

GENERAL AGREEMENT ON TARIFFS AND TRADE

RESTRICTED
SR.49/3
14 March 1994
Limited Distribution

(94-0464)

CONTRACTING PARTIES
Forty-Ninth Session

SUMMARY RECORD OF THE THIRD MEETING

Held at the International Conference Centre, Geneva,
on Wednesday, 26 January 1994, at 3.15 p.m.

Chairman: Mr. B.K. Zutshi (India)

<u>Subjects discussed:</u>	<u>Page</u>
— Report of the Council (continued)	1
— Understanding on the Interpretation of Article XXIV	16
— Activities of GATT (continued)	16
— Dates of the Fiftieth Session	18
— Election of Officers	18
— Closure of the Session	18

Report of the Council (L/7376 and Add.1) (continued)

Point 6. Trade and environment (continued)

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

The CHAIRMAN recalled that at the second meeting of the session (SR.49/2, page 4), the Chairman of the Group, Mr. Ukawa (Japan), had presented his report on the work of the Group during 1993 (L/7402), and that the CONTRACTING PARTIES had agreed to revert to this matter at their present meeting.

Mr. Bunnag (Thailand), speaking on behalf of the ASEAN countries, said that the report by the Group's Chairman was well-balanced and fully reflected the development in the Group's discussions and its progress thus far in examining the interface between trade and environmental protection to ensure the compatibility of policies in these fields. The work accomplished by the Group had provided a useful foundation for further steps in this area, particularly in the immediate process of establishing a work programme on trade and environment in accordance with the Decision by the Uruguay Round Trade Negotiations Committee (TNC) on 15 December 1993 (MTN.TNC/40, Annex 2). As a result of the collective efforts made both in the Committee on Trade and Development (CTD) and in the Group, the GATT's follow-up to the UNCED was proceeding in the right direction. Furthermore, by successfully concluding the Uruguay Round, contracting parties had made a major contribution to advancing the GATT follow-up. In this regard, the ASEAN countries looked forward to the meeting of the Council that would review in a comprehensive manner the work under way in the GATT related

of the Council that would review in a comprehensive manner the work under way in the GATT related to the follow-up to UNCED. The ASEAN countries reiterated the importance they attached to the work in this area, and their readiness to participate constructively therein.

Mr. Bisley (New Zealand) said that the reports by the Group's Chairman at the present as well as at the Forty-Eighth Session, had provided a valuable indication of the extent of the work done in the Group and the progress made over the past two years. As the Chairman himself had stated, the discussions in the Group over the past two years had resulted in delegations being better informed of and more comfortable with the subject matter. The Group had played an invaluable rôle in building confidence among contracting parties in addressing the trade and environment agenda, as evidenced by the increasing range of countries that had participated actively in its work. New Zealand welcomed this development, since the perspectives of a wide range of countries were necessary to define the issues involved. The Chairman's report had provided a clarifying and simplifying guide to the debate in the Group. It had shown why there was a debate, why there were different views and different issues which had to be considered if progress was to be made. The analytical work, and the increasingly focused discussions in the Group, had begun to reveal, in a number of areas, where the real issues and problems arose in the trade and environment agenda, and indications were emerging in some cases of the types of approaches that were available in the GATT system to deal with the challenges and possible threats. Again, the amount of work done in the Group during a time of intensive negotiations to conclude the Uruguay Round was an impressive accomplishment. The challenge now was to build upon the foundation that had been laid by the Group's work, as well as by that of the CTD, as one began to work across the GATT-World Trade Organization (WTO) system as a whole during the coming months and years, both in the formulation prior to the Marrakesh Ministerial meeting and, subsequently, in the execution thereof, of the post-Uruguay Round work programme on trade and the environment. New Zealand was committed to playing a full and active part in that task.

Mr. Gosselin (Canada) said that Canada had participated actively in this Group. Significant progress had been made over the past year in pursuing an analysis of and focusing discussion on the issues that arose in the trade and environment debate. Many of those issues were difficult and sensitive and more work clearly needed to be done before any conclusions could be reached. The Group's Chairman had played a key rôle in putting all on the right path. In particular, it had been under his strong leadership that the necessary cooperation and confidence had been established to undertake the challenges that this issue presented.

Mr. Manhusen (Sweden), speaking on behalf of the Nordic countries, said that very useful work had been done in the Group. All had collectively gone into and exchanged views on some important issues concerning the trade and environment interface, a process that had deepened the understanding of the problems at hand. The work done thus far had also shown quite clearly that these issues were of great concern to all countries in the process of promoting sustainable development. In this light, the need to carry further the work on the trade and environment agenda was obvious. It was very much as a result of the valuable work being done in the Group, that one had been able to conclude the Uruguay Round with the TNC decision on the future work in this area, and the Nordic countries especially wished to emphasize the importance of the elaboration of a concrete work programme. Trade and environment was thus firmly on the agenda of the multilateral trading system, and all would work collectively towards the goal of making the respective rules and measures mutually supportive in order to achieve sustainable development in all areas.

Mr. Rossier (Switzerland) said that the substantial report by the Group's Chairman was illustrative of the quality of the work carried out in the past year in the Group. The report had also stressed the

main problems and the positions adopted by the various delegations participating in the Group's work. The report was a reference document of high quality for the continuation of work in this area. It would be useful not only in the framework of the Group but also in relation to the preparation for the meeting of the Council to be held shortly to review the work under way in GATT relating to the UNCED follow up. The discussions thus far in the GATT on trade and environment, whether in the Council, the Group or the CTD, had clearly shown that contracting parties were now in a position to take up the challenge that they had launched. Contracting parties had shown a good sense of responsibility based on a global overview of their long-term interests as well as those of the world trading system. Switzerland was convinced that the work carried out thus far in this field had established the necessary basis to enable GATT — and the WTO — in the years to come to face their responsibilities. Implementation of the decision taken by the TNC should enable all to take up a new stage embracing this field. Switzerland would continue to participate in this work with determination. The spirit that had prevailed in the conduct of the work thus far had reinforced Switzerland's conviction that one could undertake the new steps in this field efficiently with the same spirit of cooperation and understanding.

