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ON TARIFFS AND TRADE**

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MINUTES OF MEETING

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on 22-23 February 1994

Chairman: Mr. M. Zahran (Egypt)

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1.	<u>International Trade Centre UNCTAD/GATT</u> — <u>Report of the Joint Advisory Group (ITC/AG(XXVI)/139)</u>	

Mr. Boddens-Hosang (Netherlands), Chairman of the Joint Advisory Group (JAG), introduced the report on its twenty-sixth session (ITC/AG(XXVI)/139). The Group had examined the following matters: (i) a review of the ITC's technical cooperation activities in 1992, based on its Annual Report; (ii) a report of the ITC's technical meeting, held in 1992, on the evaluation of the ITC's sub-programme on an institutional infrastructure for trade promotion at the national level; and (iii) a report of the ITC's technical meeting, held in 1993, on the evaluation of ITC's activities in commodity trade, development and promotion.

The Officer-in-Charge of the ITC, in introducing the Annual Report, had provided an update of ITC's main activities, the problems encountered and the responses thereto, and suggestions for the future. It had been recalled that half of the management-level posts in the ITC had been vacant for a considerable period of time, and that intergovernmental and independent bodies such as the Budget Committees and United Nations Board of External Auditors had commented on the potential adverse consequences of the situation and had urged the filling of all the posts. The filling of these posts had become even more urgent since two of the three remaining ITC directors were due to retire in 1994. Both the ITC Staff Council and the ITC Management had also repeatedly emphasized the importance of filling at least those posts about which there had not been any controversy.

The Officer-in-Charge had referred to the ITC's efforts during 1992 to realign its activities within the new Medium-Term Plan covering the period 1992-97. ITC strategies had been prepared for global priorities which had been defined by the JAG as issues of universal concern to be taken into account in all ITC sub-programmes and activities as recurrent themes. A detailed account had been given of the ITC's activities related to the environment, including preliminary work on eco-labelling, and reference had also been made to the ITC's efforts to establish a field presence. As regards the resource situation, delivery from trust funds, including funds-in-trust had reached its highest figure in 1992, while the availability of trust funds had declined in 1993 owing to a reduced contribution from some major donor countries. Although efforts had been made to diversify resources, the Officer-in-Charge had appealed to the donor community to arrest or reverse the decline in contributions to the ITC, especially in view of the increased demand on the ITC's services from developing countries following the successful conclusion of the Uruguay Round negotiations.

The Officer-in-Charge had recalled that the ITC would be celebrating its thirtieth anniversary in 1994, which would provide a suitable opportunity for a review of its current and future activities, rôle and direction. In this context, the ITC secretariat had embarked upon the preparation of a mission statement which would be submitted for the consideration of the JAG at its next session in 1994.

The Group had unanimously expressed its appreciation to the Office-in-Charge and the ITC staff for the excellent work carried out under very difficult circumstances and had expressed satisfaction that the ITC had achieved its historically highest rate of programme implementation in 1992. The Group had expressed regret for the difficult circumstances in which the ITC continued to find itself owing to the undue postponement of a decision on the appointment of its Executive Director and the filling other key management posts, and had called on ITC's parent bodies to arrive urgently at an appropriate solution.

It was the Group's view that, at a time when the needs of developing countries for trade promotion support were increasing as a result of significant changes in the international economic scene, the ITC was confronted with an untenable management situation which, if allowed to persist, would hamper its ability to continue to provide effective support to developing countries. Representatives had noted that the ITC had become a victim of circumstances not of its own making, and had added that it was unacceptable to damage a key organization in the United Nations system for the sake of upholding administrative principles.

As regards the timing of the Group's next session, some representatives had stressed the need to ensure that it be held, as before, in the spring. This would permit the Group to have a timely review of the previous year's activities and thus enable the ITC to carry out appropriate follow-up actions. However, a number of participants had stressed that the appointment of a new Executive Director would be a precondition to the holding of a full-fledged session.

With a view to revitalizing the ITC, one delegation had circulated a non-paper proposing a review of the ITC's mandate, financial and personnel situation, general structure, and its relations with its parent bodies. The review would also examine the broader perspective for strengthening the operational activities of the United Nations system in the trade promotion sector. An informal working group had met to consider the proposal, and had reached the consensus that a review of the ITC's mandate should be conducted, aiming at enhancing the ITC's capabilities as a technical cooperation agency in trade promotion and export development in the United Nations system. However, there had been no unanimity on criteria for the timing and coverage of this review. It had been emphasized that the participation of the Executive Director in the review process was of particular importance, and since indications had been given to the JAG that the Executive Director would be appointed soon, it had been agreed by the working group that informal consultations among interested JAG members should be initiated to establish the terms of reference and the timing of the review.

A number of representatives, while noting that the proposal had been withdrawn, had stressed its merits as a means of revitalizing the ITC. Particular concern had been voiced by a number of participants that linking donor contributions to the appointment of the Executive Director could seriously impair their national trade promotion and export development programmes. These participants had called on donor governments to reconsider their decisions to reduce or postpone their contributions to the ITC. They had urged the Group to keep the proposal under review. At the suggestion of the Chairman, it had finally been agreed that the JAG Bureau should initiate informal consultations at an appropriate time on the terms of reference and timing of the review.

