parties. This, of course, should all be within the framework established by the UNCED regarding the need to improve market access for developing countries. In this context, it would be extremely useful if the Council could, in the coming year, hold a meeting devoted to evaluating the work underway in GATT relating to the follow-up to the UNCED. Peru also agreed that the Committee on Trade and Development should deal with matters considered at the UNCED, and that this should be placed within the context of sustainable development through trade liberalization.

With regard to the Working Group on Export of Domestically Prohibited Goods and Other Hazardous Substances, Peru supported the extension of its term of mandate, but hoped that at the end of that term one could adopt the conclusions that were almost unanimously agreed upon already. As for any future work in the GATT on trade and the environment, Peru believed that it should take account of Principle 12 of the UNCED Declaration, namely that trade policy measures for environmental purposes should not constitute a means of arbitrary or unjustifiable discrimination, nor a hidden restriction to international trade, and that unilateral measures should not be taken to solve environmental problems existing beyond the jurisdiction of the importing country. Furthermore, measures designed to resolve any transborder or international problems should, insofar as possible, be based on an international consensus. If in its future work the GATT were to respect this principle, as well as the objectives and activities assigned

to it in paragraphs 2.12 and 2.22 of Agenda 21, that would mean it would be coordinating its action with the international consensus on this subject, in full consciousness of the need to avoid any overlap with work being done in other international organizations.

Mr. Lindström (Sweden), speaking on behalf of the Nordic countries, said that the Group had had a successful first year of activity. When the EFTA countries had originally proposed at the Uruguay Round Ministerial Meeting in Brussels in December 1990 that the Group be convened, they had had in mind the very sort of analytical activity that had come to characterize the Group's work. The considerable flexibility and goodwill exercised by the participants had contributed to the progress made in identifying, clarifying and focusing on issues in what was an intricate set of inter-relationships between environmental and trade policies. As the discussions in the Group had amply illustrated, this subject was technically quite complex. This complexity had put large demands on the preparations of delegations for the Group's meetings and had been, and would be, a challenge to all. It also implied a warning not to settle for premature conclusions, whether concerning the correct interpretation of the term "necessary" in Article XX, or the latitude for discrimination against non-participants of international environmental agreements, or the capacity of existing notification requirements to deal with environmental measures with direct trade effects, or how the Agreement on Technical Barriers to Trade³ applied to packaging and handling requirements. The Nordic countries agreed that there remained much for the Group to do, that discussions should continue to be based on an evolving and flexible list of issues, and that work should continue in 1993 at a fairly intensive tempo. The decision under sub-point 6(a) to refer a number of issues dealing with the UNCED follow-up inter alia to this Group would also require considerable work if the Group was to provide an input for the Council meeting to be devoted to this issue in the course of 1993. The Nordic countries looked forward to another active year in the Group.

Mr. Gosselin (Canada) said that trade and environment was one of the most significant issues to be pursued in the post-Uruguay Round period. The first challenge was an educational one, as there was considerable confusion and misunderstanding in the public debate about the rôle GATT played and what its rules were all about. An important purpose of the Group was to provide information and clarification in these areas. The Group Chairman's report reflected the importance of this objective and the common themes that had already begun to emerge in the discussions. The report also indicated that part of the educational process was to better define the nature of the key issues in the trade and environment debate, and where the GATT fitted in. His delegation agreed that important progress had been made in clarifying what the issues and their implications really were. The Group Chairman's efforts in building consensus on ways to structure and focus the Group's work had been instrumental in this regard. His delegation agreed that work so far in the Group had been positive, and that participants were proceeding in a spirit of constructive cooperation.

³ BISD 26S/8.

Canada welcomed the most useful interim report presented at the present Session, and looked forward to participating in the Group's further work in 1993.

Mr. Seade (Mexico) said that consideration of environmental problems was of utmost importance for Mexico. For this reason, Mexico had not only participated actively in the discussions in the Group, but had also strongly supported a GATT discussion of the issues within its competence that were contained in the results of the UNCED. Regarding the work of the Group, Mexico was pleased to see the outstanding progress that had been made in just one year. The discussions had clarified to a great extent the complex relationship between trade and the protection of the environment. In particular, they had highlighted the fact that GATT provisions represented a balanced approach, which enabled the use of trade measures for environmental protection within the jurisdiction of the country applying these measures, while at the same time preventing their abuse. In this context, specific questions on which discussions should be focused had been identified, relating in particular to problems of extra-territoriality and treatment of countries not signatories to multilateral environmental agreements.

Mexico believed that by including the objectives and elements of Agenda 21 of the UNCED Declaration in the Group's discussions, and in that of other GATT bodies, as had been agreed under the sub-point 6(a), the GATT would be contributing to a better and more complete treatment of this delicate and important problem. This would also enable GATT to play the rôle appropriate to it in the achievement of the aims resulting from the UNCED, in particular, the achievement of sustainable development. As a framework, or guidance, for this exercise, special attention should be given to the contents of Part B of Chapter 2 of that Agenda, which reaffirmed multilateralism and its basic principles, and in particular non-discrimination and transparency, and other principles contained in Article XX of the GATT. All these elements were the most appropriate and effective means to tackle a subject which concerned not just one country, but rather all of mankind. In conclusion, he emphasized that the distribution of tasks and responsibilities amongst the various relevant bodies of GATT, as proposed by the Council Chairman and agreed under sub-point 6(a), seemed to be the wisest and most appropriate means of working. Mexico fully supported that decision and reiterated its commitment to continue contributing in a positive and active way to the growing and diverse work in this important area.

