GENERAL AGREEMENT ON

TARIFFS AND TRADE

RESTRICTED

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Working Party on the Free-Trade Agreement between Canada and the United States

DRAFT REPORT

1. The Working Party was established by the Council on 12 April 1989 "to examine, in the light of the provisions of the General Agreement, the Canada-United States Free-Trade Agreement concluded on 2 January 1988 and which entered into force on 1 January 1989, and to report to the Council".

2. The Working Party met on 26-27 March, 11 June, 23 July, 3-4 October and 18 October 1991 under the chairmanship of Ambassador D. Hawes (Australia). It had available a communication from the delegations of Canada and the United States (L/6464 and Add.1), together with the text of the Agreement, as well as the replies to questions which had been asked by contracting parties (L/6739).

I. General statements

3. The representative of the United States recalled that the US-Canada Free-Trade Agreement (FTA) had been signed on 2 January 1988 and had entered into force on 1 January 1989. The Agreement established the world's largest, most comprehensive bilateral free-trade area, comprising bilateral trade in goods of US$174 billion in 1990, and additional trade in services that brought the total coverage to over US$200 billion. In the two years during which the Agreement had operated, the United States believed that it had fully lived up to the objectives announced by the

United States and Canada at the initiation of negotiations, i.e. to eliminate barriers to trade in goods and services; to facilitate conditions of fair competition; to significantly liberalize conditions for investment; to establish effective procedures to administer the Agreement and to resolve disputes, and to lay the foundation for further bilateral and multilateral co-operation. Implementation had proceeded smoothly, and traders and investors on both sides of the border had moved to take advantage of the new opportunities afforded by the progressive reduction and elimination of trade and investment barriers. The elimination of tariffs and most other trade barriers between the two parties would not only promote their own economic growth and efficiency but would also promote international trade liberalization. The United States saw many aspects of this Agreement as a model for further trade liberalization in multilateral, as well as other bilateral, fora.

4. The Agreement covered all categories of traded goods and exempted very few articles from its trade-liberalizing provisions. The United States believed that the Agreement's consistency with GATT provisions had been convincingly demonstrated during the period of its operation. In accordance with Article XXIV:4 of the General Agreement, the Free-Trade Agreement facilitated trade between the constituent countries and did not raise barriers to the trade of other contracting parties. Further, in accordance with Article XXIV:5(b), the post-Agreement duties and other regulations of commerce applicable to the trade of contracting parties were not higher or more restrictive than they had been prior to formation of the Free-Trade Agreement. The Agreement provided that all dutiable goods would have their tariffs eliminated according to three primary schedules, beginning with the date of implementation, i.e. immediately, in five equal annual reductions through 1 January 1993, and in ten equal annual reductions through 1 January 1998. Accelerated liberalization and elimination of these duties had also been provided for. The initial elimination of duties covering approximately US$3 billion in trade value had taken place on schedule on the date of implementation, and the other tariff reductions contemplated for 1 January 1989, 1990 and 1991 had been accomplished on schedule. Subsequently, accelerated elimination of tariffs

had been agreed in May 1990 on an additional US$6 billion in trade value, and both the United States and Canada were close to final agreement on further tariff reduction accelerations covering US$2 billion in trade, to be implemented in July 1991. For most of the accelerated items, the duty had been eliminated immediately.

5. In addition, the Agreement provided for the liberalization of non-tariff barriers, reaffirmed the GATT principle of national treatment, and expanded the size of the government procurement markets that would be open to suppliers of the other country. In liberalizations beyond the current scope of the GATT, the Agreement committed the parties not to discriminate against covered service providers of the other party when making future laws or regulations; facilitated legitimate business travel; provided national treatment for the establishment, acquisition, sale, conduct and operation of businesses; and banned the imposition of most investment performance requirements. The Agreement called for the elimination of duties and other restrictive regulations of commerce on substantially all trade between the United States and Canada. This elimination was underway and on schedule according to a fixed plan, and would be completed within a reasonable period of time. No new barriers had been raised as a result of the Agreement. Indeed, both Canada and the United States were actively negotiating further reductions in market access barriers to third countries in the context of the Uruguay Round. In some areas, the Agreement had gone beyond GATT-mandated liberalizations. It provided for enhanced trade dispute settlement procedures. The United States did not view these enhancements as interfering with GATT obligations, but as offering an early opportunity to resolve a dispute and perhaps to avoid further dispute under GATT auspices. The Agreement also covered trade in services and investment regulations, areas where GATT was only now taking its first small steps. Thus, in the United States' view, the requirements of GATT Article XXIV had been met, and exceeded.

6. The representative of Canada said that this Agreement was the most comprehensive free-trade agreement under Article XXIV to be examined by a GATT working party. It provided for the elimination of all tariffs over a

ten-year period on all traded products, and for a substantial reduction in non-tariff barriers. It also liberalized trade in areas not covered by the General Agreement, including services, business travel and investment. The Free-Trade Agreement conformed fully to the provisions of Article XXIV. It built on and went beyond the obligations under the General Agreement. The Preamble of the Free-Trade Agreement recognized these obligations by stating that the objective of the signatories was "to build on their mutual rights and obligations under the GATT and other bilateral and multilateral instruments of co-operation". Both parties to the Free-Trade Agreement had reaffirmed their existing GATT obligations in Article 104 of the Free-Trade Agreement, and many of the provisions of the General Agreement were incorporated in the relevant chapters of the Free-Trade Agreement. The FTA formed an integral part of Canada's trade policy which had been established in conformity with the principles of the General Agreement. The major objective of the Free-Trade Agreement was the fostering of a sustained and mutually beneficial expansion of trade between Canada and the United States. Its purpose was not to raise barriers to imports from third countries, nor was there anything in the Agreement which constrained Canada from pursuing further trade liberalization on a multilateral basis. Canada's active participation in the current Uruguay Round negotiations was testimony to that fact. The trade expansion generated by this Agreement would strengthen Canada's economy and its capacity to contribute to the growth of the world economy.

7. Canada's objectives in the Free-Trade Agreement were as follows: to create an expanded and secure market for Canadian goods and services; to adopt clear and mutually advantageous rules governing the Free-Trade Agreement parties' bilateral trade; to ensure a predictable commercial environment for business planning and investment; to reduce government-created trade distortions while preserving flexibility to safeguard public welfare; to build on mutual rights and obligations under the GATT and other multilateral instruments of co-operation; to contribute to the harmonious development and expansion of world trade and provide a catalyst to broader international co-operation. Briefly summarized, the Free-Trade Agreement mandated the following measures: elimination of all

tariffs by 1998, with no exceptions; liberalization and elimination of quantitative restrictions and other non-tariff barriers; an endeavour to make standards more compatible; prohibition on the use of export barriers on bilateral trade, with limited exceptions; establishment of provisions for emergency safeguard actions; further liberalization of government procurement, building on the GATT Code; establishment of disciplines in the areas of services and investment; reduction of barriers to trade in financial services; establishment of a general dispute settlement mechanism for matters covered by the Agreement; and creation of a binding dispute settlement procedure for anti-dumping and countervailing duty cases. To facilitate the implementation and further the objectives of the Agreement, a number of bi-national technical groups had been created in the areas of agricultural and fishery products, temporary entry of business people, customs matters, tourism, and services. In addition, there were specific provisions for further negotiations on anti-dumping, subsidies and countervailing duties, and on government procurement. The Free-Trade Agreement also provided for additional negotiations in the areas of technical standards and services. The Agreement's dispute settlement procedures provided for the joint management of the Agreement and were designed to avoid or settle disputes in an effective and expeditious manner. They built on and supplemented the GATT and left discretion to the complaining party to decide on the forum to address disputes arising under both the Free-Trade Agreement and the GATT. Chapter 18 of the Free-Trade Agreement set out the general procedures for notification, consultation and dispute resolution in any area except financial services cases and anti-dumping and countervailing duty cases. To date, two disputes had been resolved under Chapter 18 on the basis of panel recommendations. Chapter 19 established procedures for review by a bi-national panel of anti-dumping and countervailing rulings under each country's existing trade remedy laws. Fifteen panels had been requested to date and the process had been completed in all but five of the cases. Chapter 17 established special procedures for addressing disputes in the area of financial services. To date, no disputes had been pursued under Chapter 17. In conclusion, he said that there was a close linkage between the GATT and the Free-Trade Agreement. The Free-Trade Agreement incorporated the GATT, and

built upon it by going beyond the provisions of the General Agreement to include disciplines on services and investment, which were currently not covered under the General Agreement.