The Director-General, addressing the question of the appointment of a new Executive Director, recalled that he had informed the CONTRACTING PARTIES at their Forty-Ninth Session of the latest developments on this matter. He now had the UN Secretary-General's agreement to proceed without further delay. Accordingly, their two representatives — Mr. Lavorel, Deputy Director-General, and Mr. Dadzie, Secretary-General of UNCTAD, respectively — would conduct interviews and agree on the best candidate, who would then be endorsed by both himself and the Secretary-General. In addition to the candidates announced at the JAG meeting in November 1993, further applications received in the meantime would also be taken into account, bringing the final number of candidates to eleven. Consultations on the appointment had begun a week ago, and he hoped that it would be possible to have the final choice as soon as possible. He trusted that this procedure would lead to the early appointment of the Executive Director. With a full top management team hopefully in place shortly thereafter, the ITC would soon be able not only to resume the full range of its activities, but also to face the challenges and opportunities in the field of international trade to be opened up by the new agreements concluded under the Uruguay Round. He hoped to be able to inform the Council about further developments at its next meeting.

The vast majority of Council members indicated their appreciation for the useful and valuable work of the ITC.

The Council took note of the statements and of the expressions of support, and adopted the report in ITC/AG(XXVI)/139.

2. Accession of Lithuania
— Communication from Lithuania (L/7398)

The Chairman drew attention to the communication from Lithuania in L/7398 concerning its interest in acceding to the General Agreement pursuant to Article XXXIII.

The representative of Lithuania, speaking as an observer, said that since its independence, Lithuania's main objective had been to move from a planned to a market economy, and to liberalize its foreign trade. Among Lithuania's other objectives were trade agreements with foreign partners, the liberalization of its tariff régime and the establishment of a legal basis for its foreign trade régime compatible with international standards and corresponding to GATT principles so as to ensure favourable investment conditions and accelerate the process of privatization. Lithuania had signed a series of agreements on economic and trade cooperation to avoid double taxation, and to encourage foreign investment. Agreements on bilateral security had also been signed. Free-trade agreements with four EFTA countries — Sweden, Norway, Finland and Switzerland — had been entered into, and on 1 June 1994, a tripartite agreement between Lithuania, Latvia and Estonia, based on international standards, would enter into force. In June 1993, Lithuania had introduced a new system of import-export regulation, eliminating all quantitative restrictions and licensing, and regulating imports and exports only by means of the customs tariff. With the assistance of the EFTA countries and the European Community, Lithuania had also begun adapting the legal basis of its economic system to bring it into

line with that of the Community. Lithuania's trade balance in 1991, 1992, and in the first three quarters of 1993 had been positive, although export conditions affected by consolidation of the litas had contributed in part to a drop in exports of industrial products towards western countries. While a deficit in the foreign trade balance was expected for 1993-1994, a positive balance with western countries would be maintained.

He recalled that Lithuania had been granted observer status in the GATT in 1992. The current status of its foreign trade and its development trend, as well as the economic reform policy undertaken by its Government had led Lithuania to decide to join the GATT. Lithuania's accession would accelerate its integration into the world market and would strengthen its security and the stability of its economic development. Lithuania understood that in joining the GATT it would not only benefit from privileges, but would also incur obligations. He drew attention to the fact that in its trade agreements with foreign partners and in establishing the legal basis for its foreign trade, Lithuania had based itself on GATT principles. Its accession to the GATT would be a logical step in the development and establishment of favourable conditions for foreign trade, as well as the reform of the legal basis of Lithuania's foreign trade.

The Council took note of the statement and agreed to establish a working party with the following terms of reference and composition:

Terms of reference

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

Membership

Membership would be open to all contracting parties indicating their wish to serve on the Working Party.

The Council authorized its Chairman to designate the Chairman of the Working Party in consultation with representatives of contracting parties and with the representative of Lithuania.

The Chairman invited the representative of Lithuania to consult with the Secretariat as to further procedures, in particular regarding the basic documentation to be considered by the Working Party.

3. Accession of Honduras

— Report of the Working Party (L/7299 and Add.1, Corr.1 and Corr.2)

The Chairman recalled that in October 1990, the Council had established a Working Party to examine the request by Honduras for accession to the General Agreement. The report of the Working Party was now before the Council in documents L/7299, Add.1, Corr.1 and Corr.2.

Mr. Sanchez Arnau (Argentina), introducing the report on behalf of the Chairman of the Working Party, said that matters examined by members of the Working Party included, among others, the tariff régime of Honduras, the tax régime, the customs régime, import restrictions, the balance of payments, the regulation of unfair trade practices, government procurement, agricultural policies, the export régime, free-trade zones and regional agreements. Having carried out the examination of the foreign trade régime of Honduras and in the light of the explanations and assurances given by the Honduran representatives, the Working Party had reached the conclusion that, subject to the satisfactory conclusion

of the relevant tariff negotiations, Honduras should be invited to accede to the General Agreement under the provisions of Article XXXIII. In Schedule XCV — Honduras, which was annexed to the Protocol for the Accession of Honduras, the concessions resulting from the tariff negotiations between Honduras and contracting parties were listed (L/7299/Add.1). The Working Party had prepared a draft Decision and draft Protocol of Accession, which were annexed to its report. The draft Protocol of Accession consisted of four parts, namely, a preamble, general provisions, a schedule, and final provisions with the clauses usually included in this type of legal text.

The representative of Honduras, speaking as an observer, said that this was a historic moment for Honduras. Accession to the GATT would allow Honduras to continue to pursue with increased energy the efforts made over the past four years to transform and stimulate its economy, strengthen the external sector and integrate it more closely in the international economy, and make its trade policy subject to GATT rules and regulations. Honduras hoped that this would help to improve the living conditions of its people and reinforce its democratic and representative system of government in accordance with the rule of law. Honduras intended to accelerate its efforts in the next few days in order to obtain the necessary number of votes to allow it to sign the Protocol of Accession before 15 March so that it could participate in the signing of the Uruguay Round Final Act at the Marrakesh Ministerial meeting as a contracting party, and thereby become a founding member of the World Trade Organization. His delegation was certain that in order to achieve this ambitious goal, it would continue to benefit from the support of contracting parties in the next few days.