Mr. Cheung (Hong Kong) said that the report by the Group's Chairman, as well as that presented earlier by the Chairman of the CTD, was ample evidence of the achievements and the viability of the undertakings on the trade and environment interface. The Group's Chairman had been instrumental in creating a congenial atmosphere such that this complex subject — which had been approached with some reservations and suspicion at the outset — had been tackled in a fact-finding and non-confrontational manner. The CTD had also contributed to confidence building and to deepening appreciation on the subject, resulting in the increased participation of developing countries in the discussion. Hong Kong hoped that this would lead eventually to developing countries starting to think positively about this subject, and to see what assistance they would need to build their own capacity to deal with changing circumstances and the increased demands placed on them. The task before all was how to build on the base that had been established, and how to reflect previous work in the work programme to be established and this subject. One would have to see how various options thus far identified could be tested against existing disciplines, and against reality, and eventually to come to concrete results. Hong Kong was certain that the Implementation Committee to be established prior to the entry into force of the WTO would take a comprehensive approach, and would decide on what body should deal with this subject in the future. Hong Kong had played a positive and active rôle in this endeavour in the past, and would continue to do so in the future. In doing so, it would be guided by two principles. First, that whatever the new disciplines and changes, the GATT and the WTO should always have a positive rather than passive rôle. In other words, the value of the GATT and WTO to their members should never be diminished because of the need to accommodate environmental initiatives. Second, that the mutually supportive rôle of trade and the environment should be strengthened and not reduced or undermined.

Mr. Kenyon (Australia) said that the Group's Chairman had skilfully and appropriately reported on the Group's discussions, given the complexity of and the widely diverging views on the trade and environment debate. Australia had no substantial issues to contest in the report. In many ways, Australia had drawn the same conclusion as the Chairman, reflected in paragraph 10 of the report, that the work undertaken in the past year had strengthened further the conviction that there need not be, nor should be, any policy contradiction between upholding the values of the multilateral trading system on the one hand, and acting individually or collectively for the protection of the environment and the acceleration of sustainable development on the other.

Mr. Riaboi (Argentina) said that the report by the Group's Chairman would help contracting parties to draw certain conclusions that would be useful in establishing the trade and environment work

programme to be adopted by Ministers at the Marrakesh meeting. The most relevant point was that present GATT provisions provided sufficient flexibility to cover the problems of trade and environment in a much broader way than had initially been thought. The GATT neither limited the capacity of countries to adopt measures they considered necessary to protect their environment, nor restricted the margin that countries had in the application of trade measures when necessary to ensure such protection. Although a lot remained to be learned and to be created with respect to disciplines on trade and environment, Argentina believed that many of the questions raised in the GATT had been the result of ignorance as to the exact scope of its disciplines or of lobbies which took advantage of a legitimate concern in order to promote protectionist measures. Only rationality, international understanding and political leadership would permit the identification of each of these pressures in the appropriate place. In order to concentrate on a pragmatic approach in drawing up the future work programme, one should limit the tasks to the objectives included in the 15 December TNC Decision, which had been defined so fully so as to make it unnecessary to reinitiate a sterile debate to include specific issues that were already recognized therein. In the next two months, attention should be devoted to the resolution of practical issues, such as the time frame in which the proposed work programme should be completed and the format of the body that would deal with this subject. The possibility of strengthening the Division in the Secretariat dealing with this subject should also be studied, in order to enable it to bear the increased workload.

Mr. de la Peña (Mexico) said that very constructive work had been undertaken by the Group's Chairman. The latter's report, as well as that by the Chairman of the CTD in presenting the Committee's report to the CONTRACTING PARTIES, reflected the important progress made in the consideration within the GATT of the trade, environment and sustainable development interface. This was a complex subject matter which required careful study in all its different aspects before the issues involved could be understood adequately. There was no doubt that the trade and environment communities had a lot to learn from each other. The political will existed. All that was lacking now was for both sides to find the best way to arrive at the complementarity required to ensure that legitimate environmental concerns were supportive of free trade, and vice versa. It should be clearly understood that the GATT was not against environmental protection, but rather against trade protection. As had already been decided by the TNC, the GATT would be drawing up a programme of work on trade and the environment which would be submitted for adoption by Ministers at Marrakesh. The development of that programme should draw on the efforts of the different GATT bodies competent in this matter, in particular the CTD and the Group on Environmental Measures and International Trade. This would no doubt enable contracting parties to have a more complete and balanced view of the trade and environment issue, and to confront the challenges that it raised, in particular that of avoiding giving rise to new forms of disguised trade protection in dealing with it.

Mr. Lampreia (Brazil) said that the trade and environment issue had been one of the most momentous in the last stages of the Uruguay Round. As a result of the agreement reached in the negotiations, the forthcoming Marrakesh Ministerial meeting would adopt a work programme on this subject as well decide on an institutional structure for its execution. Brazil believed that the TNC's Decision provided a good basis for the elaboration of a work programme on trade and environment. The Decision contained a balanced text which incorporated the basic thrust of Agenda 21 and its chief concepts on this subject. Brazil believed too that the decision to draw up a work programme had been possible to a large extent due to the confidence building process and the progress in the identification of issues and in their understanding that had been made possible by the discussions that had been held previously in the GATT. These would naturally help in the drawing up of a work programme and in its implementation. In this regard, the report presented by the Group's Chairman had provided a good summary of past work in this area, and a good foundation for future work. As the report had

made clear, the Group had covered a number of issues raised by Agenda 21. It had also made clear that the trade and environment section of Agenda 21, and specifically those aspects relating to the GATT therein, could not be examined without taking into consideration the whole of Agenda 21, and particularly the commitments made by all countries to international cooperation for sustainable development. Those commitments had to be translated into concrete action, and Brazil noted with concern the persisting reluctance on the part of the richer countries to honour their engagements, in particular in the area of financial resources and the transfer of technology. If this tendency continued, it could have negative repercussions on the GATT's work.

Brazil believed that the root causes of the environmental problem had to be tackled, and feared that if this were not done through international cooperation, a lot of pressure would be put on the multilateral trading system for the introduction of palliative, trade distorting measures which would not be in anyone's interests. The application of trade restrictive measures, which might seem to be easier and less costly, should not substitute for true cooperation. The commitments made by developed countries in this respect at the UNCED should not be weakened, and governments should be alert to the use of the environmental slogan by trade protectionist lobbies.