8. The representative of a group of countries said that the Free-Trade Agreement was a major event for the international trading system, particularly in view of the fact that its members considered it to be trade-creating and complementary to the process of liberalization of multilateral trade. Politically, his authorities supported this Free-Trade Agreement initiative which might indeed be broadened to include other partners. His delegation noted that the United States and Canada supported the basic approach underlying preferential agreements concluded under Article XXIV of the General Agreement, and hence explicitly or implicitly shared the views advanced in the past by other contracting parties in this regard. This was a far-reaching regional agreement which also covered subjects under negotiation in the Uruguay Round. On some of these subjects negotiations were still underway in the Free-Trade Agreement framework, and his authorities hoped that in their negotiating efforts, the United States and Canada would give priority to the multilateral negotiations in the Uruguay Round. He said that a free-trade agreement on this scale could not fail to have effects on the trade flows of the trading partners of the United States and Canada, of which this group of countries was the foremost.

9. Another member of the Working Party recalled his delegation's ongoing interest in this Free-Trade Agreement which was likely to have significant impact not only on the trade of the Free-Trade Agreement parties but also on third parties' trade and in fact on international trade and the multilateral free-trade system. Thus, the compatibility of this Free-Trade Agreement with the General Agreement, inter alia, with the provisions of Article XXIV, should be thoroughly examined. The Preamble to the Free-Trade Agreement made reference to its contribution to the "harmonious development and expansion of world trade", and the Working Party would be examining that aspect. The Agreement covered a number of areas which might

go beyond the existing framework of the General Agreement but which were under discussion in the Uruguay Round.

10. Another member of the Working Party said that the significance of this Free-Trade Agreement was heightened by the fact that it coincided with a time when the commitment to multilateralism in trade was being tested. His country was particularly conscious of the need to build a more robust, comprehensive and enduring multilateral trading system, and of the possible threat to that objective should the Uruguay Round fail to address adequately the wide range of issues before it. The way in which the future of this Free-Trade Agreement - which involved two large world economies - was perceived, and therefore how it was allowed to develop, was likely to have substantial implications for the GATT and for the future direction of the world trading system. His country had already been down a comparable track with its free-trade agreement with another country. That Agreement was arguably the most comprehensive of its kind in the world to date, and continued to be developed beyond the concept of a free-trade area. At the same time, both parties to that Agreement had substantially reduced tariff and non-tariff measures applying to trade with other contracting parties. This reflected efficiency gains that could in part be attributed to increased exposure to competition arising from the trading arrangement between the two countries. His authorities were concerned that the Free-Trade Agreement being examined by this Working Party did not simply become a new preferential zone between two large trading nations. It should bring greater efficiencies and stronger economic growth to both countries, and it should also offer increased, not diminished, trading opportunities for his country and others outside the zone. They trusted that the parties to the Free-Trade Agreement would continue to liberalize their trade régime with the rest of the world and would not seek just to consolidate their economies on the basis of their closer bilateral relationship. It was also important that the Free-Trade Agreement, in keeping with the letter and spirit of GATT Article XXIV, further develop the objective of minimizing exceptions to the Agreement.

11. The representative of another group of countries said that these countries had a long-lasting and positive experience of economic integration based on free-trade agreements, which had shown that such integration could contribute positively to economic growth through an increase in gross domestic product when border measures were dismantled and through the dynamic effects of increased efficiency and competition. They welcomed the ambition of the Free-Trade Agreement parties to arrive at an Agreement which was in line with the provisions of the General Agreement. While the traditional analysis of such an agreement focused mostly on its trade-creating and trade-diverting effects, it might be more useful, given the fact that trade between the two parties had been largely duty-free prior to the establishment of the Free-Trade Agreement, to concentrate on how the Free-Trade Agreement would coexist with multilateral trade rules. This Agreement was perhaps the most ambitious yet notified to the GATT, and the legal and trade policy considerations involved were of great interest not only to affected third parties but to all countries interested in seeking a harmonious evolution of regional economic integration in full compliance with the multilateral trading system.

12. Another member of the Working Party said that to the extent that customs unions and free-trade agreements met the criteria of the General Agreement they were favourable to the multilateral trade system. Any possible negative effects on the trade of third parties resulting from such arrangements could be attenuated through GATT multilateral negotiations and in particular in the context of the Uruguay Round, to which his country attached great importance. This Working Party was charged with examining whether the Free-Trade Agreement was consistent with GATT criteria, particularly those set forth in Article XXIV. Because of the economic and political importance of this free-trade agreement, an in-depth analysis of it was necessary.

13. Another member of the Working Party said that this Agreement was of major political as well as economic importance. As the Agreement encompassed such a huge bilateral trade relationship, it was of particular importance to the GATT and represented a significant shift in the trade

policy of the United States toward a two-track policy - the multilateral and the bilateral. His country noted that the Free-Trade Agreement provided for dispute settlement outside of the GATT, where the FTA parties chose to have such recourse in disputes between them. They were encouraged that both of the Free-Trade Agreement parties were strong supporters of the Uruguay Round and that with the right political push, the FTA could develop into an even more comprehensive agreement in future. Free-trade agreements could pave the way for m.f.n.-based liberalization depending on a number of considerations, including the particular structure of the agreement, and they would want to examine closely this aspect of the Free-Trade Agreement in terms of Article XXIV:8(b). His delegation anticipated that the Working Party would focus on long-debated concepts in Article XXIV:8(b) - the requirement regarding the elimination of duties and other restrictive regulations of commerce on substantially all the trade between the two parties - with a particular focus on agriculture. His country had particular concerns regarding livestock, which it would pursue in the latter context. The Free-Trade Agreement appeared to deal quite comprehensively with agricultural tariffs and there were some novel features, such as the linkage between internal support and access in determining removal of import permits for grain products, or the special horticultural snapback provision of twenty years' duration, which merited careful consideration. However, it was clear that the two parties had not been able to resolve the most fundamental problems in agriculture. This might complicate the essentially legal interpretations which the Working Party would have to make. His country's approach to the examination of this Free-Trade Agreement was very positive. Such a complex and politically sensitive Agreement was a significant political achievement.

14. Another member of the Working Party said that given the economic importance of the parties to the Free-Trade Agreement and the implications for world trade and the GATT multilateral trading system, this Agreement was an important one and merited careful examination.

15. Another member of the Working Party said that drawing on its own experience as a party to a free-trade arrangement, his country believed

that such agreements furthered trade liberalization and adherence to GATT rules. They therefore welcomed this Free-Trade Agreement.

16. Another member of the Working Party said that his delegation believed that this Agreement would no doubt promote trade and would probably be the foundation of a much more ambitious project in the long term, in which his country had an interest.

17. A number of members expressed their concerns about the delay in the examination of the present free-trade agreement. The Working Party established by the Council in February 1989 had held its first meeting more than two years after the Agreement had entered into force on 1 January 1989. They hoped that the delay in the work of this Working Party would not be a precedent for the work of future working parties on other free-trade areas.

II. Examinations of the provisions of the Free-Trade Agreement

18. The following paragraphs set out the main points made in the discussion of the individual sections of the FTA. Detailed summaries of the discussion which took place at the first two meetings can be found in Spec(91)18 and Corr.1; and Spec(91)61. L/6739 reproduces written replies by the parties to the Free-Trade Agreement to questions by contracting parties. Spec(91)18/Add.1 reproduces replies to certain supplementary questions.