The representatives of Peru on behalf of the Latin American and Caribbean contracting parties, the United States, New Zealand, the European Communities, Australia and Switzerland, expressed their welcome and support for the accession of Honduras. The representatives of Peru on behalf of the Latin American and Caribbean contracting parties, and Japan and El Salvador expressed support for the adoption of the Working Party report and of the draft decision on the Accession of Honduras.

The representative of Peru, speaking on behalf of the Latin American and Caribbean contracting parties, said that the report of the Working Party had been the result of painstaking work begun in 1990, and showed that Honduras had taken serious steps to liberalize its foreign trade régime in conformity with GATT rules. The prospective entry of Honduras to the GATT implied for the Group of Latin American and Caribbean countries a strengthening of its commitment to the objectives of GATT for the creation of a more stable and predictable trading environment. He encouraged all to approve the draft decision and the draft Protocol of Accession.

The representative of Japan said that his Government wished to see Honduras become a contracting party at the earliest date, and hoped that Honduras would participate actively in GATT's work in the future.

The representative of El Salvador urged all contracting parties to register their votes as soon as possible in order to expedite the ratification process in Honduras, and to enable Honduras to become a contracting party prior to the Marrakesh Ministerial meeting.

The representatives of the United States, New Zealand, the European Communities, Australia and Switzerland expressed technical reservations with regard to Schedule XCV of Honduras, pending verification that the results of their bilateral negotiations were fully reflected in the Schedule.

The Council approved the text of the draft Protocol of Accession and the text of the draft decision, and agreed that the draft decision be submitted to a vote by postal ballot¹. The Council then

¹ The Decision was adopted on 2 March 1994 (L/7419).

adopted the report of the Working Party (L/7299 and Add.1, Corr.1 and Corr.2) and took note of the statements.

4. April 1989 Decision on improvements to the GATT dispute settlement rules and procedures (BISD 36S/61)
 - Proposal for extension of application (C/W/783)

The Chairman recalled that at its meeting on 12 April 1989, the Council had adopted the Decision on improvements to the GATT dispute settlement rules and procedures (BISD 36S/61). As provided for in paragraph A.3 of that Decision, the improved rules and procedures were to apply "on a trial basis from 1 May 1989 to the end of the Uruguay Round". Since the Uruguay Round negotiations would formally be concluded on 15 April 1994, and the new dispute settlement procedures agreed upon in the negotiations would not become operational until the Agreement establishing the World Trade Organization came into effect some time in 1995, it was necessary for the Council, acting on behalf of the CONTRACTING PARTIES, to extend the application of the current procedures for the interim period.

It was his understanding that Council members were in favour of such an action. Accordingly, he drew attention to the draft decision contained in the Annex to document C/W/783, and proposed that it be adopted.

The Council so agreed (L/7416).

5. United States - Legislation concerning the use of imported tobacco by domestic cigarette manufacturers
 - Recourse to Article XXIII:2 by Argentina (DS44/8)

The Chairman drew attention to the communication from Argentina in DS44/8 requesting the establishment of a panel to examine its complaint.

The representative of Argentina recalled that Argentina had participated in Article XXIII:1 consultations with the United States on this matter in October 1993, together with Brazil, Chile, Colombia, El Salvador, Guatemala, Thailand, Venezuela, Zimbabwe and Canada. As outlined in document DS44/8, Section 1106 of the United States' Omnibus Budget Reconciliation Act of 1993, approved on 10 August 1993, would have a serious impact on Argentina's tobacco exports to the United States. The Act and the regulations implementing it violated Article III:1, 2, 4 and 5, and Article VIII:1, and might be in breach of Article II and Article XI:1. Similarly, they might also nullify or impair benefits Argentina could reasonably have expected at the time the United States' tariff on raw tobacco had been bound. Neither the bilateral and multilateral consultations nor the written questionnaires had received a satisfactory response from the United States, and there had been no progress in the efforts to induce the United States to bring its legislation into GATT conformity. The regulations published in the United States Federal Register on 23 December 1993 and 11 January 1994 did not substantively modify the provisions of the law to make it consistent with the GATT. Argentina therefore requested the establishment of a panel pursuant to Article XXIII:2 to examine the United States legislation on imported tobacco. However, if the CONTRACTING PARTIES agreed, Argentina would wish, in accordance with paragraph F(d)(1) of the April 1989 Decision on improvements to the GATT dispute settlement rules and procedures (BISD 36S/61), and bearing in mind that the subject and the terms of reference were the same, to have its complaint examined by the panel already established on this subject by the CONTRACTING PARTIES at their Forty-Ninth Session at the request of Brazil, Canada, Chile, Colombia, El Salvador, Guatemala, Thailand and Zimbabwe (DS44/9).

The representative of the United States said that the United States' understanding, based on the clarification provided by Argentina at the present meeting, was that the scope of Argentina's request under Article XXIII:2 for the establishment of a panel was the same as that of the current parties to the dispute. The United States, therefore, would have no objection to the establishment of a panel at the present meeting or to Argentina joining the current parties to the dispute.

The representative of Turkey said that his country, as an important exporter of tobacco to the US market, had a substantial interest in this matter. Turkey therefore requested that it be given the opportunity to be heard by the Panel, to make written submissions thereto, as well as to be granted third-party access to the written submissions to the Panel. His delegation had already submitted, in the past week, a written request in this regard to the Chairman of the Panel.