Mr. Melendez (Colombia) welcomed the decision under sub-point 6(a) on how to follow-up in GATT on the UNCED recommendations, and, in particular, to integrate in the GATT's work the dual objective of preserving the environment and an open and non-discriminatory multilateral trading system conducive to sustainable development. The structure given to the GATT's future work in this area reflected the aims that had led governments to adopt the respective chapters on trade and environment at UNCTAD VIII and subsequently at the UNCED. Colombia would willingly contribute to the future work in this area in the various GATT bodies.

Mr. Park (Korea) expressed satisfaction with the progress of work in the Group over the year, as well as support for the Council Chairman's recommendations under sub-point 6(a). While much more work still lay ahead, all had significantly deepened their common understanding of the major issues. The most important task was to enhance the understanding of how trade and the environment could be mutually supportive, as was clearly underlined in Principle 12 of the UNCED Declaration and Chapter 2 of Agenda 21. In order to accomplish this task, the first thing one needed was a clear definition of GATT's rôle vis-à-vis environmental goals. Based on this, one would have to pull together all resources and experience so as to insure that trade provisions of future agreements were GATT consistent. In doing so, he believed one might effectively correct the widely held misperception that GATT was not environment-friendly. Another important element to keep in mind in pursuing such work was how to turn into a reality the special considerations for developing countries outlined at the UNCED. One of the main tasks was to attain a genuine global partnership in dealing with environmental issues through the harmonization of different demands from the developed as well as developing countries.

Mrs. Bautista (Philippines), speaking on behalf of the ASEAN contracting parties, said that they were particularly concerned with labelling requirements aimed at protecting the environment which had unilaterally been taken by some countries. The ASEAN contracting parties looked forward to the adoption of multilaterally-agreed guidelines on labelling, perhaps in other fora, which could address the specific problems which their countries had brought to the GATT's attention.

Mr. Jamal (Tanzania) expressed the hope that as this subject was explored in the GATT and brought to a final constructive conclusion, one would make sure that GATT provisions were applied with a certain amount of understanding as to the needs of developing countries, and that one would not be too selective with regard to Agenda 21 in this context, but would look at the whole spectrum of the propositions therein. He had in mind Articles I, III and XX in particular.

The CHAIRMAN proposed that the statement by the Chairman of the Group be released to the Press.

The CONTRACTING PARTIES so agreed.

Point 12. United States and European Economic Community wheat export subsidies

Mr. Hawes (Australia) recalled that this matter had been considered by the Council in September, on the basis of a communication from Australia. In light of the wide-ranging support which Australia's view had received, the Council Chairman had undertaken to conduct informal consultations as a matter of urgency, with a view to exploring avenues for addressing problems arising from the competitive export subsidization of agricultural commodities, particularly wheat. He recorded Australia's appreciation for the manner in which contracting parties had responded to its call, and for the Council Chairman's willingness to engage his good offices in search of

a solution. As all knew, a successful Uruguay Round outcome on agriculture, based on the fundamental principles and reform modalities contained in the Uruguay Round Draft Final Act, would provide a solution for wheat and other commodities the international markets of which had been corrupted by competitive subsidization. Hopefully, events of recent weeks had moved all closer to that solution. He pointed out that near-term success in the Round would still leave a gap of many months between resolution of a "political package" and the formal implementation of commitments. It was with this in mind that Australia wished to register its expectation that the intervening period would not see programmes administered in a manner which ran counter to hard won international consensus over the need to arrest and reverse both budgetary expenditure and export volumes covered by subsidies. In Australia's view, therefore, recent promising news in discussions between the United States and the Community had not entirely overtaken the objective of, or removed the need for, the informal consultations being conducted by the Council Chairman.

Mr. Lanús (Argentina) expressed support for Australia's concerns on this matter. As his delegation had stated at the September Council meeting, this was yet another act of aggression in the area of unfair competition, which not only contradicted the basic rules of trading relationships but also flagrantly violated Article XVI which called on contracting parties to avoid subsidizing the export of commodities. The US action would result in its obtaining more than a fair share of the trade in wheat. As all were aware, the United States' share of wheat exports had already been more than 35 per cent in 1989. These subsidy practices, which were engaged in also by other parties, such as the Community, were solely aimed at increasing the subsidizing countries' share in international wheat trade, thus channelling the very high surpluses which resulted from protectionism and internal prices that did not take into consideration world prices. Argentina hoped that the further consultations to be held by the Council Chairman would lead to positive steps to resolve such practices.

Mr. Amorim (Brazil) recalled that his Government had supported Australia's request for informal consultations on this matter when it had been brought before the Council in September, and that it had emphasized that Brazil suffered from the same detrimental consequences of such subsidies in the trade of other agricultural products. He recalled that there was a widespread concern over the competitive export subsidization of agricultural commodities, particularly, though not exclusively, wheat. He reiterated Brazil's readiness to participate in any future consultations on this matter.

Mr. Tironi (Chile) associated Chile with the statements made by Australia, Argentina and Brazil. Chile had also been affected by a similar US practice, which was dealt with under point 13 of the Council's report. He also expressed concern that the same types of practices were also being carried out by the Community.

Mr. Seade (Mexico) recalled that Mexico had already voiced its concerns on this issue at the September Council meeting. He associated Mexico with the concerns expressed by Australia and others.

Mr. Misle (Venezuela) said that his Government fully supported the concerns expressed by Australia, Argentina, Mexico and Brazil that the United States' export enhancement programme should be modified so that the damage it caused, particularly to third countries, was limited. Venezuela believed that action needed to be taken to try and restore some balance following the damage that it had suffered in its substitute cereal production.

Mr. Bisley (New Zealand) supported Australia's statement, and agreed with the latter that while the Uruguay Round might provide a solution to the problem, there would be an interim period in which one hoped that contracting parties would be able to consider the necessity of acting with restraint.