A. Objectives and Scope

19. Regarding the impact of the FTA on the rights and obligations of Canada and of the United States under the GATT with respect to third countries or each other, one member noted that the Agreement took up a number of commitments that had been entered into multilaterally under the General Agreement. However, this technique of double legal commitment ran the risk of future dichotomies regarding the interpretation of the General

Agreement and the FTA. The precedence accorded to the rights and obligations under the FTA over those under the GATT should not impair the interests of third parties. To another member on behalf of a group of countries, it was not clear how the parties could maintain that the FTA did not affect the rights and obligations of either parties under the GATT with regard to third parties or each other when they also affirmed that the FTA prevailed in the event of an inconsistency between the provisions of the FTA and the GATT. The representative of Canada emphasized that the Agreement prevailed between the two parties to the extent of any inconsistency between the FTA and GATT provisions, except as otherwise provided in the FTA, and that the FTA built on the GATT and went beyond the GATT by establishing new disciplines in a number of areas.

20. Several members of the Working Party noted that a fundamental question in the consideration of the precedence of the FTA or GATT provisions related to dispute settlement between the parties to the FTA. One member, on behalf of a group of countries, asked whether the precedence accorded to the rules of the FTA over GATT rules also extended to dispute settlement, and asked whether the parties to the FTA had an obligation to pursue bilateral trade conflicts under the FTA rather than multilaterally. The representative of a group of countries said that the parties could settle their disputes using either the bilateral or multilateral process but that they seemed to have established a hierarchy in favour of the bilateral process under the FTA. Another member asked whether Article 104.2 applied strictly to dispute settlement cases.

21. Some members wondered what would happen if the conclusions of the bilateral dispute settlement proceedings under the FTA and those reached under the multilateral dispute settlement proceedings were different or even contradictory, and whether in that event, the conclusion reached in terms of the FTA would prevail so far as parties to the FTA were concerned. The representative of the United States stated that the procedures followed presently by the parties to the FTA were consistent with their obligations under the GATT. Any question relating to a possible situation in the future could not be answered at this time.

22. Several members expressed concerns about the implications for third parties in a dispute between the United States and Canada raised under the GATT if a second process were allowed to impinge upon the results of the GATT dispute settlement process and possibly prevent the implementation of these results. The representative of a group of countries said that while a dispute settlement process under GATT was usually initiated by a country which was specifically affected by a measure taken by another party, any clarification of rights and obligations through such a process was of interest to all contracting parties insofar as the interpretation of multilateral rights and obligations was concerned. Several members said that the recourse to a bilateral dispute settlement mechanism could create a problem of consideration of the results of the multilateral process and could lead to delays in the adoption of panel reports by CONTRACTING PARTIES, as recent experience had shown. There was also a danger that the results would never be adopted because of contradictory findings. One member noted that according to the representative of the United States, if similar issues were being addressed in dispute settlement under the GATT and the FTA, it was reasonable for either party to consider how the results of the FTA dispute settlement proceedings might bear upon the execution of its responsibilities under the GATT. However, in his delegation's view such obstruction of the proper functioning of the multilateral dispute settlement process was not in accordance with the obligations of parties under the GATT.

23. The representative of Canada said that it was important to note that this free-trade agreement covered the largest bilateral trading relationship in the world; the volume of trade subject to dispute was only a small percentage of the volume of trade covered. Both Canada and the United States had continued to have recourse to GATT dispute settlement procedures, and there was no obligation in the FTA to use one system or the other. Dispute settlement under the FTA would apply only to matters raised by either party under the FTA. In areas where the FTA incorporated GATT obligations, the parties had a choice of FTA or GATT dispute settlement measures. The complainant party decided at the outset the procedures to be followed. In a recent dispute settlement case between the two parties

Canada had opted to pursue an aspect of that case under the GATT. On issues covered solely under the FTA, the parties could use the FTA dispute settlement procedures. In any event, other contracting parties fully retain their GATT rights.

24. Several members referred to the divergence in the way in which the two parties perceived their rights and obligations with regard to third countries or each other in a dispute settlement process under the GATT, which had become apparent in the recent discussions on the adoption of a panel report. The representative of a group of countries noted that Canada had a fairly straightforward understanding of its rights and obligations under the multilateral system, whereas the United States believed that if a dispute were pursued both in the bilateral and multilateral framework, it was logical that the instances of the FTA dispute settlement mechanism double-check the results of dispute settlement proceedings under the GATT. He noted the statement of the parties that the FTA in no way changed the rights or obligations of the FTA parties towards third parties under the General Agreement, and that should either of the FTA parties decide to have recourse to GATT dispute settlement procedures, the latter procedures would apply to the dispute. However, there was a lack of coherence and a contradiction between this statement and the fact that in a recent dispute involving the two FTA parties, one of them had blocked adoption of the GATT Panel report in the Council, arguing that a bi-national panel established under the FTA was also examining the matter. Another member asked what would have been the reaction of this party had the challenge in the bi-national forum produced a different conclusion from that of the GATT panel report.

25. One member said that the negotiations in the Uruguay Round aimed to strengthen and to give further predictability to the dispute settlement procedures, including the procedures for adoption of panel reports. He asked the parties to give their views on the relationship between the provisions of the FTA and the dispute settlement system as it would emerge from these negotiations. The representative of Canada said that his delegation also sought to strengthen the dispute settlement procedures in

the Uruguay Round. The representative of the United States said that contracting parties would look at the dispute settlement procedures that would be agreed in the Uruguay Round; in future, the contracting parties may also have the need to review how the process worked in other respects and, for instance, to examine the relationship between a decision by the European Court of Justice and the dispute settlement process in GATT. He emphasized that the rights and obligations of the FTA parties under the GATT remained unchanged. If any third parties felt that either party to the FTA had failed to observe its obligations and that their action nullified or impaired its rights under GATT, it could initiate GATT dispute settlement procedures.

26. One member asked what the rationale was for having a distinction as regards the precedence of the FTA or other agreements in different areas under the FTA. For example, regarding the energy sector, the FTA provided that in the event of an inconsistency, the International Energy Program (IEP) would prevail over the FTA (Article 908); however, FTA Article 104:2 provided for the exact opposite. The representative of Canada said that Article 104 of the FTA referred to all rights and obligations under the Agreement between the two parties and also reaffirmed all existing GATT rights at the time the parties had entered into the Agreement. The FTA went beyond existing GATT rules to liberalize and establish new disciplines. To the extent that the FTA further liberalized and established new disciplines beyond the GATT, the FTA would prevail. Regarding Article 104:2 and its relationship to the International Energy Program (IEP), Article 104:2 included the phrase "except as otherwise provided in this Agreement"; this was the case with Article 908. The FTA provision relating to the IEP dealt with a specific obligation assumed by both parties and could prove to have a higher level of discipline in specific circumstances than would the new obligations under the FTA. The IEP provisions related strictly to oil and to specific situations of world-wide shortage of supply.

27. Regarding the incorporation of the Uruguay Round results into the FTA, one member said that in his country's view, those results should be

reflected in the bilateral relationship, not necessarily through a redrafting of the FTA, but at least in those areas where there might be inconsistencies with the FTA. The representative of Canada said that where Canada and the United States agreed to the Uruguay Round results, these would apply between the two parties and to all other contracting parties. To the extent that the Uruguay Round results did not provide for trade liberalization to the same level as the FTA, the latter would continue to prevail as to the difference. To the extent that the Uruguay Round results exceeded the trade liberalization in the FTA, the Uruguay Round results agreed to by Canada and the United States would prevail. In the areas of anti-dumping, countervail and services, the FTA parties had indicated their intention to await the results of the Uruguay Round. Only in government procurement was there an explicit commitment in the FTA to incorporate Uruguay Round results. In agriculture and intellectual property rights, the FTA parties had agreed to work together to achieve specific trade liberalizing goals. Outside of these areas, there was no specific requirement to incorporate the results of the Uruguay Round into the FTA, but as contracting parties, the parties to the FTA would assume the higher level of obligations they had undertaken. When Canada and the United States implemented any results of the Uruguay Round they would consider how these results would apply with respect to the FTA.