The representative of the United States noted that certain contracting parties had indicated their intention to participate as third parties in this Panel well after its establishment by the CONTRACTING PARTIES at their Forty-Ninth Session. The United States acknowledged that these notifications were consistent with paragraph F(e)(2) of the April 1989 Decision. While it had no objection to the participation of these parties in the Panel proceedings, the timing of these requests raised an issue which the United States believed was important. As a procedural matter, the dispute settlement process functioned most effectively when contracting parties notified the Council of their interest in participating as third parties at the time when a panel was established. There were two reasons for this. First, in order for a panel to function efficiently it was essential to take into account the participation of third parties in establishing its timetable. If such parties made their interests known after the panel had established its timetable, it would make it very difficult to accommodate their interests. Second, the timing of notifications of third party participation might affect the selection of panelists. Parties to a dispute were generally concerned that the composition of a panel be neutral and balanced. In the United States' experience, parties wished to take into account all those involved in a dispute, including third parties, in making this assessment. Such an assessment was a positive step in the dispute settlement process, since it tended to enhance the credibility of the overall process. However, it could not be made effectively if third party interests were made known after the composition of the panel was already well under way.

The United States believed this issue to be of considerable significance. It would therefore request that consultations be held by the Council Chairman, as soon as his schedule permitted, to examine this issue and to establish a practice that all contracting parties would deem to be fair and effective. Until such consultations were held, the United States urged contracting parties to follow the practice of notifying their third-party interests to the Council at the time of establishment of a panel so as not to undermine inadvertently the smooth functioning of the process.

The representative of Australia said that Australia was one of the contracting parties that had made its third-party interests in this Panel known after its establishment at the Forty-Ninth Session. He recalled that in order to deal with a very large amount of business at that Session in a very short period of time, contracting parties had addressed blocks of different issues together in their comments on the agenda item dealing with the report of the Council. Just prior to the question of the establishment of the tobacco panel being raised, his delegation had expressed its views on a whole range of other matters under a previous item. In view of the pressures of time at the Session, and in the knowledge that it could make its third-party interests in the Panel known after the Session, Australia had chosen not to intervene on that particular matter. Two days after the Session, Australia had informed the United States and the Secretariat of its desire to make a third party submission, and had subsequently circulated a communication to that effect (DS44/7). While his delegation did not object to the United States' request for consultations, it believed that the circumstances of this particular Panel were rather exceptional, and that in most cases contracting parties expressed their interest in making third party submissions at the time panels were established.

The representative of Brazil said that his delegation had noted the United States' request for consultations on third-party participation in panels. While Brazil had no strong views on this matter, it was its firm understanding that such consultations would not in any way prejudice or interfere with the timetable for the work of the Panel on the US tobacco legislation.

The Council took note of the statements and agreed that, as provided for in the April 1989 Decision in respect of multiple complainants (BISD 36S/61, paragraph (F)(d)(1)), the matter referred to the CONTRACTING PARTIES by Argentina in DS44/8 be examined by the Panel previously established by the CONTRACTING PARTIES at their Forty-Ninth Session (DS44/9) to examine the complaints by Brazil, Canada, Chile, Colombia, El Salvador, Guatemala, Thailand and Zimbabwe relating to the same matter.

6. EEC - Member States' import régimes for bananas
— Panel report (DS32/R)

The Chairman said that this item was on the Agenda of the present meeting at the request of Costa Rica. He recalled that this matter had been discussed at the Council meetings in June, July, September, October and December 1993, as well as at the Forty-Ninth Session of the CONTRACTING PARTIES in January 1994. During the discussions, the following contracting parties were on record as supporting adoption of the Panel report contained in DS32/R: Argentina, the ASEAN countries, Australia, Bolivia, Brazil, Canada, Colombia, Costa Rica on behalf of the co-complainants, Cuba, El Salvador, Guatemala, India, Japan, Mexico, Pakistan, Peru, the United States and Uruguay. The European Community's position on this matter was also on record as reflected by its statement at the July 1993 Council meeting. The following contracting parties were on record as opposing adoption of the Panel report: Antigua and Barbuda, Barbados, Belize, Cameroon, Côte d'Ivoire, Dominica, Dominican Republic, Egypt, Ghana, Guyana, Jamaica on behalf of ACP contracting parties, Kenya, Madagascar, Morocco, Nigeria, Senegal, St. Lucia, St. Vincent and the Grenadines, Suriname, Tanzania, Trinidad and Tobago, Tunisia and Zimbabwe. The observer from Ecuador was also on record as having addressed this matter. It was apparent that the Council would not be able to reach a conclusion to this debate at the present meeting and would have to revert to this matter at its next meeting. Therefore, unless any representative spoke to the contrary, he would conclude that positions on this matter as recorded remained unchanged, and propose that the Council revert to this matter at a future meeting.

The representative of Mexico said that his delegation did not intend to address the issue of adoption of the Panel report which, as the Chairman had noted, all had had an opportunity to address on several earlier occasions. He wished, however, to inform the Council, for reasons of transparency, that a group of banana exporting countries had taken the initiative to submit to the Community a proposal aimed at resolving this issue which was both GATT compatible and took into account the interests of all parties, in particular the ACP contracting parties. Mexico recognized that the dispute at hand involved very complex issues and affected the vital interests of some contracting parties. In the circumstances, Mexico wished to emphasize the need to maintain a dialogue between all the parties concerned with a view to finding a solution satisfactory to all.

The representative of Chile said that her Government wished to be on record as supporting the adoption of this Panel report.