Mr. Laurent (European Communities) said that the major achievement of the Group's work had been to develop an analytical approach in a non-confrontational and constructive spirit. The report by the Group's Chairman was both objective and comprehensive, and would be an essential basis for the forthcoming meeting of the Council devoted to the follow-up to UNCED as well as in the preparation of GATT's contribution to the Commission on Sustainable Development. The Community believed that in view of public concern regarding environmental matters, it was important to show to the outside world that the GATT was not insensitive to the need to harmonize the interface between trade and the environment from the perspective of sustainable development. For this reason, it was important to derestrict immediately not only the working documents of the Group but also the Chairman's report and the two communications from the Community in TRE/W/5 and TRE/W/115.

The 15 December Decision of the TNC had opened up promising prospects for the initiation of a concrete work programme to harmonize the interface between trade and environmental policies. Without prejudging the nature of the programme that all would define together before the Marrakesh Ministerial meeting, the Community wished to draw attention to three ideas that it considered fundamental. The first concerned the question of how to translate domestic policies on the environment into practice consensually, in a way that did not hamper the equitable progress of international development, without departing unilaterally from trade policy obligations. The Community supported an approach in which multilateral sagacity would prevail over the arbitrary unilateralism of trade measures taken outside the multilateral system. This did not mean that contracting parties would lose their autonomy or their discretionary authority over policy, but that such autonomy should serve the collective interest.

The second idea concerned the question of tolerance among industrialized countries, developing countries and non-governmental environmental organizations. Developing countries would not understand why industrialized countries — some of which had achieved economic progress by devastating the environment — now imposed intolerable economic and financial constraints to the detriment of developing countries' comparative advantage and at the same time moved their polluting production sectors to the developing countries. On the other hand, it was equally obvious that developing countries should gradually accept growing responsibilities in the pursuit of global environmental objectives in parallel with the increase in their level of development. It was in the interests of developing countries to shorten

as far as possible the intermediate period before assuming their full responsibilities, either by acceding to multilateral environment agreements or by defining environmental standards equivalent to those in developed countries.

The third idea concerned the need for operational negotiations on the work programme. It was therefore necessary for domestic environmental policies to take into account the multilateral dimension of trade policies. This was the goal of the work programme to be approved in Marrakesh and to be implemented immediately afterwards.

The message emanating from the UNCED was that sustainable development should be achieved through a judicious combination of financial transfers from the North to the South — and to Central and Eastern European countries — the transfer of technology, both North-South and South-South, and increased market access. These were the three parameters of the global equation within which GATT should find a balance in the rules governing trade and environmental policies, taking into account its competence. The question was not simply one of the "greening" of the GATT. It was necessary to ensure that the international rules of GATT encouraged the use of governments' sovereign powers in the area of environment for a new form of development, namely sustainable development. One should therefore try to establish within GATT a sensitive operational balance — both by interpreting existing rules and, where necessary, by amending them — in which the sovereign powers of governments should enable each country to define its own environmental standards and consequently its contribution to the defence of the global ecosystem, while at the same time respecting the founding principles of GATT as regards exceptions to free trade, namely, proportionality, the necessity of the measures to be taken, and the absence of protectionist or discriminatory motivations.

Mr. Endo (Japan) said that the Group's Chairman had provided an informative and useful report. Together with this report, the work accomplished thus far by the Group would be a good basis for future work in the GATT on this issue and would be a useful reference when the work programme on trade and environment was established.

Mr. Moon (Korea) said that the Group's Chairman had provided a well-balanced summary of the Group's work in the past year, and that Korea supported his statement. As all were aware, the GATT needed to deal with the perception that it was discounting environmental concerns, which was nourished by a general feeling that free trade might be inimical to the environment. The contrary was true, however. The environment would be better protected through the liberalization of trade, as fully endorsed at the UNCED. The successful completion of the Uruguay Round in December 1993 was an excellent basis for the realization of sustainable development. As its Chairman had stated, the Group had demonstrated that trade and the environment could be mutually supportive. These earnest endeavours deserved attention and credit from inside and outside the GATT. Korea hoped that the results of the work in the Group would be adequately reflected in the development of the work programme on trade and environment that was to be presented to Ministers at Marrakesh.

Mr. Stoler (United States) said that the work of the Group had established a strong foundation and an atmosphere of constructive dialogue that would prove to be very useful as one approached the tasks envisaged in the 15 December Decision of the TNC. The progress achieved thus far in the Group was a testimony to its Chairman's personal skills.

The CHAIRMAN proposed that the CONTRACTING PARTIES agree to derestrict the report by the Chairman of the Group in L/7402 in view of the public misperception about the rôle of the GATT in the field of trade and environment.

The CONTRACTING PARTIES so agreed.

Point 17. United States - Regulations concerning reformulated gasoline

Mr. Mendoza (Venezuela) said that on 24 January, the United States had responded positively to Venezuela's recent request for Article XXII:1 consultations (DS47/1) regarding regulations concerning reformulated gasoline announced by the US Environmental Protection Agency (EPA) for the period 1995-1997. As Venezuela had stated at the December 1993 Council meeting, these regulations violated certain GATT rules, in particular Article III, since imported gasoline was to be subject to stricter parameters than domestic gasoline. These regulations would adversely affect roughly 50 per cent of Venezuela's exports of reformulated gasoline to the United States, and would have a significant trade and economic impact on Venezuela. Venezuela was one of the major suppliers of petroleum and petroleum derivatives, including to the United States, and its industry had always committed itself to supplying products that complied with the strict environmental requirements established by the United States, and had made considerable investments to this effect. Indeed, Venezuela's petroleum industry had initiated a refinery modernization programme, at an estimated cost of US\$1000 million, in order to adjust itself to the new environmental requirements. This would enable it to meet the EPA regulations in question, as long as Venezuela's refineries enjoyed the same rights as their US counterparts of the base reference points for the quality parameters applicable to the types of gasoline referred to. This was an important matter for Venezuela, and required special attention because one was faced once again with the use of environmental measures for the purposes of disguised protectionism.