28. One member asked what were the rules and obligations in the FTA which exceeded existing liberalization in GATT or which would arise as a result of the Uruguay Round. While this might be a conceptual point it was important in that there were no objective criteria to measure the degree of trade liberalization and that any decision on this matter would be based on arbitrary judgement of the parties. As a result, the GATT system might end up having different sets of rules in effect for different countries. Another member expressed doubts whether it would be possible to treat the rules and trade liberalization stemming from the Uruguay Round in a uni-dimensional manner while comparing these with the provisions of the FTA; in his country's view the whole issue of the consistency, or lack of it, between the provisions of the FTA and the Uruguay Round results had to be viewed in a multi-dimensional context. Another member believed that the

issue of the incorporation of the Uruguay Round results into the FTA raised the more fundamental question of whether ultimately the multilateral or the bilateral obligations would prevail. The representative of the United States said that their assessment of the degree of liberalization could be made once the results of Uruguay Round negotiations were available. Its subjectivity or objectivity would depend on the nature of the measure.

29. One member referred to the draft text of an agreement on rules of origin which proposed a work programme on harmonization of rules of origin as a result of the Uruguay Round (MTN.GNG/RM/W/2). She asked how the parties would measure the scope of liberalization of respective rules when they came to consider the incorporation of internationally harmonized rules into the FTA. The representative of the United States said that the harmonization of rules of origin called for in the draft text applied to the rules used in non-preferential commercial policy instruments for general trading purposes and excluded those used for the operation of the preferential trade arrangements such as those in the FTA.

30. Another member asked whether, if a new agreement on safeguards emerging from the Uruguay Round clearly prohibited any conclusion of VRAs in future, Canada and the United States would consider VRAs to be prohibited between them even if the provisions of the FTA did not provide such prohibition. The representative of Canada said that, in terms of Article 104 of the Agreement, parties affirmed their rights and obligations under multilateral and bilateral agreements as they existed at the time of entry into force of the FTA. He reiterated that when his country and the United States implemented any results of the Uruguay Round they would also consider how these results would apply with respect to the FTA.

31. Some members noted that the specific obligations incurred by the two parties in terms of Article 103 of the FTA appeared to be more direct than the obligations of Article XXIV:12 to ensure compliance at the sub-federal levels of government in respect of international trade matters. The representative of a group of countries went on to say that, in one framework for constitutional reasons it was not possible for the parties to

ensure respect of trade matters at sub-federal level to the same extent as it seemed to be possible under a bilateral agreement. He wondered whether there was a difference in the constitutional status of bilateral agreements compared to multilateral agreements which created an impediment to undertaking more stringent commitments at the sub-federal level under multilateral agreements. He also asked how arrangements coming out of the Uruguay Round in this respect could be applied to the relevant provisions of the FTA. The representative of Canada said that regarding this matter, the two parties agreed that there was no difference between the constitutional status of federal obligations of bilateral and multilateral agreements with respect to the compliance of sub-federal governments. Significant progress had already been made in the Negotiating Group on GATT Articles in addressing the issue of observance of GATT provisions at sub-national levels of government. The parties to the FTA envisaged that these emerging principles would also apply in other areas of the Uruguay Round, such as services, and technical barriers to trade. They anticipated that whatever was agreed in the Uruguay Round in this respect would apply to Canada and the United States as well as to all other contracting parties. As to the FTA, such application would have to be further discussed between the two parties, once all the details were known. The representative of the United States said that Article 103 did not alter the federal jurisdiction on international trade, regardless of how the wording was formulated in the two provisions. The draft text on Article XXIV:12 negotiated in the Uruguay Round provided further detailed provisions on the relationship between federal and sub-federal governments in international trade matters. The representative of a group of countries asked whether the terms used in the FTA ("shall ensure that all necessary measures are taken") would also be acceptable to the two parties in the context of the negotiations on Article XXIV:12 in the Uruguay Round. The representatives of Canada and the United States explained that the language in the two provisions served two different purposes: Article 103 of the FTA dealt with the specific obligations related to the FTA, whereas Article XXIV:12 of GATT related to the rights and obligations of contracting parties to GATT. The difference in the formulation of the relevant provisions in the

FTA would not in any way alter the obligations of parties to the Agreement under the GATT in this respect.

32. Regarding the issue of trade creation and trade diversion, two members noted the statement of the parties that the FTA would result in long-term trade creation both bilaterally and multilaterally. They asked the parties to show reasons or data supporting such argument, including whether trade with third countries had, in fact, increased over the past two years. The representative of the United States said that the trade situation at issue had been somewhat mixed, given that a two-year period was rather short on which to base any conclusions, and particularly given the impact of the cyclical trends in the economies of the parties during the period 1988-1990. Since the FTA's entry into force, the rate of growth of United States exports to Canada had declined, while to other trading partners it had increased. The rate of growth of United States imports from most developed countries had decreased, particularly with regard to Canada, and had increased with regard to several groupings of developing countries. Regarding the trade turnover in bilateral trade between the parties - the sum of exports plus imports - the overall growth in United States trade with Canada had been less in 1988-1990 than the growth in total trade with the rest of the world; the percentages were 14.5 per cent and 16.2 per cent, respectively. From 1989-1990, the percentage share of United States imports from Canada had declined, compared to imports from a number of other trading partners, particularly with regard to developing countries and newly industrializing countries. The representative of Canada said that Canada's total trade had continued to grow in the two-year period since the entry into force of the FTA compared to the two years prior to the FTA; trade with the United States had grown more slowly than with the rest of the world. Imports from the United States into Canada had increased marginally over earlier years and had remained stable in 1990 compared to 1989, whereas imports from the rest of the world had grown more rapidly.

33. The representative of Canada also stressed that the benefits from a free-trade agreement in terms of world growth came from the gains in

incomes and efficiency in resource allocation that arose from trade liberalization between two trading partners. The parties to the FTA were only three-tenths of the way into the Agreement's implementation, and many economic adjustments that were expected to occur were only just underway. Consequently, a judgement based on only a two-year period was probably premature. However, econometric studies made prior to the Free-Trade Agreement had predicted that real incomes in Canada would increase between 2.5 per cent to 3.5 per cent, efficiency gains would be significant, and consumers would benefit through lower prices. The models had also suggested that due to the income growth, imports from the rest of the world would increase, not decrease.

34. The representative of a group of countries said that if the FTA was consistent with Article XXIV, it should have trade-creating effects for third parties. Several members suggested that in a year's time or so, the statistics on trade diversion and trade creation cited by the FTA parties should be examined again.

B. Rules of Origin for goods

35. The parties to the FTA recognized that the purpose of rules of origin for goods in a free-trade agreement was solely to determine whether a product was eligible to benefit from preferential treatment under the agreement.

36. One member, on behalf of a group of countries, said that the criterion stipulated in Article 301:3(c) of the FTA regarding circumvention of the rules of origin should be more clear. Another member had doubts as to the neutrality of the clause "that the sole object was to circumvent" in the FTA. However, since the parties to the FTA had affirmed that this clause was to be interpreted narrowly, her country would check on a case-by-case basis that the operation of this clause did not undermine her country's interests, and would revert to it in future if warranted.

37. The same member also said that, an increase in the percentage or frequent modification of rules of origin could have adverse effects on the trade of third parties and could give rise to disputes. In operating the provisions of the FTA on rules of origin, parties should bear in mind the provisions of Article XXIV.4 and Article XXIV.5(b), which clearly stipulated that barriers to the trade of other contracting parties with free-trade areas should not be raised and that any new regulations of commerce shall not be more restrictive than those existing prior to the formation of free trade areas. The compatibility of the rules of origin in the FTA with GATT should be examined in the light of these criteria. The representative of Canada said that the discussion of the question of whether rules of origin were one of "other regulations of commerce" in terms of Article XXIV:5(b) had not led to a solution in previous working parties on free trade agreements. Rules of origin for the FTA would operate so as not to have adverse effects on the trade of third parties. It was important to note that the provisions on rules of origin in the FTA affected only the bilateral trade between the parties. The same questioner, said that even if that were the case, it should be noted that rules of origin in the context of the FTA had to be operated in such a manner as not to cause adverse effects on the trade of third parties, as provided in Article XXIV.