Mr. Buencamino (Philippines), speaking on behalf of the ASEAN contracting parties, said that they fully supported Australia's statement. One now had the opportunity to successfully conclude the Uruguay Round, and the ASEAN contracting parties therefore urged all to refrain from applying additional export subsidies on any product in any market.

Mr. Amarin (Uruguay) said his Government too supported the concerns expressed by Australia regarding the subsidies on wheat exports. He agreed with New Zealand and the ASEAN contracting parties on an important point, namely that restraint should be exercised on such subsidy practices until a satisfactory conclusion to the Uruguay Round could be reached. This should apply also to the practice of subsidies in respect of other products than wheat.

Mr. George (Canada) associated his delegation with the concerns expressed by previous speakers, and indicated Canada's wish to participate in any future consultations on this matter.

Mr. Szepesi (Hungary) said his Government's position on this issue had been made clear at the September Council meeting, and remained valid.

Mr. Yerxa (United States) thanked others for reiterating their concerns on the very important issue of agricultural export subsidies, and on the need for both restraint and discipline. On the future use of those subsidy practices, the United States had stated its position in the past. As contracting parties were aware, the United States believed that the only appropriate solution to this matter was a multilateral understanding which would bring about an effective reform of export subsidy policies around the world. As recent press reports had indicated, an agreement had been struck between the United States and the Community which would enable them to reach a multilateral understanding that would reduce the volume of subsidized exports by 21 per cent and the value of such subsidies by 36 per cent over a six-year period. He recalled that the United States had wished for much greater reductions -- having originally proposed the elimination of export subsidies, falling back to a 90 per cent reduction over ten years. It was disappointed that the agreed reductions could not be even greater. The United States felt obliged to reiterate the position it had taken before: in the absence of such reforms through a multilateral understanding, the United States would be forced to compete for markets with the Community, which, as all knew, afforded extraordinarily high

levels of benefit to exporters of agricultural products. It was the United States' earnest hope that one was about to find a remedy to this problem. That, of course, would require real political will and forthright efforts in the coming few days.

Mr. Asakai (Japan) said that, as stated by his delegation at the September Council meeting, Japan believed that export subsidies were highly trade distortive. Japan continued to believe, therefore, that export subsidies should be put under strong multilateral discipline.

Mr. Espinosa (Colombia) associated his delegation with Australia's concerns regarding the proliferation of export subsidies in agriculture. Colombia agreed with the United States that a multilateral understanding was required to eliminate the most distorting elements of international trade, namely export subsidies, particularly agricultural ones.

Point 14. United States - Trade embargo against Cuba

Mr. Hernandez Perez (Cuba) recalled that at the September Council meeting his delegation had expressed its concern at the approval by the United States' Senate and House of Representatives of a bill which not only reinforced the unjust trade blockade imposed for more than thirty years against Cuba, but which also, due to its extra-territorial nature, violated GATT principles and objectives, and affected the rights of contracting parties thereunder. Despite the fact that the reasons of security or the situation of war invoked by the United States to justify such a blockade -- reasons that Cuba had never given cause for -- could no longer be justified in light of the present international climate, the United States, far from lifting the blockade, was now approving a bill that went beyond the bilateral relations between Cuba and the United States and now also affected Cuba's trade relations with other contracting parties. This bill had been approved by the US Congress at the beginning of October, and had been signed into law by the President on 23 October. He reiterated that the provisions of this law were not only a violation of international obligations and GATT provisions, but also interfered with the sovereign right of other contracting parties to decide with whom and how they maintained trade relations -- in this particular case, their trade relations with Cuba. The coercive nature of this law had serious economic consequences for Cuba because countries that had relations with Cuba might, as a result of the extra-territorial nature of the law, reduce or eliminate their trade, while those that did not yet have trade relations with Cuba might be discouraged from establishing them. The amount of trade that could be affected was roughly US\$718 million a year -- a figure provided by the US Treasury Department itself -- and included products that were essential for Cuba's population. In this connection, he recalled that on 24 November, the UN General Assembly had approved -- with only three votes against by the United States, Israel and Romania -- a resolution that expressed the need to put an end to this economic, trade and financial blockade imposed by the United States against Cuba. The text of the Resolution had been circulated in L/7128. In the light of these facts, Cuba had begun a series of consultations with other affected contracting parties in order to assess the effects of the application of this law.

Cuba, for its part, would be considering the procedures established under GATT to initiate any other actions in this regard.

Mr. Abbott (European Communities) said that while the Community had no comments to make on the trade relations between the United States and Cuba as such, it had serious concerns on some of the other matters mentioned, in particular the moves to implement the trade embargo by applying legislation of an extra-territorial character. The Community regarded this as an extremely serious development which had been the subject of a very strong protest, as the United States' delegation was aware. The Community reserved its GATT rights in full on this matter.

Mr. Amorim (Brazil) said that he would not address the political aspects of this question which had been the object of discussion in the United Nations General Assembly (UNGA), and referred anyone interested in Brazil's views on this matter to the statement by its representative to that Assembly. He quoted from the official press release of the statement made by Brazil on the UNGA resolution, on which Brazil had voted in favour, as follows: "The Brazilian Government is currently evaluating the implications of this legislation, in light of both international law and the interests of the Brazilian companies, on the understanding that the relationships of companies located in Brazil with third countries are only regulated by Brazilian legislation, by international agreements to which Brazil is party, and by the decision of international organizations of which Brazil is a member."

Mr. Jamal (Tanzania) said his Government shared the concerns of others with regard to what appeared to be a rather unilateral way of dealing with something that should be dealt with under multilateral discipline. Tanzania sincerely hoped that better counsel would prevail.

Mr. Seade (Mexico) noted that Mexico had already expressed its views on this matter in a substantive statement and through its vote at the UN General Assembly, as well as in other fora. He reiterated Mexico's firm rejection of the legislation which had recently been approved by the US Congress, and which Mexico considered to be of an extreme extra-territorial nature.