The representative of Panama, speaking as an observer, underlined Panama's interest in this matter, given that exports of bananas represented 48 per cent of Panama's total exports and that its economy was particularly sensitive to any measure which limited imports of this fruit into the Community. As all were aware, Panama had initiated the process of its accession to GATT. Panama was prepared to accept sacrifices implicit in the accession process in exchange for being able to rely

on legal assurances for its exports. It was, however, discouraging and a disincentive to see a major contracting party adopt measures which violated GATT provisions and its fundamental principles such as non-discrimination and m.f.n. treatment, imposing an unlawful régime on imports of the most important of Panama's exports, without respecting concessions previously bound in GATT. Panama believed that only a negotiated solution could resolve the banana problem to the benefit of consumers as well as producers. With a view to such dialogue, Panama, together with Ecuador, Guatemala, Honduras and Mexico, had submitted a proposal to the Community on 10 February. Panama called on the Community to take into consideration the just aspirations of their countries and to support the start of a negotiating process with all Latin American countries so that all could together find an equitable and balanced solution to the banana problem, while at the same time taking into account the interests of ACP countries.

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

7. 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 (BISD 36S/61)

The Chairman recalled that this item was on the Agenda pursuant to paragraph I.3 of the April 1989 Decision, and that in the course of informal consultations held in 1992 and in early 1993 it had been understood that it would continue to appear on the agenda in its present form. He drew attention to a recent communication from the United States in document DS23/14 on the status of implementation of the Panel report on US measures affecting alcoholic and malt beverages (DS23/R).

The representative of the United States said that since the adoption of the Panel report on US measures affecting alcoholic and malt beverages, the United States had maintained its intensive efforts to comply with the Panel's recommendations. The most recent communication (DS23/14) highlighted the results of these efforts and indicated that at present five states — Indiana, Mississippi, Montana, Tennessee and New Mexico — had taken action to bring themselves into compliance with the Panel report. The United States would continue its efforts to make additional progress towards compliance with the Panel's recommendations.

With regard to the Panel report on the United States' denial of m.f.n. treatment as to non-rubber footwear from Brazil (DS18/R), he said that a resolution of this dispute was still under consideration by his authorities. His delegation was hopeful that a decision on this matter could be made in the foreseeable future.

The representative of Canada expressed his delegation's appreciation to the United States for its recent communication on the implementation of the alcoholic and malt beverages Panel report. However, the willingness to provide information did not overcome what was a virtual lack of progress by the United States in implementing the Panel's recommendations, which had been adopted more than a year and a half earlier. Except for one tax measure in the state of Mississippi, there was no evidence that any of the two federal and some sixty state measures had been brought into compliance. The United States had reported that five states had enacted legislation "in an effort to comply" with the Panel's recommendations. Canada would be interested to know if the United States believed that these efforts had been successful in bringing the state measures into compliance. Specifically, Canada wished to receive copies of the legislation, together with an explanation of how South Carolina's legislation now met the requirements of the Panel report. Canada was encouraged to learn that at least nine states had begun the process of bringing their legislation into conformity, and hoped that this would be done in the 1994 legislative session. Otherwise, one ran the risk of losing yet another year. With regard to the two federal tax measures found inconsistent, it was clear that the US federal authorities had full jurisdiction to change them. Yet, to Canada's knowledge, nothing had been proposed in this

regard. Early action on the federal measures — two out of sixty-two found inconsistent — would provide concrete evidence of the United States' intention to meet its obligations in this dispute.

The representative of Australia said that although Australia welcomed the continuing progress reports on the United States' implementation of the alcoholic and malt beverages Panel report, it continued to be concerned, like Canada, with the slowness of bringing the individual states into compliance with the Panel's recommendations. Australia would be interested in the United States' response to the particular questions asked by Canada.

The representative of Brazil expressed appreciation for the United States' statement regarding the implementation of the non-rubber footwear Panel report. Brazil was interested in a prompt resolution to this matter, and encouraged the United States to expedite its reforms towards this goal.

The Council took note of the statements.

8. Interpretation of Article XXXV
— Proposal by the United States (C/W/775)

The Chairman recalled that at their Forty-Ninth Session, the CONTRACTING PARTIES had referred this matter to the Council for further consideration.

The representative of the United States said consultations between the United States and certain contracting parties had not been able to advance on this matter to a point where the Council could act on the proposal in document C/W/775. His delegation therefore requested that the Council revert to this matter at its next meeting.

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

9. United States - Caribbean Basin Economic Recovery Act (CBERA)
— Biennial review (L/7304)

The Chairman recalled that under paragraph 7 of the CONTRACTING PARTIES' Decision of 15 February 1985 (BISD 31S/20), the United States was required to submit an annual report on the implementation of the provisions of the Caribbean Basin Economic Recovery Act (CBERA), and the CONTRACTING PARTIES were, two years from the Waiver's entry into force and biennially thereafter, to review its operation and consider if in the circumstances then prevailing any modification to or termination of its provisions was required.

The representative of the United States said that the United States had created the Caribbean Basin Initiative (CBI) in an effort to assist the economic development of countries in that region, and continued to believe that the CBI provided the twenty-four beneficiary countries with expanded trade opportunities with the United States. The United States believed that the continuation of this programme was in the interest of all countries that wished to see this important region maintain a course of economic growth and political stability. His Government believed it had met its responsibilities and commitments under the terms of the Waiver. As far as his delegation was aware, contracting parties appeared to be satisfied with the operation of the programme.

The representative of Jamaica said that, as one of the beneficiary countries of the CBI programme, Jamaica commended the United States for the positive steps it had taken in the period covered by the report in expanding the benefits of the programme and enhancing its effectiveness for

participating countries. Jamaica welcomed also the United States' initiative to convert the CBI programme into a permanent one. Jamaica viewed positively the improvements made to the programme through the expansion of the list of products eligible for duty-free treatment, which had been done on two separate instances, providing new or expanded duty-free treatment for 94 product categories in one instance and for 28 product categories in another.