38. In response to one member on behalf of a group of countries, the representative of the United States said that the FTA parties had not yet undertaken an analysis of the need to adjust the provisions on rules of origin in the Agreement to take into account the outcome of the Uruguay Round discussions on rules of origin.

C. Border measures

39. Some members of the Working Party expressed concerns regarding possible adverse effects of the elimination of tariffs between the two parties on the tariff benefits granted by Canada and the United States to developing countries. The representative of the United States said that in

his delegation's view, preferential trading arrangements, if they met the requirements of Article XXIV, could be a positive, complementary force for trade liberalization supportive of the multilateral trading system. It could not be suggested that existence of preferential arrangements such as the Generalized System of Preferences (GSP) should serve as an impediment to further liberalization by contracting parties, either in a bilateral or multilateral context. One member said that this argument rested on the premise that the free-trade agreement under examination liberalized trade whereas the present Working Party had not yet arrived at such a conclusion. A certain increase in bilateral trade at the cost of a reduction in trade under preferential arrangements could not be termed liberalization. The trade created by the Agreement should be in addition to already existing trade flows under preferential arrangements. Another member suggested that where the erosion of the GSP might exist as a result of autonomous measures between the parties to the FTA, a trade-creative step might be to enhance or strengthen the GSP to maintain the balance that existed prior to the free-trade agreement.

40. With regard to the customs user fee maintained by the United States, one member asked whether the parties to the FTA considered that Article XXIV was necessary to justify the United States waiver with respect to imports from Canada (Article 403.3) and whether in the absence of Article XXIV the United States would be in breach of the obligation of non-discrimination under Article I of the General Agreement. The representative of the United States said that the national legislation had been amended to bring the customs user fee into conformity with GATT. By virtue of Article XXIV, the consistency of the waiver with Article I was a moot point. The fee from which Canadian trade was exempted was collected from other countries. In reply to another member who wondered under which provisions of Article XXIV the United States justified the waiver granted to Canada under the FTA, the representative of the United States said that the customs user fee was an "other regulation of commerce" covered under Article XXIV, paragraph 5(b). The same questioner stated that Article XXIV, paragraph 5(b) did not stipulate that one FTA party could waive the application of "other regulations of commerce", such as a Customs

User fee, with respect to the other party. In response to a suggestion by one other member that the customs user fee should be more appropriately considered as "other restrictive regulations of commerce" that applied between the two FTA parties in terms of Article XXIV:8(b), the representative of the United States said that the customs user fee could not be qualified as "restrictive regulation of commerce" in the way it was presently applied by his country.

41. One member on behalf of a group of countries had doubts whether the United States had brought the customs user fee into conformity with GATT. He also questioned how the 32 per cent drop in the collection of customs user fees in the first six months of fiscal year 1991 could be attributed to the exemption of fees on imports from Canada. In order to demonstrate whether other countries were bearing a disproportionate share of the burden, the rate of decrease in the fees collected had to be compared to the percentage share of United States imports from Canada in the total imports over the same period. The representative of a group of countries said that in order to appreciate whether the 32 per cent drop in the collection of fees effectively related to the bilateral trade, the calculation had to take into account the details of the variation in the rate of fees charged on different imports. He saw a need for detailed statistical data in order to assess the impact of customs user fee on trade of other parties.

42. With regard to drawback (Article 404), some members considered that the suppression of the drawback scheme might create a situation, in the language of Article XXIV, more restrictive than prior to the FTA. Also this could create an unfavourable economic situation for those benefiting from the scheme. The representative of Canada said that a more fundamental question raised in this matter was whether the intent of Article XXIV was that any party entering into a free-trade area agreement automatically bound itself never to increase m.f.n rate of duty, the application of which had been suspended or subject to exoneration in some way. One member said that this question was not necessarily related to whether or not the customs duties had been bound. Changing the rules mid-stream could cause

trade diversion. In response to clarification sought by one member, the representative of Canada said that the parties to the FTA had not extended the system of drawback for either general or specific products, and that there were no discussions at the present time towards that end.

43. Regarding quantitative restrictions, the representative of a group of countries asked whether Canada had eliminated its embargo on used aircraft as of 1 January 1989, in respect of third parties as well as the United States (Annex 407.5). The representative of Canada said that although the restriction on imports of civil aircraft remained on the books for imports from countries other than the United States, as a practical matter it had not, for many years, been applied with restrictive effect. Canada was meeting its commitments under the Civil Aircraft Agreement.

44. As regards export measures for short supply or conservation reasons, one member said that Article 409.1(a) of the FTA stipulated that either party may maintain or introduce such measures with respect to the exports of the other party, provided that export licences were issued up to the share traditionally supplied to the other party. While the conditions set out in this provision did not necessarily allow the party maintaining the measure to exclude the other party from the export licence scheme, a possible selective application of the scheme to third parties would not be in conformity with Article XX of GATT which provided for non-discriminatory application of such measures. The representative of the United States said that Article 409.1(a) spelled out the conditions under which, should there be a need, export measures would operate. It did not establish a basis for the exemption of the other FTA partner in respect of these measures. Article 401.1(a) recognized that export restrictions imposed by a party in the context of a general short supply situation might affect the other party to the FTA. Its provisions were designed so as to ensure that the other FTA party was granted a treatment no less favourable than third parties. Furthermore, establishment or maintenance of export licensing scheme for short supply or conservation purposes was not mandatory in the Agreement.

45. The same member said that if a party to a free trade agreement invoked Article XX to justify an export licensing scheme for short supply or conservation purposes, it should apply such a measure in a non-discriminatory manner regardless of the fact that restricted goods were also supplied to the other parties of the free-trade agreement. Article XXIV:8(b) did not allow parties to a free trade agreement to exempt other parties from the measures taken under the exceptions provided in that article. Such measures could not be considered "other restrictive regulations of commerce" in terms of Article XXIV:8(b). The representative of Canada said that under Article XXIV:8(b) of the GATT, restrictions meeting the exceptions of Article XX could be maintained in a free-trade agreement. Export control measures were included in "other restrictive regulations of commerce" in this article. Article 409.1(a) of the FTA merely limited the scope of the application of exceptions under Article XX by the party maintaining the restriction. Article XXIV.8(b) encouraged the elimination of duties and other restrictive regulations of commerce except as permitted under the exceptions specified in that article. It did not preclude the parties to a free-trade agreement from undertaking elimination of restrictions vis-à-vis other party to the agreement.

D. National treatment

46. Regarding national treatment with respect to provincial and State measures, the representative of a group of countries noted that the parties maintained that the national treatment provisions of the FTA prevailed over any State law or its application which conflicted with the Agreement (Article 502). Therefore, they appeared to rule out any discrimination regarding state taxes and other measures. Yet, he pointed out that one of the parties to the FTA had complained in GATT regarding practices of the other party with respect to certain alcoholic beverages. The representative of the United States said that there was currently a complaint in this matter concerning an alleged inconsistency with GATT, however, a complaint was not necessarily proof of inconsistency.

E. Agriculture

47. One member noted that Canada had undertaken to honour its bilateral agreements and that it was willing to address issues relating to the operation of these agreements with third parties as they were affected by the FTA, through a process of bilateral consultation.

48. The parties to the Agreement stated that at the present stage there was no schedule for the elimination or reduction of non-tariff import barriers in agriculture under the GATT. Both the United States and Canada were working together diligently in the Uruguay Round to achieve a schedule of reductions and eliminations of import barriers in the agricultural sector. This effort was in the context of a broad trade-liberalizing exercise covering specific commitments in all major areas of the agricultural discussions, i.e. import barriers, domestic support programmes, and export subsidies.