Point 17. Recourse to Articles XXII and XXIII

Sub-point 17(b)(ii)(2). European Economic Community - Payments and subsidies paid to processors and producers of oilseeds and related animal-feed proteins - Negotiations under Article XXVIII:4 concerning the modification of certain concessions included in the European Communities' schedule LXXX-EC

Mr. Abbott (European Communities) recalled that at the November Council meeting, the Community had addressed a certain number of questions to the CONTRACTING PARTIES on the matters arising out of the Article XXVIII:4 negotiations which had been engaged with around ten other contracting parties. While the responses to those questions would

certainly help the Community very much in further negotiations, thus far the CONTRACTING PARTIES had been unable to respond. On the other hand, at the September and November Council meetings, the Community and the United States had been invited by contracting parties to make all efforts to look for a negotiated solution to this dispute, in order to avoid an escalation of trade measures that could only have been disastrous for the multilateral trading system, for the development of world trade and for the successful pursuit of the Uruguay Round negotiations. Intensive negotiations between the Community and the contracting party primarily concerned in this matter, namely the United States, had led to a compromise agreed on an ad referendum basis which, after the compromise had been finalized, enabled the Community to put an end to the Article XXVIII:4 negotiations with the United States. In any event, the announcement of this compromise had already cast a more favourable light on the pursuit of the multilateral negotiations. The Community was ready and intended to pursue, in the light of these developments, the consultations and negotiations under Article XXVIII which it had engaged with other contracting parties. It would be contacting the contracting parties concerned in the following days with a view to concluding these negotiations as far as possible before mid-December.

Mr. Yerxa (United States) said that the United States was obviously very pleased to have reached an accommodation with the Community on this issue. The United States believed that this agreement would enable this very contentious issue to be put to rest finally. It was working with the Community to settle a few minor details about the specific language, but hoped to have complete information in the very near future to furnish to other contracting parties. The United States knew many of the contracting parties were obviously interested parties, being exporters of oilseed products themselves, and, therefore, obviously had to be brought into these consultations in a meaningful way.

Mr. Lanús (Argentina) said that his delegation had noted the United States' and the Community's statements regarding the resolution of their oilseeds dispute. As a contracting party with negotiating rights as a principal supplier, Argentina wished to point out that it would study in detail the documentation to be furnished regarding the understanding reached between the United States and the Community on this matter. Without prejudice to this, however, Argentina stood ready to continue Article XXVIII:4 negotiations with the Community so as to reach a mutually satisfactory solution. Meanwhile, Argentina reserved its GATT rights.

Mr. Gosselin (Canada) said that Canada also welcomed the announcement that the United States and the Community had reached a mutually satisfactory settlement on this issue. Canada had a long-standing interest in this dispute, and had participated actively in the Article XXVIII negotiations with the Community. Canada's preference was certainly to resolve this issue under Article XXVIII and it looked forward to further negotiations thereunder in the expectation that Canada and the Community could also reach a mutually satisfactory solution.

Mr. Amorin (Uruguay) said that Uruguay was satisfied at the agreement reached between the United States and the Community on this issue. He emphasized the importance of this agreement which had averted the danger of

a trade war the effects of which would have been extremely negative for all concerned, and particularly for countries which could not subsidize their agriculture production and even less the export thereof. This agreement was also obviously important because it had enabled the reactivation of the Uruguay Round negotiations. The linkage of the oilseeds dispute to the Uruguay Round was now undeniable, as the agreement between the United States and the Community had pointed out. He recalled that Uruguay, as a contracting party with negotiating rights on the concessions concerned, had participated in bilateral negotiations with the Community regarding the modification of these concessions. The agreement reached between the United States and the Community would call for a modification of the conditions of these negotiations. There should be a culmination of the negotiating process with all the parties involved. Uruguay was willing to continue this process, which had already begun and in which it had a particular interest. Furthermore, Uruguay hoped that the Article XXVIII negotiations would be concluded rapidly and successfully, and that their outcome would have a substantial and positive impact on the parties concerned.

Mr. Amorim (Brazil) said that, as others, Brazil also welcomed the understanding reached between the United States and the Community on this very crucial issue. Brazil looked forward to the pursuance of the Article XXVIII:4 negotiations with the Community.

Mr. Ahmad (Pakistan) said that as a contracting party primarily concerned in the concessions proposed to be modified by the Community, Pakistan had participated in three negotiating rounds with the Community in a spirit of cooperation and with a sense of mutual accommodation to find a satisfactory solution. Unfortunately, as Pakistan had indicated at the September Council meeting, the offer made by the Community had not contained any items of interest to Pakistan. His delegation had read with satisfaction reports about the agreement reached between the United States and the Community, and had also noted the statements just made by their delegations. Obviously, Pakistan wished to receive and to analyse details of this agreement. It was encouraged that the Community would continue the consultations and negotiations with other concerned parties as well. Pakistan hoped and expected that the Community would pursue the Article XXVIII:4 negotiations so as to arrive at a settlement with all the contracting parties having negotiating rights on the issue, including, in particular the contracting parties primarily concerned.

Mr. Zutshi (India) said that India had already in another forum welcomed the understanding between the United States and the Community on the oilseeds issue. It had noted the Community's statement that it proposed to continue to negotiate with other interested parties under Article XXVIII:4. India had an interest in this matter and looked forward to a satisfactory resolution of its concerns.

Mr. Asakai (Japan) said that, like others, Japan, too, welcomed the fact that a so-called trade war had been averted. At the same time, Japan wished to study the details of this bilateral settlement as they became available, and to assess the implications thereof, particularly in relation

to certain views expressed in the report of the Panel members⁴ regarding the nature of the subsidies in question.