Point 18. United States and European Economic Community wheat export subsidies

Mr. Kenyon (Australia) recalled that in both 1992 and 1993, Australia and other contracting parties had firmly registered concern about wheat export subsidization by the European Economic Community and the United States. Against the background of the important outcome on agricultural export subsidies in the Uruguay Round, Australia expected that the major users of export subsidies would start cutting back on their use of such subsidies for wheat on the world market as of the present, and in the context of the current excess wheat stocks, would avoid any further sales of these stocks pending the implementation of the Uruguay Round outcome. Against that background, Australia would wish to keep under review the question of the Council Chairman's consultations that had been held during 1992 and 1993 on this issue.

Mr. Riaboi (Argentina) said that Argentina fully shared Australia's concerns. Although it had been agreed in 1993 that consultations on this matter would be continued in a constructive manner, sales of subsidized wheat in the international market had been taking place at a very rapid rate. This was not in keeping with the spirit of the successful conclusion of the Uruguay Round. Argentina hoped that this would be taken into consideration, and that the message that was sent would be that the implementation of the Uruguay Round results, both in their spirit and in their letter, should be advanced.

Mr. Gosselin (Canada) expressed full agreement with Australia's statement, and hoped that given the agreements concluded in December under the Uruguay Round, one would see an early end to this disastrous subsidization.

Point 21. Canada - Article XIX action on boneless beef

Mr. Kenyon (Australia) recalled that at the December 1993 Council meeting, his delegation had expressed deep disappointment at Canada's decision to extend its restrictions on boneless beef imports

under Article XIX for a further period. Australia awaited formal notification to the GATT by Canada of its intended measures for 1994. Australia believed that Canada had not yet demonstrated any threat of injury to Canadian producers, and that there was no justification therefore for import restraints under Article XIX either in 1993 or in 1994. There was no evidence to suggest that conditions in Canada's domestic market, or in international beef markets, were causing or threatening injury to Canadian industry so as to warrant the imposition of these measures. Although measures had been applied under Article XIX for the latter part of 1993, Australia strongly disagreed that there had been any justification therefor. Indeed, Canadian industry had enjoyed increased incomes in 1993 as a result of high domestic prices and record export levels. Under the circumstances, there was no basis for the measures to continue to be applied in 1994, and particularly for restraints for the full year to be effectively more restrictive than those applied in 1993. Australia intended to continue consultations with Canada under Article XIX, as well as to continue its negotiations under the Uruguay Round on agreements for access for beef to the Canadian market, with which Australia continued to have major concerns. It hoped that this issue would be resolved satisfactorily in the near future.

Mr. Riaboi (Argentina) said that any actions which contributed to making the meat market even more difficult were of concern to Argentina and detrimental to it.

Mr. Jouanjean (European Communities) expressed the Community's support for the statement by Australia. The Community continued to believe that the conditions for the use of Article XIX had not been fulfilled in this case, and that Canada's measures were therefore illegal.

Mr. Gosselin (Canada) recalled that Canada had notified the GATT on 3 June 1993 (L/7219/Add.1) of its intention to implement measures under Article XIX with regard to boneless beef for the remainder of 1993, and for 1994 and 1995. This action had been based on a finding by the Canadian International Trade Tribunal, an independent quasi-judicial body, that imports threatened serious injury to Canadian cattle producers, slaughterers and processors. Australia and other contracting parties had had full opportunity to participate in the hearings. Canada had consulted with Australia on this matter on no less than five occasions, and remained open to requests for further consultations from Australia or any other contracting party. Canada's Article XIX action was in sharp contrast to the voluntary restraint agreements that Australia appeared to readily agree to with certain other contracting parties. As regards Canada's intended measures for 1994, a formal notification had been submitted to the Secretariat on 24 January for circulation to contracting parties (L/7219/Add.8).

Point 23. Recourse to Articles XXII and XXIII

Mr. Lampreia (Brazil) said that while Brazil had been active in the dispute settlement area over the past year, it had had mixed experiences with the operation of the system which caused it to be somewhat philosophical on this point. However, while his delegation would not address any specific dispute at the present meeting, it would not wish its silence to be misinterpreted.

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

Mr. Jouanjean (European Communities) expressed the Community's concern with regard to the implementation by Canada of the recommendations of the Panels on this matter. He recalled that a Panel to examine the practices of Canada's provincial marketing agencies had initially been established

at the Community's request, and that its report¹ had been adopted in March 1988. This had been supplemented by another Panel on the same matter, established at the United States' request, the report of which had been adopted in February 1992.

Sub-point (b)(ii). EEC - Member States' import régimes for bananas

Mr. Rodríguez (Costa Rica) said that in light of the work that had been carried out over the past eight months, the Governments of Colombia, Nicaragua, Venezuela and Costa Rica requested that the CONTRACTING PARTIES at their present meeting adopt the report of the Panel on this matter. They noted with concern that the report had not yet been adopted and that the Community refused to accept the clear and logical conclusions of the Panel, and continued its trade practices that were in violation of the GATT. This was a serious matter, not only because the complaining parties were still being subjected to illegal measures and their banana exports continued to suffer from discrimination which had been clearly condemned by the Panel, but also because the Community continued to disregard, without any valid justification under the GATT, the rules that all had voluntarily accepted. The Community had brushed aside the Panel's conclusions because of their adverse nature, using extraneous arguments which did not take account of its obligations under GATT. The Community had demonstrated an evident lack of respect for the rules of the multilateral trading system, a situation that could not be tolerated. The Community should accept the Panel's conclusions, as well as those of the Panel on its common import régime on bananas which would soon be circulated, irrespective of whether or not the results were adverse to it. Their Governments called on the Community to respect GATT rules, as well as the dispute settlement mechanism, which provided security in the multilateral trading system. The damage caused to the system when its principles were allowed to be violated with impunity was all the more serious when one of the major trading partners was involved. Their Governments therefore once again urged that the CONTRACTING PARTIES adopt the Panel report immediately and that the Community bring itself into compliance with the Panel's recommendations as soon as possible.

Mr. Jouanjean (European Communities) recalled that the Community had made a substantive statement on this matter at the Council meeting in July 1993. It believed that the statement just made by Costa Rica had been a little biased given the problems as a whole that had been raised by the Panel report. The Community believed that nothing new had happened to cause it to change its view on this report.

Mr. de la Peña (Mexico) said that Mexico had an interest in trade in bananas and had participated in the work of the two Panels established to examine the Community's régimes on this product. Mexico supported adoption of the report of the Panel on the Community's common import régime, which would be circulated shortly, and hoped that the Community would also be in a position to do so. Mexico had an interest in maintaining open markets for trade in bananas, and in participating in the Community's market without discrimination.