49. With regard to agricultural subsidies, one member noted the provisions of the FTA prohibiting export subsidies on agricultural goods (Article 701.2) and the related definition which included a reference to the illustrative list annexed to the Subsidies Code (Article 711). He asked the United States whether the full legal framework of the General Agreement bearing on this issue applied, including paragraph 3:2 of Ad Article XVI, and whether the provisions of the FTA, by going beyond the provisions of GATT on export subsidies, automatically included the latter. The representative of the United States said that although Article 710 of the FTA preserved the general legal framework of Article XVI of GATT, the FTA parties had undertaken an obligation well beyond the scope of Article XVI in agreeing that they would not introduce or maintain export subsidies on bilateral trade between them (Article 701:2).

50. With regard to the US Export Enhancement Programme (EEP), the representative of the United States stated that each proposed individual initiative was carefully reviewed. It would not be approved should it be determined that sales, under which a proposed EEP bonus would be paid,

would have more than a minimal effect on non-subsidizing exporters in the market. While a considerable amount of analysis was conducted for each targeted market other exporting countries were not, as a policy, consulted in this regard. In response to the question by one member whether this process also applied to other mandatory export programmes of the United States, he said that it held true for all commodities considered for EEP initiatives and for all targeted markets.

51. Regarding the special provisions under which each party reserved the right to reimpose a temporary duty on fresh fruits and vegetables over a period of twenty years (Article 702), one member expressed the hope that the duty rate to be applied in the snapback mechanism would not become a reason for Canada seeking not to reduce m.f.n. rates so as to have an operative safeguard action with respect to its major trading partner. The representative of Canada explained that the specific conditions under which the snapback would operate, set out in detail in the FTA, were: (1) that prices of the product in question were below 90 per cent of the previous five years average price, and (2) that the amount of planted acreage of that product in the country imposing snapback was below that of the average of the previous five years. When the required conditions were met, the tariff on the product in question originating in the United States might be raised back temporarily either to the then prevailing m.f.n. rate or the tariff that had been in place on 4 October 1987, whichever was lower. The reference to the prevailing m.f.n. rate foresaw the possibility of a lower m.f.n. rate than that currently in place. Furthermore, the snapback did not apply to all fruits and vegetables, but only to specific ones for which specific conditions were in effect. Fruits and vegetables accounted for about 2.5 per cent of Canada's trade with the United States and most of these tariffs were at zero for most of the year. Also Canada had included fresh fruits and vegetables in its Uruguay Round tariff offer.

52. Several members had doubts about the temporary nature of the measures which allowed re-imposition of duties on fresh fruit and vegetables over a period of twenty years and which did not set out a time period for the phasing out of Canadian import permits for grain and grain products. They

questioned the consistency of such provisions with Article XXIV:5(c), which stipulated a "reasonable length of time" for the formation of a free-trade area and with the terms of the draft decision on Article XXIV negotiated in the Uruguay Round which envisaged that such period would not exceed ten years. The representative of the United States said that snapback clause for fresh fruit and vegetables might need to operate for reasons related to a possible injury to an industry in the context of the operation of Article XXIV. This provision would not have the effect of frustrating the ultimate objective of eliminating tariff restrictions between the two parties in a certain time frame. The representative of Canada said that the "snapback" clause was applied as a type of safeguard measure for which the GATT did not provide for a time frame, compared to the elimination of duties where the Agreement had a clear set of rules. The provisions of the FTA specified the temporary nature of any such reimposition of duties. When the snapback was not in effect, there was no snapback tariff. This tariff could be put into place only under special conditions, and could only be used once during a given defined twelve-month period for any particular product. A snapback could not be maintained once circumstances no longer warranted it, and in any event had a 180-day maximum limit. At the time of the Working Party the snapback had been used only once, and for only two weeks. The "snapback" clause was not a device to keep the tariff in place for twenty years. Tariffs on all fruits and vegetables would be eliminated within ten years according to the schedule set out in the FTA. Snapback could be used as an emergency mechanism over a twenty-year period. The parties to the FTA considered that the particular provisions for fruit and vegetables and for grain and grain products were applied as a type of emergency clause and therefore met the requirements of Article XXIV.

53. The representative of a group of countries noted that Article 704.1 of the Agreement provided for preferential market access for meat through reciprocal exemptions on meat import laws between the two parties. These provisions could give rise to trade diversion from third parties and might also give rise to questions of compatibility with the General Agreement. Furthermore, a third country might be denied access to the market of the second party simply because one party had imposed import restrictions. If

either party set up third-party quantitative restrictions, the other party then had to take equivalent restrictive measures toward third parties in order to avoid its meat exports from facing these quantitative restrictions. He wished to know the legal basis on which such restrictions vis-à-vis third countries could be justified; and on which the party taking the action could exempt exports of the other party from the quantitative restrictions if it was those exports which were causing injury. With regard to Article XXIV:5(b), it would thus seem that the situation resulting from the FTA might be more restrictive than that prevailing prior to the FTA.

54. The representative of Canada explained that there was no requirement for the second country to restrict imports of meat from third countries in the event that the first country did so; however, it was possible that this could occur. If either party took action to control meat imports regardless of whether it was before or after the other party's action, those measures would have to be judged on the basis of GATT obligations. If Canada were to take such action, it would be on the basis of Article XIX. Canada did not see how this would create a situation more restrictive than prior to the FTA, because the action would still have to be based on a GATT provision, taking into account the circumstances in the Canadian market, which would apply whether or not there was a free-trade agreement. The representative of the United States reiterated that the FTA neither provided nor limited a basis under the GATT for the restriction by either party of third-country meat imports. The FTA did not require one party to impose restrictions on third-country meat imports simply because the other FTA party had done so. If, for example, under the FTA one of the parties chose to apply such restrictions, and the other party did not take equivalent action, the FTA party taking such action could restrict meat imports originating in the other party to the extent necessary to avoid frustration of the trade measures taken. In any event, the GATT legality of the measures taken had to be judged independently of the other FTA party's action or the provisions of the FTA.

55. Regarding market access for grain and grain products, the representative of a group of countries asked whether, once the import permit had been eliminated, Article 705 of the FTA would provide for the reintroduction of the import permit requirements in a case where the level of subsidy had been changed. How would the elimination of import permit requirements be assured and when? The representative of Canada said that every year a determination was required as to whether or not Canadian support levels exceeded United States support levels for each grain product. This was a technical determination and would occur every year in which the import permits were still in existence. Should it be determined that Canadian support levels were above those of the United States, the import permit requirements for these products would be removed as was the case for oats and oat products in 1989, and wheat and wheat products in 1991. The timing of this depended upon the annual determinations. Once removed, the permits would remain removed; however, pursuant to Article 705:5 each party retained the right to introduce or reintroduce quantitative import restrictions or fees on imports from the other party, should such imports have increased significantly as a result of substantial change in either party's support levels. Therefore, Canada could reintroduce import permit requirements if imports from the United States increased significantly, if this increase were the result of a substantial change in the relative support levels in either party, and if the action were consistent with other obligations under the FTA including those relating to emergency measures.

56. One member noted that since the provisions of Article 705 did not set a time frame for phasing out such restrictions between the two parties, import permit requirements for grain and grain products removed recently by Canada could be reintroduced at any time. The lack of such a time frame raised doubts as to the consistency of these provisions with the requirements in Article XXIV. The representative of Canada confirmed that import permit requirements on wheat and wheat products had been removed in 1991 in the light of the results of a technical exercise conducted under the FTA, which showed that the subsidy levels in the United States were lower than the subsidy levels in Canada for wheat and wheat products.