The Council took note of the statements and of the information in L/7304.

10. Committee on Balance-of-Payments Restrictions
— Programme of consultations for 1994 (C/W/784)

The Chairman drew attention to the Committee's proposed programme of consultations for 1994 contained in document C/W/784.

The Council took note of the information in C/W/784.

11. Canada - Article XIX action on boneless beef (L/7219/Add.1, 2, 3, 4, 5, 6, 7 and 8)

The representative of Australia, speaking under "Other Business", said that Australia had requested consultations with Canada following notification by the latter of its decision to apply restrictions on imports of boneless beef in 1994 under Article XIX (L/7219/Add.8). Australia wished to reiterate concerns expressed at the Forty-Ninth Session of the CONTRACTING PARTIES, that Canada was imposing restrictions on boneless beef imports in 1994 — at a more restrictive level than that applied in 1993 — without any justification, given the conditions applying in the Canadian and international markets. Indeed, Canadian beef industry leaders had described 1993 as one of the best years ever with prices at record levels. Australia would be pursuing these concerns vigorously in the consultations. Canada's approach in imposing these restrictions was all the more disturbing given its approach on the conclusion of the Uruguay Round negotiations on beef access. Australia was concerned that the key principle that access should not be diminished by the Uruguay Round outcome was not being observed by Canada.

The representative of Canada recalled that in June 1993, Canada had notified contracting parties of its intention to implement measures under Article XIX for the balance of 1993, 1994 and 1995 (L/7219/Add.1), based on a finding by the Canadian International Trade Tribunal (CITT) that imports of boneless beef constituted a threat of serious injury. The measures to be applied in 1994 were not more restrictive than those applied in 1993, because the latter had only applied for six months. Pursuant to the CITT's finding, and consistent with its international rights and obligations, Canada had introduced a tariff rate quota on imports of boneless beef originating in countries other than the United States. The 1994 tariff rate quota had been set at 72,021 tonnes. Imports within that quota were subject to the m.f.n. rate of duty of 4.41 Canadian cents/kilo with imports above the quota subject to an additional surtax of 25 per cent ad valorem. No decision had yet been taken with respect to the 1995 régime, in order that it could take into account the outcome of the Uruguay Round. He would note that Australia had once again concluded a voluntary restraint agreement with the United States, which restricted the entry of Australian beef into the United States. Australia's continued willingness to accept grey-area measures had been one of the driving forces behind Canada's increasing vigilance on surges in imports, although, unlike Australia's arrangement with the United States, Canada's safeguard measure did not impose an absolute quantitative restriction on imports. Even with the surtax, Australia's exports of beef to Canada had continued at impressive levels, and their overall level had increased by more than 50 per cent in 1993. Australia and others had had full opportunity to participate in the hearings before the CITT and had consulted with Canada no less than five times. Canada had agreed to Australia's

request to roll over its rights under Article XIX for a further 90 days, and had agreed to further consultations.

The representative of Argentina shared Australia's concerns regarding the impact of measures of this kind and their operation on international trade, as well as on consumption in the international markets. Argentina noted with satisfaction Canada's willingness to hold consultations on this matter.

The representative of New Zealand said that Canada's action was entirely unjustified under GATT provisions. There was no clear evidence of injury or threat thereof to the domestic industry, although Canada's inquiry had concluded that imports above 72,021 tonnes in 1993 threatened to cause serious injury. However, because of a delay in implementing the surcharge, well in excess of 80,000 tonnes had been imported at a low duty with no injury or threat thereof ensuing, and prices had remained firm in Canada's market. Canada had implemented the same tariff quota for 1994 even though there continued to be no evidence of injury. Canada was unjustifiably using safeguard action to reduce access for beef from Australia and New Zealand, and was, furthermore, seeking to achieve the same result using a tariffication approach in the Uruguay Round. Although New Zealand considered that there was no basis for either action, it recognized the constraints within which Canada was working, and had been more than prepared to find an accommodation with Canada in the context of the Round, although without success thus far. New Zealand would continue to pursue this matter through the processes available and, until a satisfactory outcome had been found, would continue to reserve its GATT rights.

The representative of the European Communities shared the concerns expressed by Australia. The CITT was an internal institution, and its conclusions did not have to be accepted. The Community remained convinced that Article XIX conditions had not been met in this case, and noted in particular that beef prices in Canada were at a satisfactory level.

The Council took note of the statements.

12. Japan - Restrictions on imports of certain agricultural items
— Follow-up on the Panel report (BISD 35S/163)

The representative of Australia, speaking under "Other Business", recalled that this matter had been raised on a number of earlier occasions by his delegation. Australia remained concerned that Japan had still not implemented the recommendations of the Panel report in respect of dairy products and starch. Although Japan had consistently indicated that Australia's concerns would be effectively dealt with in the context of the Uruguay Round negotiations, Australia had thus far not seen any adequate offer from Japan in this regard. Discussions were continuing, and Australia hoped that a better outcome would emerge soon. If not, Australia reserved its rights to initiate further formal dispute settlement processes on this matter.

The representative of Japan said that Japan had decided, despite enormous domestic difficulties, to tariffify its dairy products and starch import régime in accordance with the Uruguay Round agreement on agriculture. Japan believed that this would address the remaining issues concerning the implementation of the Panel report.

The representative of Chile joined Australia in urging Japan to take the measures necessary to comply with the Panel's recommendations. Japan had indicated previously that this would be done at the end of the Uruguay Round, although commitments undertaken by contracting parties in the past were not tied to the negotiations. Given that the Uruguay Round was now concluded, Chile once again urged Japan to bring itself into compliance with its commitments.