Mr. Bizie (Côte d'Ivoire) recalled that the Council had considered this report on five occasions in 1993, and had not been able to reach a consensus with regard to its adoption. He reiterated, also on behalf of other ACP countries, that the Panel report not be adopted, and urged the Community

¹Canada - Import, distribution and sale of alcoholic drinks by provincial marketing agencies (BISD 35S/37).

and the Latin American banana-producing countries to reach an agreement on this matter as soon as possible in a way that would not be detrimental to the interests of ACP countries.

Mrs. Mbongue (Cameroon) said that contracting parties had been aware at the very first occasion at which this Panel report had been considered that the régimes in question would soon be replaced by a Community-wide régime on bananas. Now, seven months after the régimes in question had been replaced, this Panel report was still being discussed. Clearly, one of the problems to be resolved before the World Trade Organization came into effect was that relating to unadopted or unimplemented panel reports. However, one had to be constructive and to tackle problems that had a real impact, and Cameroon appealed to all not to engage in the aimless pursuit of this Panel report.

Mr. Pierce (Jamaica) recalled that a number of ACP countries, including his own, had made clear at several previous Council meetings their serious objection to the adoption of this Panel report. As had already been indicated, the CONTRACTING PARTIES were being asked to adopt a report on a régime which no longer existed.

Mrs. Herrera (Dominican Republic) said that her delegation's position on this matter had not changed. The Dominican Republic continued to believe, like other ACP countries, that this Panel report should not be adopted.

Sub-point (b)(vii). EEC - French regulations concerning the trade description of scallops

Mr. Gosselin (Canada) recalled that Canada had held Article XXII:1 consultations with the Community on 20 September 1993 regarding this matter. Following these consultations, the French legislation concerning the trade description of scallops had been amended to enable 'coquilles Saint-Jacques' from Canada to be sold on the French market in an acceptable manner. Unfortunately, however, the amendment would only be valid for the period 1994-1995. Canada was seeking a permanent solution that would enable it to regain its traditional position in the French market for this product. If this were not possible, Canada would be obliged to have recourse to its GATT rights.

Mr. Jouanjean (European Communities) said that his delegation had noted Canada's statement. The action taken by France in January to amend its legislation was an important gesture that demonstrated good faith on the part of the authorities concerned in this particular matter, and the Community hoped that this would be duly noted by Canada.

Sub-point (c)(i). Japan - Restrictions on imports of certain agricultural products²

Mr. Bisley (New Zealand) said that Japan's incomplete implementation of the Panel report on this matter had been an important concern of New Zealand's since the adoption of the report almost six years earlier. New Zealand hoped that the agreements negotiated in the Uruguay Round, while yet to be analyzed in detail, would permit it to avoid the need for further action under the GATT. New Zealand expected to report to the Council as necessary on the implementation of this Panel report.

Mr. Endo (Japan) said he believed that the recommendations of the Panel had been taken into account in Japan's offer in the Uruguay Round negotiations.

²The statement by Australia under sub-point 23(d) refers also to this sub-point.

Sub-point (c)(ii). Japan - Customs duties, taxes and labelling practices on imported wines and alcoholic beverages

Mr. Jouanjean (European Communities) said that notwithstanding Japan's statement at the Council meeting in September 1993, it remained the Community's view that the fiscal reform measures adopted by Japan in 1989 did not fully comply with the recommendations of the Panel on this matter, and that the Panel report had not been fully implemented. The Community therefore expected Japan to take steps to eliminate the remaining fiscal distortions, which were affecting the Community's exports to Japan. This was an important matter for the Community given the high export potential of its alcoholic beverages in Japan's market. The non-conformity of Japan's fiscal practices with the Panel's recommendations created conditions for the Community's exports that were unacceptable.

Mr. Endo (Japan) said that, as his delegation had stated on several previous occasions, Japan had taken various measures in response to this Panel report, and considered that the report had been effectively implemented.

Sub-point (d). Korea - Restrictions on imports of beef

- (i) Recourse by Australia
- (ii) Recourse by New Zealand
- (iii) Recourse by the United States

Mr. Bisley (New Zealand) said that his Government had been concerned about the implementation of the Panel report on the recourse by New Zealand on this matter. While the agreements negotiated in the Uruguay Round in this area would need to be analyzed in detail, New Zealand hoped that the implementation of those results would allow it to avoid the need to have recourse to further action under the GATT. New Zealand expected to report to the Council as necessary on the implementation of this Panel report.

Mr. Kenyon (Australia) expressed support for the statements by New Zealand on this sub-point as well as on sub-point 23(c)(i). Australia believed there was still some unfinished business with respect to both these matters, and expected them to be resolved satisfactorily in the time remaining for the submission of the draft final schedules on the Uruguay Round market access outcome, i.e., by 15 February.

Sub-point (e)(iv). United States - Section 337 of the Tariff Act of 1930

Mr. Endo (Japan) recalled that on several previous occasions, Japan had urged the United States to implement quickly the recommendations of the Panel on Section 337 of the US Tariff Act of 1930, and to refrain from taking further actions under that Section. The United States had responded that it was fully committed to implementing the Panel's recommendations in the context of implementing legislation for the Uruguay Round results. Since the Uruguay Round had now been concluded and the Agreements negotiated thereunder were expected to enter into force in 1995, Japan renewed its request that the United States make the necessary amendments to Section 337 as soon as possible.

Mr. Stoier (United States) said that his authorities had recently begun preparations for the drafting of the Uruguay Round implementing legislation, a process that would continue over the next several months. As his delegation had stated previously, the United States intended to address the recommendations of this Panel in the context of the implementing legislation.

Mr. Jouanjean (European Communities) said that his delegation had noted the United States' statement, and hoped that in the context of its Uruguay Round implementing legislation, the United States would implement the Panel's recommendations in a comprehensive manner.