Mr. Szepesi (Hungary) recalled that on earlier occasions his delegation had urged the parties primarily involved in this dispute to make all efforts to arrive at a rapid negotiated solution thereto within the GATT's framework. His delegation therefore welcomed the announcement made by the Community and the United States, and hoped that this would enable the Community to terminate the Article XXVIII:4 negotiations also with other interested parties, thus ensuring an amicable and mutually acceptable settlement of the issue among all concerned. Hungary was prepared to cooperate with the Community with a view to achieving these objectives, provided that the settlement took into account legitimate concerns of Hungary's exporters. In this regard, he emphasized that unless appropriate remedies were found, the trade interests of Hungary's exporters might be significantly, and in certain cases adversely, affected as a result of compensation offered by the Community in Article XXVIII negotiations to interested parties on products other than oilseeds.

Mr. Kaczurba (Poland) said that, like others, Poland, too, welcomed the accommodation reached between the United States and the Community. Poland's interests in this matter had been presented with clarity at the September Council meeting, and were well known to all the parties concerned. Poland looked forward to negotiating with the Community a final settlement which satisfied its commercial interests involved.

Mr. Seade (Mexico) expressed his Government's satisfaction at the understanding reached between the United States and the Community. Bearing in mind the great concern it had felt on this issue, Mexico was pleased to see the return to Geneva of the broader negotiations in the Uruguay Round, and hoped that they would be concluded successfully.

Sub-point 17(b)(iii). European Economic Community - Import régime for bananas

The DIRECTOR-GENERAL recalled that on 21 September 1992, Colombia, Costa Rica, Guatemala, Nicaragua and Venezuela had requested him to lend his good offices in an ex officio capacity, in accordance with the provisions of paragraph 1 of the 1966 Decision on Procedures under Article XXIII (BISD 14S/18). This request had been made "in order to facilitate a satisfactory solution to the dispute over measures to restrict the import of bananas currently applied by some member States of the EC..." (DS32/3). He had accepted the request. For the sake of transparency as regards the procedural aspects of the good offices, this request had been announced at the September Council meeting.

⁴European Economic Community - Payments and subsidies paid to processors and producers of oilseeds and related animal-feed proteins (DS28/R).

Since then, he had met with the parties several times, both formally and informally. At the beginning of the present week, he had suggested to both parties involved, and they had accepted the suggestion, that in order to make progress in this very complicated case, the formal good offices be suspended forthwith until 15 January 1993. By "suspension" it was understood that the complainants might at any time during the period request that the formal good offices be resumed if they believed that to be in their best interest, and that in the meantime the suspension in no way affected their legal rights. Meanwhile, informal consultations would be pursued, exploring possibilities for a mutually satisfactory solution. The reasons for suspending the formal 1966 good offices procedure now was that, in the present circumstances, informal talks might lend themselves better to flexibility and innovation, the final aim being a mutually satisfactory solution.

Mr. Saborio Soto (Costa Rica), speaking also on behalf of Colombia, Guatemala, Nicaragua and Venezuela, recalled that in June they had requested Article XXII:1 consultations with the Community with regard to the import régimes on bananas currently applied by several of its member States, as well as to the Community's proposed future régime to enter into force from 1 January 1993. The failure to arrive at a mutually satisfactory solution in the consultations had led them in September to request the Director-General to lend his good offices to resolve the dispute in accordance with the 1966 Decision. As the Director-General had indicated, they had recently accepted the suspension of the good offices procedures for a specified period. Their aim in so doing was to leave the door open for informal negotiations which would make it possible to find a solution within the Uruguay Round commitments, on the understanding that they retained all their rights under the 1966 procedures.

The international trading environment had changed substantially over the past few days. The agreement between the Community and the United States on the main issues which had blocked the Uruguay Round had enabled those negotiations to be reactivated, and had provided fresh hope for a satisfactory conclusion thereto in the near future. All participants had entered into a multilateral commitment to bring to realization this ambitious endeavour, and their countries trusted that a solution to the banana controversy would be among the positive results so awaited by the world. By accepting a temporary suspension of the good offices procedure, they reaffirmed their unswerving commitment to the objectives of the Uruguay Round. They proposed to work with the Director-General in his efforts to find a solution during the specified period, and hoped that the Community would do likewise.

Mr. Abbott (European Communities) said that the Community had also accepted the Director-General's suggestion that the procedure in this matter be officially suspended. He added that, within the limits of the exercise of good offices and the informal consultative process which had just been agreed, the Community had full confidence that the Director-General would carry out his mission effectively so as to be of assistance to all the parties.

Sub-point 17(c). Norway - Subsidy in connection with a tender submitted for a hydro-electric project in Costa Rica

Mr. Stancanelli (Argentina) informed contracting parties that Argentina and Norway had terminated their Article XXII consultations on this subject, because the problem that had given rise to those consultations had been removed. As Argentina had stated on earlier occasions in the Council, the whole issue of subsidies, on the part of countries members of the Organization for Economic Cooperation and Development, linked to projects in developing countries, was one which Argentina might wish to put on the agenda of a future Council meeting for consideration. Argentina believed that in situations in which a subsidy could affect the competitive position of the parties involved, there was an obligation to notify the GATT and to hold consultations with the contracting parties concerned.