The Council took note of the statements.

13. EEC - Trade measures affecting the imports of whitefish (L/7413)

The representative of the United States, speaking under "Other Business", said that the European Community's experience in past dispute settlement cases appeared not to have mitigated its unilateral behaviour. Recently, fish exports destined for the French market had been considerably affected by restrictions, in particular by arbitrary, excessive and burdensome inspection requirements. These actions had been implemented without adequate warning and in contravention of the international obligations of France and the Community, and appeared to be a deliberate attempt by France to limit imports of fish and seafood products rather than a response to health or safety problems. The Community had subsequently notified contracting parties (L/7413) that it was unilaterally, and in the United States' view, illegally, restricting fish imports at prices below reference prices. The reportedly temporary nature of the restrictions was of small consolation to the United States. The United States also questioned the degree to which the Community's member States were free to pursue individual trade policies in light of these French actions.

The representative of New Zealand supported the views expressed by the United States, and called for an explanation for the potentially trade distorting measures. He urged an early return by the Community to normal quarantine arrangements.

The representative of Canada supported the position taken by the United States. He requested information on the various measures being taken, and on the decision process that had led to such measures.

The representative of Peru expressed concern at the introduction of reference prices for certain types of fish by the Community, which would affect Peru's exports of whitefish to that market. Peru too wished to have more information on these measures.

The representative of the European Communities indicated the Community's willingness to respond to any request for information from contracting parties. He said that the measures had been introduced as a result of an acute crisis situation involving whitefish imports into the Community, and had recently been notified to contracting parties. He reiterated that the measures were temporary and would remain in effect until 15 March.

The Council took note of the statements.

14. Application of Article XXXV to South Africa
— Withdrawal of invocation by Egypt

The representative of Egypt, speaking under "Other Business", informed the Council that his Government had decided to withdraw the invocation of the provisions of Article XXXV against South Africa. Egypt had taken a number of steps towards normalizing its relations with South Africa, in light of the new policies and the democratic developments in that country. Egypt believed that the lifting of trade sanctions would be beneficial to both countries and would help foster trade relations and intensify cooperation between them.

The representative of South Africa stated that the lifting of trade sanctions and the disinvocation of Article XXXV by Egypt was a historic event which would benefit both Egypt and South Africa, in addition to a large number of other countries. South Africa would reciprocate forthwith by extending

full treatment under the GATT to Egypt. He expressed his Government's hope that the three remaining contracting parties still applying Article XXXV against South Africa would disinvoke its application in the near future.

The Council took note of the statements.

15. United States - Sales of subsidized soyabean oil to China

The representative of Brazil, speaking under "Other Business", expressed concern that the United States would soon be exporting 25,000 tonnes of soyabean oil to China under its Export Enhancement Programme (EEP). This transaction would adversely affect Brazil and Argentina, which were traditional suppliers of soyabean oil to China. The EEP's stated objective of countering the European Community's subsidies had not been met in this particular case since the Community was not a major soyabean oil supplier to China. Between 1990 and 1992, Brazil had exported 501,100 tonnes of soyabean oil to China as compared to 30,900 tonnes by the Community. Neither was there a possible shortage of soyabean oil which would justify recourse to sales under the EEP. Brazil believed that this operation, which could only distort international trade, ran counter to the objectives of the Uruguay Round agreement on agriculture, and urged the United States to reconsider its action.

The representative of Argentina shared Brazil's concerns. China had been a traditional market for both Argentina and Brazil, which had accounted for 85 per cent of all soyabean oil imported by China in 1992. The Community had only a symbolic participation in that market, with its exports having been reduced from 22,000 tonnes in 1990 to between 4,000 and 5,000 tonnes in the 1991-1992 period, while the United States had had virtually no presence in that market in 1990 and 1991. Furthermore, vegetable oils originating in the Community were not eligible for export refunds. Yet, the United States had set annual export targets of 80,000 tonnes for the 1992-1994 period. The EEP's objective was to neutralize subsidized transactions by other countries, while, at the same time, not affecting the market share of non-subsidizing efficient exporters. These conditions did not appear to have been met in this particular case. It was unacceptable for the United States to subsidize exports of soyabean oil when the real technical and trade objective would be to neutralize subsidized exports of rapeseed oil, which competed with the United States. Another criteria for the use of the EEP, the development of markets, was equally unjustified in this case, especially following the successful conclusion of the Uruguay Round. A basic motivation for the use of the EEP had been that it would compensate for the lack of rules in the trade of these products. However, these rules were now part of the Uruguay Round agriculture agreement. Argentina called on the United States to take account of the concerns expressed and to correct the scope of its policy.

The representative of Australia supported the views expressed by Brazil and Argentina. Australia had raised its own concerns regarding the operation of the EEP on several previous occasions. There were two basic concerns that countries had regarding the operation of the EEP at the present time. First, that the United States would use the EEP more intensively during 1994 in order to dispose of stocks before the implementation of the Uruguay Round results, and, second, that following the implementation of the export subsidy reductions negotiated in the Uruguay Round, the United States would target particular markets and would extend its EEP operations into new markets. These prospects were of great concern, and apparently justifiably so in view of the actions now being contemplated with China.

The representative of Uruguay supported the position taken by Brazil and Argentina. The use of the EEP by the United States was in direct contravention of the disciplines it had agreed to on agriculture in the Uruguay Round.