Sub-point (e)(v). United States - Restrictions on imports of tuna
— Recourse by the European Communities

Mr. Misle (Venezuela) reiterated his Government's concerns at the direct and indirect embargoes imposed by the United States Marine Mammal Protection Act, which was subject to examination by this Panel. This legislation had had a severe impact on Venezuela's exports of yellow-finned tuna and tuna products both to the US as well as to other markets. As contracting parties were aware, provisions of this legislation had been examined by an earlier Panel (DS21/R), which had concluded that the United States' prohibition on imports of yellow-finned tuna and tuna products from Mexico, as well as from intermediary countries, was in violation of Article XI:1 and was not justified by paragraphs (b) and (g) of Article XX. Venezuela had participated as an interested third party in this Panel, and fully shared its conclusions. As all were aware, however, the report of that Panel had not yet been adopted.

The item presently under consideration referred to the work of a second panel on the same matter. While Venezuela did not wish to comment on the work of this Panel until its report had been circulated, it wished to underline the need for a satisfactory solution to this controversy, which dated back to 1991. Venezuela believed that the United States' embargo violated important GATT principles by trying to impose on the international community, through coercive means, the United States' own standards relating to the processing of natural resources. The multilateral trading system was being threatened by the unilateral and extra-territorial application of national laws, a matter that the Panel was currently examining. In addition, this dispute involved trade protectionism on the basis of environmental considerations. Venezuela believed that such issues should continue to be examined by appropriate GATT bodies in order to ensure that the development of rules and standards reflected the consensus of all parties to the system. The case at hand clearly violated that fundamental principle. It was of paramount importance for Venezuela that this dispute be resolved satisfactorily, either through an agreement between the parties or through a solution imposed by the Panel. If the restrictions imposed by the United States were maintained, Venezuela would reserve its rights to request consultations with that Government in order to examine this question once again.

Sub-point (f). Venezuela - Actions on imports of cement from Mexico

Mr. de la Peña (Mexico) informed contracting parties that the measures imposed by Venezuela on Mexico's cement exports had now been withdrawn. In addition, Mexico had recently been informed that Venezuela's Commission on Anti-dumping and Subsidies had declared inadmissible a petition for the imposition of anti-dumping duties on imports of cement from Mexico. Mexico considered the decision taken by Venezuela to be positive, and expressed its gratitude to that Government for the spirit of cooperation and friendliness shown in the consultations on this subject.

Mr. Thielen (Venezuela) confirmed that Venezuela and Mexico had resolved their differences on this matter. The atmosphere in which the contacts between the two Governments had developed reflected the excellent relations existing between them.

Point 24. Monitoring of implementation of panel reports under paragraph I.3 of the April 1989 Decision on improvements to the GATT dispute settlement rules and procedures

Mr. Gosselin (Canada) drew attention to the lack of progress by the United States in implementing the recommendations of the Panel report on US measures affecting alcoholic and malt beverages (DS23/R). The United States had on several occasions indicated the difficulties it faced in the implementation of this Panel report, notably the short duration of the legislative period in certain of its states. Canada noted that several of the states which maintained GATT-inconsistent measures would soon be starting their legislative sessions. The time had therefore come for the federal authorities to ensure that these legislatures took the necessary measures to bring their measures into GATT conformity. Canada wished also to draw attention to the fact that the United States had taken no action with regard to the federal measures found to be GATT inconsistent by the Panel, in respect of which there were no inter-jurisdictional problems. Canada requested that, as a demonstration of its commitment to the dispute settlement system, the United States bring its federal measures into conformity as soon as possible.

Mr. Kenyon (Australia) expressed support for Canada's statement.

Point 25. Customs unions and free-trade areas; regional agreements

Mr. Rossier (Switzerland) recalled that at the Forty-Eighth Session of the CONTRACTING PARTIES, his delegation had expressed its views on the question of regionalism and had suggested that it might be opportune to give some thought to the place of customs unions and free-trade areas in the multilateral trading system. His delegation had stated then that the overall context in which the 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. In making its proposal, his delegation had been aware that a thorough consideration of the substance of the matter as well as of the GATT's working methods in such cases would require a lot of time and effort, and had therefore suggested that such work be carried out following the conclusion of the Uruguay Round. The Secretariat had already undertaken a certain amount of work in the area of regional trade arrangements, which Switzerland believed could constitute an initial input into the examination it was proposing. Switzerland therefore believed that contracting parties should seize this occasion to deal with this subject, because the trend towards regionalism would certainly become more pronounced in the future. His delegation proposed that consultations be held in the near future to clarify how this matter could be dealt with globally under the GATT.

Mr. Cheung (Hong Kong) echoed Switzerland's concerns, and expressed Hong Kong's interest in further work being done on this subject.

Mr. Endo (Japan) shared Switzerland's concerns and agreed with its proposal that contracting parties should examine the question of regionalism.

Sub-point (m). North American Free-Trade Agreement (NAFTA)

Mr. Stoler (United States), speaking also on behalf of Canada and Mexico, informed contracting parties that ratification of the North American Free-Trade Agreement (NAFTA) had taken place in all three countries parties thereto, and that their Governments had exchanged the written notifications required to bring the NAFTA into force. The NAFTA had entered into force on 1 January 1994. Contracting parties had been notified of the signature of NAFTA at the Council meeting in February

1993, and a copy of the Agreement had been submitted to the Secretariat at that time for consultation by interested contracting parties. The parties to the NAFTA were prepared to make available such further information regarding the agreement as would enable the CONTRACTING PARTIES to make such reports and recommendations as they deemed appropriate.

Point 26. Waivers under Article XXV:5

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

Mr. Jouanjean (European Communities) informed contracting parties that the Commission of the European Communities had submitted a proposal to the Council of Ministers to extend for a further year the application of certain of the temporary measures adopted by the Community in the context of German unification. The proposed measures were of more limited scope than earlier measures adopted by the Community, since provisions relating to the agricultural and steel sectors had been eliminated. Once the proposal had been adopted by the Council of Ministers, the Community would submit a request to the CONTRACTING PARTIES for a waiver from its GATT obligations for this purpose for 1994.

Mr. Stoler (United States) asked when the Community expected to submit a report on the operation of the transitional measures. The United States believed it would be useful for this report to be circulated well in advance of the consideration of the Community's request for a further waiver relating to this matter.

Mr. Jouanjean (European Communities) said that the report referred to by the United States was under preparation. The Community understood the concerns of the United States, and hoped to be able to submit the report in the very near future.