Sub-point 17(d)(i). United States - Denial of MFN treatment as to imports of non-rubber footwear from Brazil

Mr. Amorim (Brazil) recalled that the Panel report on this matter (DS18/R) had concluded that the United States had acted inconsistently with Article I:1 and had denied m.f.n. treatment to Brazil. Although the Panel report had been adopted almost six months earlier at the June Council meeting and assurances had been given by the United States that a solution was being sought, that step had not been translated into any positive, concrete action by the United States. Brazil regretted this state of affairs, since the United States had been found to be in violation of the m.f.n. principle, which was considered to be the cornerstone of the GATT. It was unacceptable that a contracting party could be found to be in such a situation and that the CONTRACTING PARTIES at the same time agreed to do nothing about it. This would be very destructive for the GATT system. He emphasized that the discrimination against Brazil was continuing. In its implementation of the law that the Panel had found to be discriminatory, the United States had asserted a demand for duties from importers of Brazilian footwear. The United States continued to make that demand at the present time, and, as his delegation had stated on earlier occasions, the amount accruing from the demand for duties increased each day as a result of penalty interest. Indeed, Brazil understood that the United States had only a few days earlier filed a brief in a court case with a view to collecting duties that had been ruled by the Panel to be illegal under the GATT. Significant monetary values were involved, and the uncertainty around the possible outcome of this case was very disturbing to Brazil's trade interests in the United States. Although Brazil was hopeful that a satisfactory conclusion would be reached, it reserved the right to pursue this matter in the proper fora in the GATT.

Sub-point 17(d)(ii)(1). United States - Restrictions on imports of tuna

Mr. Misle (Venezuela) recalled that exports of tuna from Venezuela had been subject to an embargo by the United States from the time the latter had ordered an embargo of all imports of tuna from the Eastern tropical Pacific Ocean. It was estimated that as a result of this, Venezuela's tuna fishing industry had suffered losses of more than US\$60 million annually.

Furthermore, the embargo had severely affected some 30,000 inhabitants of Cumana in the interior of Venezuela, whose livelihoods depended basically on the marketing of tuna.

Since the imposition of the embargo, Venezuela had initiated contacts with US authorities in order to achieve the earliest possible removal of the embargo, given that it was incompatible with GATT provisions. Venezuela had also participated as an interested party in the Panel established to examine Mexico's complaint regarding the same matter. Furthermore, Venezuela had been adjusting its tuna fishing practices to those followed by the Inter-American Tropical Tuna Commission, a multilateral body of which the United States was an active member. The efforts undertaken in the framework of the GATT to secure the removal of this embargo had not given the hoped-for results. As was well-known, the recommendations of the Panel (DS21/R) established at Mexico's request, had not been adopted. Venezuela also viewed with concern the suspension of the work of the Panel established at the European Community's request (L/7125, sub-point 17(d)(ii)(2)). On the bilateral level too, no satisfactory results had been achieved, despite the efforts made by the US Administration to modify the Marine Mammal Protection Act. In the meantime, the embargo continued to affect Venezuela's tuna exports to the United States, causing considerable prejudice to its fishing sector and to its economy as a whole.

Venezuela had done everything possible to resolve the problem of the tuna embargo, but had met with no success. It was clear that neither Venezuela nor the other contracting parties concerned could allow the United States to continue unilaterally to impose trade restrictions, in violation of the GATT, for the purpose of protecting natural resources outside its territory. Environmental issues that had a bearing on trade could not be resolved unilaterally. It was only in a forum such as the GATT, which was multilateral and had a broad and full-ranging participation, that such issues could adequately be dealt with. The embargo on Venezuela's tuna exports was a clear violation of the United States' GATT obligations and therefore should be lifted definitively.

Mr. Yerxa (United States) recalled that in earlier Council meetings his delegation had reported on the United States' efforts to provide a legislative solution to the problems associated with this Panel report. He announced that on 26 October the US President had signed into law the International Dolphin Conservation Act of 1992. His country believed that this Act represented a balanced and effective solution to what had been a difficult issue for many countries. The United States would be working with its partners over the coming few months in connection with this new law.

Sub-point 17(d)(iii). United States - Measures affecting alcoholic and malt beverages

Mr. Gosselin (Canada) recalled that the Panel report on this matter (DS23/R) had been adopted at the June Council meeting. He reiterated Canada's view that this was a matter of importance to its industry.

Consultations had been held with the United States in October to review its plans for implementation of the Panel recommendations at the federal and state levels. During those consultations Canada had advised the United States of its expectation that those recommendations would be fully implemented by the Summer of 1993. Canada had been informed that the United States was proceeding with efforts to implement the Panel's recommendations but that it had not yet made a proposal to Congress to remove the discriminatory aspects of the federal measures. Canada had also been informed that the federal Government had been in contact with its states since the Spring of 1992 with an eye to the latter's implementation of the Panel recommendations.

Unfortunately, Canada had been advised that no plans had been put forward by the state governments, with few exceptions, for implementation of these recommendations. Virtually all of the state measures could only be brought into compliance with the Panel report through legislative amendments. Unfortunately, most of the state legislatures only met for a short period of time, and generally in the first few months of the calendar year. Only six state legislatures were scheduled to be in session for most of the year; in one case, a state legislature was not scheduled to meet in regular session in 1993. Canada was concerned that unless those states passed the necessary amending legislation in 1993, there would be no opportunity to implement the panel recommendations by the Summer of 1993, and Canadian industry would be forced to wait until 1994 to obtain access to the US market. Since the Panel report had been presented to the United States in February 1992, it would be unreasonable for implementation to be delayed at either the federal or state level until 1994. Canada asked the United States to report on the status of work on the implementation of the Panel's recommendations at both the federal and state levels, and to reiterate to its state authorities Canada's concerns that measures be taken to implement these recommendations in 1993.

Mr. Yerxa (United States) said that the United States continued to consult intensively with the Congress and the governments of forty states and the Commonwealth of Puerto Rico, in order to bring its federal and sub-federal practices into conformity with the recommendations in the Panel report. As the United States had stated previously, both before the Panel and before the Council, in the US federal system of government, the states had substantial law-making authority. This was particularly true in the area of the regulation of alcoholic beverages, in which the states operated under an explicit grant of authority from the 21st Amendment to the US Constitution. The United States was making serious efforts to achieve prompt conformity with the report within the confines of its constitutional system. It had held consultations with Canada, at the latter's request, to review those efforts, and would continue to keep Canada and the Council informed of progress in the implementation of the Panel recommendations.