57. With respect to market access for poultry and eggs, one member said that the provisions of Article XXIV:8(b) did not give open-ended permission to maintain quantitative restrictions, and asked how the parties to the Agreement had reached the judgement that their use of the exceptions under Article XI in respect of dairy products and poultry was "necessary", given their obligation to eliminate duties and other restrictive regulations of commerce on substantially all trade. The representative of Canada said that they had considered it "necessary" to maintain particular programmes for such products under Article XI, a measure that was consistent with Article XXIV:8(b). He also said that it may not be feasible to calculate the value of the "trade foregone" in the dairy sector as requested by the same member.

58. Regarding technical regulations and standards for agricultural and food products, one member asked whether it would be possible for third countries to participate, or otherwise make its views known, in the bilateral process of the harmonization of the FTA parties' respective regulatory technical requirements and inspection procedures. The representative of Canada said that the FTA did not provide for the participation of third countries in agricultural working groups, but such countries could make their views known through normal channels. The Agreement on Technical Barriers to Trade set out obligations for notification of technical regulations proposed by central government bodies. In response to a question on non-agricultural standards he said that most of the industrial standards in both Canada and the United States were developed by the private sector.

59. In response to another member the representative of the United States said that the marketing orders applied to certain agricultural products, for which there were minimum quality requirements, were unaffected by the FTA.

F. Energy

60. With regard to export measures related to energy goods, the representative of a group of countries said that they were holding consultations with Canada regarding the extension of the exemption foreseen for the United States from the Canadian Uranium Upgrading Policy to other GATT contracting parties (Annex 902.5).

G. Trade in automotive goods

61. One member of the Working Party said that the Agreement Concerning Automotive Products between Canada and the United States was maintained despite the concerns expressed previously by third parties as to its appropriateness. Under the FTA it had developed into an exclusive arrangement with three types of membership.

62. Some members of the Working Party considered that, while the suppression of the export-based waivers of customs duties (Article 1002) might not have affected any consolidated GATT rights, it had the effect of distorting trade patterns. Moreover, it established a situation that was more restrictive than that which had prevailed prior to the entry into force of the Agreement. The representative of Canada said that the objective of not raising barriers to the trade of other parties in Article XXIV:4 had to be considered together with the requirements of Article XXIV:5(b). Any judgement on the restrictive effect of eliminating the export-based duty remission scheme compared to the situation prevailing prior to the formation of the free-trade area, should be made with respect to trade in goods with bound tariff rates. Parties to a free-trade agreement did not have the obligation to continue, regardless of the GATT bound rates, the duties applied at lower rates than GATT bound rates through duty remission schemes or temporary reduction or suspension of duties prior to the formation of the free-trade agreement. The representative of a group of countries noted with interest that the parties' interpretation of Article XXIV was that the obligation not to increase the restrictiveness of duties related exclusively to bound rates.

One member maintained the view that the term "duties" in Article XXIV:5(b) was not only limited to bound rates but covered all the duties applied by the parties at the time of the formation or the enlargement of a free-trade agreement. Another member of the Working Party asked why the parties had decided to suppress the duty remission scheme if it were neutral. The representative of Canada said that the decision to terminate the scheme was part of the overall package of measures taken by the parties to remove most conditional provisions existing prior to the conclusion of the FTA. The duty remission scheme was a measure applied unilaterally by Canada in the past, but there was no obligation under the GATT to continue such measures. One member considered that the withdrawal of the duty remission scheme fell within the scope of Article XXIV.4 and Article XXIV.5(b) and disagreed with the view that Canada had no obligation with respect to it. The representative of a group of countries said that if the duty remission scheme had been terminated as part of the establishment of the FTA, he considered that another "regulation of commerce" had become more restrictive. He also noted that, in the case of the duty remission scheme, the parties had a narrower interpretation of the derogation given in Article XXIV as regards other restrictive regulations of commerce than they had in the case of customs user fees.

H. Emergency action

63. With regard to provisions of Article 1102 which allowed parties to exclude each other from emergency global actions, one member of the Working Party believed that an agreement under Article XXIV did not permit discriminatory application of Article XIX. She noted that no agreed interpretation had been reached on the relationship between the provisions of Articles XXIV and XIX in past working party examinations of free-trade agreements and in the context of the Uruguay Round negotiations on GATT Articles and on Safeguards. She also took issue with the perception conveyed in the statement by the parties to the FTA that a practice was in place under other Article XXIV arrangements which provided for the exemption of parties to the arrangement from safeguard actions. She pointed out that there had been past cases in which Article XIX safeguard

actions had been applied on a most-favoured-nation basis, including on imports among parties which had entered into such arrangements. Another member of the Working Party said that in his country's view, Article XXIV did not allow for selectivity in the application of Article XIX safeguard measures. They were therefore concerned about this particular provision in the FTA, which seemed to prejudge the outcome of the Uruguay Round negotiations on safeguards and on GATT Articles. Another member of the Working Party expressed concern over the way this issue of emergency action had been addressed in the FTA, which seemed to dilute the principle of non-discrimination and most-favoured- nation application of restrictions based on Article XIX. One other member of the Working Party said that in his delegation's view, Article XIX safeguard measures should not, and could not, be applied by one member of a customs union or free-trade agreement to other constituent members. It was part of the rationale for the creation of a customs union or free-trade agreement that constituent members accepted that each might be a more efficient producer of various products, and the protection against this efficiency should not be instituted or maintained. However, this view raised questions concerning determination of injury. The representative of Canada said that the discussion on the relationship between Articles XIX and XXIV had highlighted the lack of consensus among contracting parties on this issue. Canada had tried, in the Uruguay Round negotiations on GATT Articles, to achieve a common interpretation on this issue, and its position had not changed since that time.

I. Exceptions for trade in goods

64. The representative of the United States explained that under the part entitled "Exceptions for Trade in Goods", the Jones Act was exempted from the obligations of Article 501 of the FTA regarding national treatment, on the same basis as any other legislation covered by sub-paragraph 1(b) of the Protocol of Provisional Application of the GATT (Article 1202). To the extent that trade in services was covered by this Act, present provisions of GATT were not relevant. He added that the Jones Act covered the construction of ships in the United States but excluded trade in ships.

J. Government procurement

65. The representative of a group of countries noted that, whereas rules of origin were applied in the context of preferential trade to other areas of the FTA, a different set of rule of origin requirements was provided for the input of supplies from third countries (Article 1309). He asked to what extent these different rules would be taken into consideration in the attempt to arrive at a single set of rules of origin in the Uruguay Round. The representative of the United States said that nineteen different systems were applied in his country, each designed for determination of origin under a particular circumstance. For that reason his country had been active in pursuing the work on rules of origin in the Uruguay Round. He hoped that the draft text that was tentatively agreed would create a unified system of rule of origin that would be of broad application.

66. One member, on behalf of a group of countries, referred to the terms of Article 104 concerning precedence of the provisions of the FTA over other agreements (Article 104) and asked which rules of origin would prevail, in the event of any inconsistency between the rules of origin of the FTA and any such new rules developed in the area of government procurement? The representative of the United States replied that there was no inconsistency in this respect since the rules of origin for government procurement in Article 1309 of the FTA were developed to apply to procurements above a threshold of twenty-five thousand US dollars set in the FTA and below the threshold of the Agreement on Government Procurement.

K. Services

67. One member of the Working Party noted that the terms of reference of this Working Party specifically mentioned that its examination of the FTA would be made in the light of the provisions of the General Agreement. As the areas of services and investment were not part of the General Agreement, it was his country's view that these issues were not covered by the terms of reference and hence not within the competence of the Working Party to examine. Another member of the Working Party, on behalf of a

group of countries, said that while the discussion of the relevant provisions in the FTA on services would go beyond the formal scope of an examination under Article XXIV, the FTA provisions in this area were of considerable interest given the Uruguay Round negotiations. The Chairman suggested that it would be best to take a pragmatic approach to the discussion of services and investment and that the Working Party pursue the information exchange on these issues which were also being discussed in the Uruguay Round, without prejudice to the nature of conclusions that it would ultimately draw in the light of the present provisions of the General Agreement.