Point 27. Accession matters

Mr. Gutiérrez (Peru), speaking on behalf of the Latin American and Caribbean contracting parties, expressed concern that developing countries seeking accession to the GATT were being asked to fulfil progressively higher conditions for their accession. On various occasions, countries in the process of accession had been asked by developed countries to enter into commitments regarding levels of bindings, tariff reductions, entry to other agreements negotiated under the auspices of GATT, or on modification of their domestic commercial legislation which went beyond what could reasonably be expected of countries with limited levels of development. Requirements of this type, which many developing countries had to accept in the interests of their integration into the multilateral trading system, did not help towards a better balance in commercial interchange between the acceding country and other contracting parties. On the contrary, such requirements could cause considerable economic and commercial damage to the acceding country, and were of no help towards the equity — based on the balance of rights and obligations — and universal coverage that the GATT, and in future the World Trade Organization (WTO), wished to achieve. Even more serious was the increase in the requirements, based on prior precedents, that some contracting parties were trying to include in the process of accession. It was sufficient for a concession to have once been granted by a particular country in the accession process for contracting parties to seek that same concession of other countries seeking accession thereafter. This type of practice was inappropriate, and resulted in greater levels of obligations being assumed by a small number of countries that were penalized for having acceded to the GATT more recently than others. One of the subjects that would have to be discussed in the interim body to be established prior to the entry into force of the WTO was the manner in which countries that were not yet contracting parties and which wished to be original members of the WTO, should accede. Peru

hoped that these negotiations would take full account of the concerns it had expressed, and that the requirements for accession would be based on the level of development and the particular situation of each country.

Sub-point (a)(iv). Accession of Belarus

The Chairman of the Council recalled that at its meeting on October 1993, the Council had established a Working Party to examine the request for accession by Belarus, and had authorized him to designate its Chairman in consultation with representatives of contracting parties and with the representative of Belarus. He informed the CONTRACTING PARTIES that Mr. C. Manhusen (Sweden) had agreed to serve as Chairman of the Working Party.

Sub-point (a)(v). Accession of Croatia

The Chairman of the Council recalled that at its meeting in October 1993, the Council had established a Working Party to examine Croatia's request for accession, and had authorized him to designate its Chairman in consultation with representatives of contracting parties and with the representative of Croatia. He informed the CONTRACTING PARTIES that Mrs. A.M. Plate (Netherlands) had agreed to serve as Chairperson of the Working Party.

Sub-point (a)(vii). Accession of Latvia

The Chairman of the Council recalled that at its meeting in December 1993, the Council had established a Working Party to examine Latvia's request for accession, and had authorized him to designate its Chairman in consultation with representatives of contracting parties and with the representative of Latvia. He informed the CONTRACTING PARTIES that Mr. F. Thielgaard (Denmark) had agreed to serve as Chairman of the Working Party.

Sub-point (a)(viii). Accession of Moldova

The Chairman of the Council recalled that at its meeting in December 1993, the Council had established a Working Party to examine Moldova's request for accession, and had authorized him to designate its Chairman in consultation with representatives of contracting parties and with the representative of Moldova. He informed the CONTRACTING PARTIES that Mr. M. Kumar (India) had agreed to serve as Chairman of the Working Party.

Sub-point (a)(xiv). Accession of Ukraine

The Chairman of the Council recalled that in December 1993, the Council had established a Working Party to examine Ukraine's request for accession, and had authorized him to designate its Chairman in consultation with representatives of contracting parties and with the representative of Ukraine. He informed the CONTRACTING PARTIES that Mr. A. Stoler (United States) had agreed to serve as Chairman of the Working Party.

Point 31. US/Japan Framework Agreement

Mr. Jouanjean (European Communities) recalled that at its meeting in July 1993, the United States and Japan had informed the Council that they had agreed on a Framework for talks to open markets, encourage growth and address persistent imbalances in Japan's trade with the world, and that

the results of such talks would be applied on an m.f.n. basis. While the Community shared the two countries' objective of opening markets, it reiterated its expectation that the results of all negotiations under the Framework talks would be implemented on an m.f.n. basis. The Community would continue to follow closely the evolution of the talks.

Mr. Endo (Japan) reaffirmed that benefits accruing from the results of the negotiations under the Framework Agreement would be extended on an m.f.n. basis.

The CONTRACTING PARTIES then took note of all the statements made under this Agenda item and adopted the Council's report (L/7376 and Add.1) as a whole.

Understanding on the Interpretation of Article XXIV

Mr. Jouanjean (European Communities) recalled that in the final stages of the Uruguay Round negotiations, the Community had submitted a proposal to amend paragraph 12 of the Understanding on the Interpretation of Article XXIV (MTN.TNC/W/125). During the discussions, it had been agreed that given the complex and politically important nature of this issue, it would not be pursued at that stage, but would be discussed by the CONTRACTING PARTIES immediately after the conclusion of the negotiations. The Community now envisaged dealing with this matter at a future Council meeting, and intended to submit a proposal in this regard in due course.

The CONTRACTING PARTIES took note of the statement.

Activities of GATT (continued)

— Action on reports submitted to the CONTRACTING PARTIES

Having earlier concluded the general discussion on Activities of GATT, the CONTRACTING PARTIES adopted the report of the Committee on Trade and Development (L/7328).

The CONTRACTING PARTIES then took note of the reports of the MTN Committees and Councils (L/7322, L/7294, L/7313, L/7323, L/7330, L/7369, L/7315 and Corr.1, L/7318 and L/7324).

Mr. Gonzalez (Colombia), drawing attention to the status of acceptances of MTN Protocols, Agreements and Arrangements in the Annex to document L/6453/Add.22, said that while Colombia had indeed signed, subject to ratification, the Anti-Dumping and the Customs Valuation Agreements³, it was also applying these Agreements on a provisional basis pending ratification, which was not reflected in the tabular presentation.

The CONTRACTING PARTIES took note of the statement.

The CHAIRMAN then summed up the discussion on Activities of GATT. He said that the task of summing-up the discussion at the present Session was, in many respects, an enviable one

³Respectively, the Agreement on Implementation of Article VI (BISD 26S/171) and the Agreement on Implementation of Article VII (BISD 26S/116).

compared to the task faced by his recent predecessors. While they had had to deal with a general atmosphere of concern on the direction of the multilateral trading system as a result of the delays and uncertainties in bringing the Uruguay Round negotiations to a conclusion, he had heard mainly positive comments in this regard as a result of the historic step taken in December 1993.