He noted that this report had been adopted on 19 June. Under paragraph I.3 of the April 1989 improvements to the dispute settlement rules (BISD 36S/61), the United States' obligation to provide the Council with a status report on progress in implementing the Panel recommendations would begin on 19 December, i.e., six months after its adoption. He assured contracting parties that his authorities were mindful of this obligation.

Point 19. Customs unions and free-trade areas; regional agreements

Mr. Rossier (Switzerland) noted that since the entry into force of the General Agreement, Article XXIV thereof had determined the conditions under which free-trade areas or customs unions could be established. The founding fathers of the General Agreement had rightly introduced this exception to the general principle of non-discrimination in order to take into consideration the positive effects of this kind of liberalization on the expansion of trade in general. The blossoming of regional integration agreements which one witnessed today reflected an economic environment which differed considerably from that which prevailed at the time of the elaboration of the General Agreement. He was referring in particular to the changes which had come about in the composition of international trade. The new components, particularly services and investments which constituted an important part of this trade, were not yet covered. In this context, one could quite legitimately ask oneself whether some reflection as to the position of customs unions and free-trade agreements in the multilateral trading system might not be opportune. For this, two points seemed to be important, namely the context in which such regionalism developed and the form that it took.

As regards the first point, he said that the globalization of markets was an incontrovertible factor which manifested itself in various ways. At the geo-political level, the multilateral trading system had to find the means to welcome into its fold new participants. In this context, he noted that the developing countries were clamouring for a greater share of international trade, and that the former centrally-planned countries, quite legitimately, wished to be integrated into a system from which they had thus far been excluded. From an economic point of view, he noted that more and more, trade involved immaterial aspects alongside the traditional area of merchandise trade. A number of enterprises were today drawing on the progress in the area of telecommunications and were following an international -- even supranational -- strategy in developing their own system of relations at the international level. In order to respond to the expectations in this area, and to establish a framework for the options chosen by the economic operators themselves, many contracting parties were in fact resorting to regional integration arrangements and justifying them under Article XXIV even though their forms sometimes varied substantially. Some regional initiatives took the form of further elaborating the existing agreements, for example the single market of the European Community, the European Economic Area, MERCOSUR, or even ASEAN. Others widened the area covered by the existing agreements such as the Community's new agreements with the EFTA countries and the Central and Eastern European countries.

He noted that there was a willingness to create new areas of regional economic cooperation in comparison with what existed already. The overall context in which this new trend towards regionalism was inscribed, and the new forms that such initiatives took, suggested that the phenomenon no longer fully corresponded to the circumstances that had originally been foreseen when Article XXIV had been drafted. For this reason, Switzerland believed that it would be useful, after the Uruguay Round had been concluded, to consider the significance of regional agreements within the existing multilateral trading system. The impossibility of arriving at any

conclusions in the working parties that had been established in the past to examine regional agreements under Article XXIV provisions proved the need for contracting parties to turn their attention to this particular aspect of multilateral cooperation.

Mr. Hawes (Australia) said that Australia was very conscious of the fact that in recent times there had been a marked trend towards, and an increasing interest in, regional trading arrangements. While this might, in part, have been generated by a loss of confidence in the integrity of the multilateral system, which had been under challenge, it also represented defensive attempts to insure against inward-looking regional trading blocs. Few of these arrangements had emphasized as objectives of national policies, the unilateral reductions of trade barriers to third countries. One should therefore guard against a situation whereby regional trading arrangements could in themselves become an additional impediment to the success of future trade negotiations because of inferred preferences arising from bilateral or plurilateral arrangements. The sheer proliferation of such arrangements, and the attention demanded by the Uruguay Round, had resulted, in Australia's view, in a weakening of GATT scrutiny. There appeared to have been little concern at the breakdown of the process of biennial review. Working parties on regional arrangements rarely, if ever, arrived at a definite conclusion regarding GATT consistency. The arrangements were implemented nonetheless and, in fact, were frequently irrevocably in place before they were even notified, let alone discussed. Australia therefore agreed that the GATT clearly needed to intensify its scrutiny of regional arrangements in future.

Mr. Asakai (Japan) said that Japan was concerned with the recent proliferation of various preferential arrangements. As Switzerland had said, there were certain geo-political and economic reasons behind this phenomenon. Nonetheless, Japan wished to emphasize once again that such preferential arrangements, by their very nature, constituted a derogation from the multilateralism of the GATT, in particular of the m.f.n. principle thereof. Japan had noticed specific instances in which these arrangements had seemed to create new and additional barriers to the trade of third countries, which was not in accord with the relevant provisions or the spirit of the GATT. One might have to address, in due course, certain specific problems in this area. For these reasons, Japan fully agreed with Australia that one needed to intensify the examination of these arrangements in the GATT, and it looked forward to participating actively therein.

The DIRECTOR-GENERAL said that the next GATT annual report on International Trade -- for the period 1991-1992 -- would contain a special section on the very subject that had been under discussion. He added that, as all were aware, the annual reports were published on the Secretariat's own responsibility.

Point 25. International Trade Centre UNCTAD/GATT
- Appointment of a new Executive Director

Mr. Amorim (Brazil), speaking on behalf of the Latin American and Caribbean contracting parties, said that they had followed with great interest and particular concern the institutional crisis affecting the International Trade Centre (ITC). Despite the efforts of many delegations, both in GATT and in UNCTAD, to promote a consensus on this matter, their discussions had been inconclusive. The Latin American and Caribbean contracting parties were convinced that the ITC had a clear mandate to assist in the process of trade expansion, a goal that was in the interests of the global economy. Therefore, a decision on the question of the appointment of an Executive Director had to be taken without delay, so that the ITC could continue to perform its important task of helping developing countries participate more fully in the multilateral trading system.