The representative of the United States said that in October 1993, the United States had announced the opportunity for sales of 875,000 tonnes of vegetable oil under the EEP for 1994, including 80,000 tonnes of vegetable oil for China. Although exporters had been invited to bid for EEP subsidies for exports of 25,000 tonnes of vegetable oil to China, no bids had been accepted thus far. China was a significant importer of vegetable oil, with imports for 1993-1994 estimated at 1.6 million tonnes. The EEP allocation, therefore, would account for less than 2 per cent of its imports. While the Community's vegetable oil exports to China in 1990 and 1991 might have been small, its exports of rapeseed oil to China from July to December 1993 had increased to 120,000 tonnes, from 59,000 tonnes in the same period in 1992. The EEP continued to target subsidized competition, particularly from the Community, while at the same time respecting the traditional market export levels of non-subsidizing suppliers. As all were aware, and as had been demonstrated by the United States' dispute with the Community on oilseeds, the subsidies creating the problem in the case of vegetable oils were not always export subsidies. With regard to Argentina's statement, he said that the operation of the EEP had not prevented the growth of Argentina's vegetable oil exports, which had increased by 63 per cent since its inception, from 1.456 million tonnes in 1985-1986 to 2.378 million tonnes in 1992-1993.

The representative of Argentina said that the figures just read out by the United States did not appear to agree with those that his delegation had, a matter which could be resolved by comparing the sources. Argentina's main concern, however, was the diversion of world markets as between subsidizing and non-subsidizing countries. Operations under the EEP could not be justified at the present time, in the light of the rules agreed to on agriculture in the Uruguay Round.

The representative of the European Communities said that this matter had been raised under "Other Business" and should not be the focus of a lengthy and substantive debate. This being said, he would note that the subject under discussion was subsidized exports by the United States under the EEP, and not domestic subsidies in the Community, and that this was therefore not a "United States versus the Community" matter.

The Council took note of the statements.

16. Free-Trade Agreements between the Czech Republic, the Slovak Republic and Slovenia

The representative of the Czech Republic, speaking also on behalf of the Slovak Republic, under "Other Business", informed the Council of the signing recently of Free-Trade Agreements between the Czech Republic, the Slovak Republic and Slovenia. The Agreements were being applied provisionally since 1 January 1994, and would enter into force definitively once the respective ratification processes had been completed. The Agreements aimed at the progressive establishment of free-trade areas between the parties in the sense of Article XXIV. They would be established over a transitional period ending on 1 January 1996, when duties and other restrictive regulations on trade would be abolished on substantially all the trade between the parties. The Agreements also contained provisions dealing with, inter alia, state aid, competition, public procurement and intellectual property rights. Evolutionary clauses offered the possibility of extending the Agreements to areas not covered by them. The Agreements would be notified to contracting parties in the near future.

The Council took note of the statement.

17. Appointment of presiding officers of standing bodies

The Chairman, speaking under "Other Business", recalled that at the CONTRACTING PARTIES' Forty-Fourth Session, the Council Chairman had suggested that "in future, at the first Council meeting

each year, on the basis of a consensus which would have emerged from consultations, the Council Chairman should propose the names of the presiding officers of the Committee on Balance-of-Payments Restrictions, the Committee on Budget, Finance and Administration and the Committee on Tariff Concessions for the current year. This would not preclude the re-appointment of an incumbent" (SR.44/2). The CONTRACTING PARTIES had taken note of that suggestion. The proposal had called for prior consultations, open to all delegations and conducted so as to ensure transparency of the process.

At the Council meeting on 17 December 1993, the previous Chairman had announced that his successor would carry out such consultations. Having done so, he was in a position to announce that Mr. Peter Witt (Germany) had agreed to serve as Chairman of the Committee on Balance-of-Payments Restrictions, Mr. Pierre Gosselin (Canada) as Chairman of the Committee on Budget, Finance and Administration and Mrs. Lilia Bautista (Philippines) as Chairperson of the Committee on Tariff Concessions. He was pursuing consultations on the appointment of the Vice-Chairman of the Committee on Tariff Concessions, and would announce the results at the next Council meeting.

The Council took note of the statement and approved the appointments.

18. Trade Policy Review Mechanism - Programme of reviews for 1994
— Postponement of the review of Israel

The Chairman, speaking under "Other Business", informed the Council that Israel had requested a postponement until November of its trade policy review initially scheduled to be held on 21-22 March. Israel had indicated that its request was due both to the work resulting from the conclusion of the Uruguay Round and to other ongoing negotiations. In the light of this request, he would consult both with the delegation concerned as well as with the Secretariat with a view to rescheduling the review towards the end of the year.

The Council took note of this information.

19. Accession of Algeria
— Working Party Chairmanship

The Chairman, speaking under "Other Business", recalled that at its meeting in June 1987, the Council had established a Working Party to examine Algeria's request for accession, and had authorized him to designate its Chairman in consultation with representatives of contracting parties and with the representative of Algeria. He informed the Council that Mr. Sanchez Arnau (Argentina) had agreed to serve as Chairman of the Working Party.

The Council took note of this information.

20. Accession of Armenia
— Working Party Chairmanship

The Chairman, speaking under "Other Business", recalled that at its meeting in December 1993, the Council had established a Working Party to examine Armenia's request for accession, and had authorized him to designate its Chairman in consultation with representatives of contracting parties and with the representative of Armenia. He informed the Council that Mr. Kenyon (Australia) had agreed to serve as Chairman of the Working Party.

The Council took note of this information.

21. Romania - Renegotiation of Protocol of Accession
— Working Party Chairmanship

The Chairman, speaking under "Other Business", recalled that at its meeting in February 1992, the Council had established a Working Party on the Renegotiation of Romania's Protocol of Accession, and had authorized him to designate its Chairman in consultation with contracting parties. He informed the Council that Mr. de la Peña (Mexico) had agreed to serve as Chairman of the Working Party.

The Council took note of this information.