Referring to some of the main themes of the statements made by delegations, he said that the need for a speedy and harmonious transition between the GATT 1947 and the WTO in 1995 had been stressed by many. To this end, compromise and cooperation would remain essential to complete the numerous tasks the contracting parties faced in the coming months. In particular, it was necessary to faithfully implement the commitments undertaken in the Uruguay Round. A harmonious transition would also be facilitated by a full respect by contracting parties for existing obligations. This applied, in particular, to the implementation of adopted panel reports, as well as to measures that might be introduced in the transition period.

Many speakers had noted the large number of accession working parties, and the need to advance the accession process under satisfactory conditions and arrangements. The requests for accession, combined with the substantial increase in GATT membership since the Forty-Eighth Session, as well as the requests for observer status, reflected a strong belief in GATT principles as the foundation for trade relations, and represented steps towards the creation of a truly global trading system.

Many speakers had voiced support for the TPRM — one of the first results of the Uruguay Round — and had welcomed the completion of the 1993 program of reviews in the coming weeks. In order to ensure the continuing smooth operation of the mechanism, several speakers had emphasized the need to re-examine certain aspects of its operation.

Many speakers had noted the importance they attached to pursuing regional economic integration, and their belief that such agreements were complementary to the multilateral trading system. Several speakers had pointed to the process used to examine such agreements as an area in need of further reflection.

If the conclusion of the Uruguay Round represented a major victory for multilateralism, several speakers had noted the lurking dangers of unilateralism, bilateralism and inward-looking regional arrangements. More generally, contracting parties needed to remain vigilant with respect to protectionist pressures. Concerns had been expressed regarding the use of legitimate trade instruments for protectionist purposes. Several speakers had noted that protectionist pressures could arise not only in traditional areas of trade policy, but also in new areas, such as trade and environment. In this regard, a number of speakers had welcomed the establishment of a work programme on trade and environment for adoption by Ministers at Marrakesh, while noting the useful work already accomplished in GATT, and in particular, by the Group on Environmental Measures and International Trade, the Committee on Trade and Development, and the Council.

A number of speakers had noted that implementation of the Uruguay Round commitments was taking place in the context of an adverse economic and employment situation. Speakers had pointed to the efforts their governments had made, and were continuing to make, to implement domestic economic reforms, including autonomous measures of trade liberalization. Special and differential treatment was a key aspect of ensuring the eventual success of such reforms in terms of economic growth, and more could be done to speed the integration of developing countries in the world trading system. In particular, technical assistance would be helpful to developing contracting parties in identifying the new avenues for trade growth resulting from the Round.

He reminded contracting parties of the proposal made in his introductory remarks (GATT/1612) regarding the desirability of a monitoring mechanism to gauge the impact of the Uruguay Round on individual countries. Should there be any losers from the Round, ways should be found to redress the situation by positive action which might include compensation.

Dates of the Fiftieth Session

The CONTRACTING PARTIES agreed that the Fiftieth Session would be held in the week starting Monday, 5 December 1994, bearing in mind the possibility for the Chairman of the CONTRACTING PARTIES, in consultation with delegations, to fix the dates and the duration of the Session with greater precision in the course of 1994, and even to modify the dates if circumstances, such as the possible convening of a Uruguay Round Implementation Conference at the end of the year, made this desirable.

Election of Officers

The following nominations were made:

Chairman of the CONTRACTING PARTIES:	Mr. A. Szepesi (Hungary)
Vice-Chairmen of the CONTRACTING PARTIES:	Mr. K. Kesavapany (Singapore)
	Mr. C. Manhusen (Sweden)
	Mr. A. Reyn (Belgium)
Chairman of the Council of Representatives:	Mr. M. Zahran (Egypt)
Chairman of the Committee on Trade and: Development	Mr. E. Tironi Barrios (Chile)

The CONTRACTING PARTIES elected the officers nominated.

Closure of the Session

Prior to the closure of the Session, the CHAIRMAN presented the Director-General with the gavel the latter had used to signal agreement of the Uruguay Round Trade Negotiations Committee on the Final Act Embodying the Results of the Uruguay Round, on 15 December 1993.

Then, having declared the official business of the Session concluded, the CHAIRMAN offered the floor to Mr. Tran Van-Thinh (European Communities).

In a statement as the departing dean of the Permanent Representatives in Geneva, Mr. Tran requested that the CONTRACTING PARTIES take note of a proposal, which he made in a personal capacity, for the multilateral trading system to finance a "Solidarity Fund" for the environment to overcome a weakness in current multilateral policy on the environment, namely the lack of funds that could be collected and used as a matter of priority to reduce disparities in the field of the environment between advanced countries and those less well provided for. The proposed Fund would be financed through the imposition of a levy on imports as from the date of entry into force of the World Trade Organization (WTO). The levy would be paid on all imports of goods on which customs duties were collected, in all member countries of the WTO, with the exception of the least-developed countries, which would benefit from a grace period to be agreed on. The levy would initially be set at a uniform rate of 0.25 % ad valorem on each tariff line. There would be no additional charge on imports to the extent that the levy would be offset by Uruguay Round tariff reductions. The WTO would have general responsibility for the Fund, the management of which would require the participation of other specialized bodies, notably the Global Environment Facility (GEF), the resources of which came from voluntary contributions via the World Bank.

As to the use of the Fund's resources — a major difficulty which would require a lot of thought — all members of the WTO would have access to the resources, subject to conditions and modalities to be agreed, such as for example that half the available resources would be reserved for developing countries, with a priority, to be determined, for least-developed countries, while the other half would be allocated to developed countries with a double priority to be determined, on the one hand for countries in transition and on the other for the transfer of technology to the countries of the South. The release of resources would be a function of projects based on criteria to be determined, going beyond a strictly national framework and having an impact outside national borders, regionally or globally. Arrangements should be made to take into account comments by non-governmental organizations concerned to obtain their ideas for further work on this subject, on negotiations concerning the approach to be adopted and on its implementation. He said that his proposal had been inspired by the unique opportunity which the creation and implementation of the WTO had provided, which he believed would probably not come again.

The Session closed at 7 p.m.