Mr. Rossier (Switzerland) said that Switzerland, like Brazil, was particularly concerned at the present situation as a result of which a vacancy remained at the head of the ITC. As all were aware, there were also vacancies at other hierarchical levels in that institution. No real progress had been registered over the past year on this matter. Switzerland therefore appealed to the Director-General to pursue consultations on this matter vigorously in order that the ITC might be able to break the deadlock in which it presently found itself with regard to its management and its activities. Switzerland continued to give its full support to the ITC, and hoped that it would very shortly find effective and efficient direction.

Mr. Lindström (Sweden), speaking on behalf of the Nordic countries, stressed their strongly-held view that the present unsatisfactory management situation of the ITC should be addressed without further delay. These countries attached great importance to the work of this institution, and were concerned about its capacity to continue to function effectively.

Mr. Mwenda (Zambia), speaking on behalf of contracting parties members of the Preferential Trading Area (PTA), said that these countries were concerned over the delayed appointment of the Executive Director at the ITC, especially in recognition of the amount of assistance they were receiving from this organization in the promotion of trade as an engine of growth in Africa. He wished to place on record that although the appointment of the Executive Director was the key issue, the issue of staffing in general should also be addressed. The ITC, unlike the GATT or the UNCTAD, was staffed largely by middle-level officials. The problem of high-level manpower should be addressed simultaneously.

- Joint Advisory Group

Mr. Hynninen (Finland), Chairman of the Joint Advisory Group (JAG), recalled that the meeting of the JAG was an annual occasion to review the activities of the International Trade Centre (ITC). While the JAG meeting for 1992 had originally been scheduled for April, it had been decided to postpone it at the request of several governments. It had been felt that a normal meeting could only be held once a new Executive Director had been in

place long enough to become acquainted with the ITC's operations and issues. After extensive consultations, it had been decided to convene a shortened JAG meeting. That decision had been based on two considerations. First, the ITC was under the obligation to report annually on its activities to its governing bodies, namely the UNCTAD and GATT. Second, it had not been possible to appoint an Executive Director within the time originally foreseen.

The short meeting of the JAG, held on 26-27 November, had focused on a single item, namely the 1991 annual report. Many delegations had reserved their right to revert to substantive issues at the next regular meeting of the JAG, scheduled for late April 1993. While the formal report of the JAG would be submitted to the ITC's governing bodies early in 1993, he wished to highlight one point. A recurrent theme in the statements at the meeting had been the present management situation at the ITC. The JAG had stressed the importance of having the vacant post of Executive Director and other top management and professional vacancies filled as soon as possible to permit the ITC to continue to provide steady support to the trade promotion efforts of developing countries. A number of delegations had recalled that the ITC was a viable organization -- indeed one of the most efficient implementing agencies of multilateral assistance. It had also been noted that the ITC was active in a field that should attract primary attention, since trade enhancement lay at the centre of modern development strategies. Some apprehension had also been expressed as to the possible erosion of donor support due to the unclear situation at the organization. In concluding, he said it would be a correct interpretation of the recent JAG meeting to say that it had generally been felt that a person to lead the ITC at an acceptable level should be found without further delay.

Point 26. Administrative and financial matters (continued)

Sub-point (b)(i). Appointment of a new Director-General

The CHAIRMAN recalled that the term of office of the current Director-General expired on 30 June 1993. Accordingly, pursuant to the procedures for the future appointment of a Director-General (BISD 33S/55), he announced, on behalf of his successor, that the latter would begin consultations early in 1993 regarding the appointment of a successor to the present Director-General.

Appointment of the Deputy Director-General

The CHAIRMAN recalled that the contract of the present Deputy Director-General, Mr. Carlisle, had been extended earlier in the year until 31 December 1992. He had been asked by the Director-General to inform the CONTRACTING PARTIES of his decision to extend Mr. Carlisle's present term of office until 30 June 1993, under the same terms and conditions as in the existing contract.

Succession to the General Agreement under Article XXVI:5(c)

Mr. Yerxa (United States) said that the United States had addressed contracting parties on earlier occasions on the issue of the terms of accession to the GATT undertaken by countries that succeeded under Article XXVI:5(c), and on the need for these countries to establish tariff schedules notwithstanding the absence of negotiations at the time they were deemed to be a contracting party.

The number of contracting parties without Schedules of concessions had reached 24. Many others had only a handful of bindings. None of these contracting parties had tabled a tariff offer in the Uruguay Round negotiations on Market Access. All of them enjoyed the rights established by other contracting parties, both developing and developed. In the context of the balance of rights and obligations that was the foundation of GATT's political viability, this situation appeared unfair and could be destabilizing. The United States urged all such contracting parties to join the Market Access negotiations as soon as possible with an offer to establish schedules of concessions with extensive bindings. The United States also believed that contracting parties should begin to think about how the lack of transparency and clear definition in the establishment of the GATT obligations of countries having succeeded under Article XXVI:5(c), particularly after a long period of separation from the original contracting party government, could be addressed, either within existing GATT institutions or through the agreed development of new mechanisms.

Mr. Abbott (European Communities) expressed the Community's sympathy with the United States' concerns in respect of the question of tariff schedules of countries that succeeded under Article XXVI:5(c).

The CONTRACTING PARTIES took note of all the statements made under this Agenda item and adopted the Council's report (L/7125 and Add.1) as a whole.

The meeting adjourned at 1 p.m.