68. Regarding denial of benefits of the provisions on services in the FTA to persons of the other party providing a covered service (Article 1406), one member of the Working Party, on behalf of a group of countries, noted that there were no formal criteria in the FTA for determining when a service was being indirectly provided by a person of a third country and that the parties to the FTA appeared willing to make use of the Uruguay Round results in this respect. In response to a question by the same member, the representative of the United States said that to date there was no case history or discussions between the parties to the FTA as to how such cases would be handled.

69. Another member of the Working Party asked the reason for the inclusion of Article 1703.2 in the FTA, which exempted the United States-controlled Canadian bank subsidiaries from the limitations on the total domestic assets of foreign bank subsidiaries in Canada, if it had no impact on the freer flow of financial services. He suggested that the impact of the provisions should not be assessed only on the basis of the overall share of foreign bank subsidiaries in total domestic bank assets, or the relative shares of United States and non-United States banks. These shares might have remained unchanged since the implementation of the FTA due to certain other factors. The representative of Canada said that since the introduction of the FTA, all requests from the United States for authorization to increase the capital of Canadian bank subsidiaries had been granted. No other steps had been taken in the past two years which

could have an impact on domestic assets of foreign bank subsidiaries in Canada.

L. Investment

70. The representative of Canada stated that his country had accepted the conclusions in the report of the panel on Foreign Investment Review Act (FIRA Panel) (BISD 30S/140) which it was fully implementing as a matter of policy.

71. Another member noted that Article 1603 of the FTA made a distinction between an investor of the other party to the FTA and an investor of a third country. The relevant provisions listed four practices which were not to be imposed on the other party to the FTA; however, for an investor of a third country, those limitations were not to be imposed "where meeting such a requirement could have a significant impact on trade between the two Parties" (Article 1603.2). He asked what the need was for such distinction if the FTA was intended to promote trade globally. Regarding the national and non-discriminatory treatment of third-country investors in Article 1603.2, he believed that most of the practices listed there were already regulated by Article III which did not contain the condition "where meeting such a requirement could have a significant impact on trade between the two parties". The addition of the latter clause in the FTA raised a doubt as to its consistency with the relevant provisions of the General Agreement. The representative of Canada said that the provisions on treatment of third-country investors amounted to an extension of a benefit of the FTA to these investors. Canada did not impose sourcing requirements on third parties any more than on the United States. He pointed out that the provisions of Article 1603.1 concerning treatment of investors of the other party included a provision prohibiting a requirement to "export a given level or percentage of goods or services"; that issue had not been found by the Panel on the Canadian Foreign Investment Review Act (FIRA Panel; BISD 30S/140) to be inconsistent with the GATT. The requirements listed in this Article also applied to services, on which the FIRA Panel had not made a determination. Thus, what was stated in the provisions on

performance requirements with respect to investors of a third country (Article 1603:2) applied to an additional undertaking.

72. One member welcomed the United States intention not to impose such performance requirements as listed in Article 1603.1 on investors from either Canada, the FTA partner, or third parties, and stated that it would be useful if Canada could also express such an intention.

M. Other specific points

73. The representative of a group of countries asked how Section 301 of the Trade Act of 1974 (Unfair Trade Practices) could be implemented in a manner compatible with the obligations of the United States under the FTA which stipulated that no measures could be taken before the exhaustion of the bilateral dispute procedures under the FTA. The representative of the United States said that the FTA did not have provisions on the application of Section 301.

74. One member noted that while there were no existing "voluntary export restraints" between Canada and the United States, the FTA did not exclude the possibility of concluding voluntary restraint arrangements (VRAs). She expressed the hope that none would be introduced, since the agreement on safeguards that was likely to emerge from the Uruguay Round would prohibit "grey area" measures. Another member, on behalf of a group of countries asked whether the FTA should be understood to mean that the United States would not request a VRA on steel imports from Canada, when the current steel import programme which expired at the end of March 1992. The representative of the United States said that the outcome of the ongoing negotiations in the steel sector would determine their policy on steel, including the question of the present arrangements.

III. Compatibility of the Agreement with the relevant provisions of the General Agreement

75. In opening the discussion the representative of Canada stated that the Canada-United States Free-Trade Agreement was the most comprehensive free-trade agreement yet to have been examined in GATT. It provided for elimination of all tariffs on trade between the countries parties to the agreement over a ten-year period. Many, if not most, duties had already been eliminated on trade between the two parties. Some had been eliminated against an accelerated timetable provided under the Agreement. Furthermore, other restrictive regulations of commerce would be reduced or eliminated on substantially all trade between the two parties as the Free-Trade Agreement also provided for substantial reduction of non-tariff barriers to trade. His delegation considered, therefore, that it had been demonstrated that the Canada-United States Free-Trade Agreement was fully consistent with the requirements of Article XXIV and hoped that the report of the Working Party would indicate that the Agreement had created a free-trade area which was compatible with the GATT.

76. The representative of the United States stated that his delegation believed that the Canada-United States Free-Trade Agreement more than met the criteria set out in Article XXIV. Both the text of the Agreement and its operation during the previous two years had been an excellent practical demonstration of the desirability of increasing freedom of trade by the development, through voluntary agreements, of closer integration between the economies of the countries parties to such agreements. It also met the objective of facilitating trade between the constituent territories and not raising barriers to the trade of other contracting parties with such territories through the formation of free-trade areas. In accordance with both paragraphs 4 and 5 of Article XXIV, the Canada-United States Free-Trade Agreement had not raised barriers to third-country trade either directly in the context of the phased-in implementation of the provisions of the Agreement or indirectly as a consequence of its negotiation. No major sectors of trade were excluded from the elimination of duties, and non-tariff barriers had been sharply curtailed. All bilateral trade in

dutiable goods would be duty free within ten years under a schedule that had already been accelerated in actual implementation of the Agreement. In addition, the Agreement provided for the elimination of significant non-tariff barriers in the trade of parties to the Agreement in areas both within and outside the current scope of the provisions of GATT. There was no evidence that the Agreement had diverted trade to the detriment of third countries and nothing in the Agreement supported trade diversion as a possibility or as a goal. The Agreement was complete and while its implementation would occur over a period of ten years, it could not be considered to be an interim agreement. It constituted the most comprehensive free-trade agreement which had ever been presented for review under Article XXIV. With this Agreement they believed that a new broader definition of the term free-trade agreement had been established in the GATT. His delegation joined the delegation of Canada in seeking confirmation by the Working Party that the Agreement was fully consistent with Article XXIV.

77. The parties to the Agreement believed that they had responded fully and comprehensively to the specific concerns raised by other members of the Working Party during the examination of the Agreement. They reaffirmed their commitment to live up to their GATT obligations and recalled that both initial post-Agreement trade figures and available econometric studies indicated continued growth in imports from the rest of the world, not trade diversion. They emphasised that the FTA built on the GATT, went beyond it by establishing new disciplines in a number of areas and, except as otherwise provided for in the FTA itself, prevailed to the extent of any inconsistency between FTA and GATT provisions. The parties questioned the concerns expressed about possible conflicts between the dispute settlement provisions of the Agreement and those of the GATT, and noted that, should difficulties arise, other contracting parties retained their full GATT rights to pursue a remedy. With regard to the provisions in the Agreement on export licensing for short supply and conservation purposes (Article 409) they noted that Article XXIV:8(b) did not preclude undertakings to eliminate such restrictions vis-à-vis the other party to the Agreement. On the question of rules of origin in the FTA they noted

that these affected only bilateral trade between them. With respect to concerns expressed about duty drawback and duty remission provisions in the Agreement they questioned whether it was the intent of Article XXIV to bind parties never to increase m.f.n. rates of duty which, at the time of entry into force of the FTA, had been suspended or subject to exoneration in some way. They also noted that duty remission schemes were measures applied unilaterally, and that there was no obligation under the GATT to continue such measures. As regards the waiver of the US customs user fee on imports from Canada, they said that by virtue of Article XXIV, the consistency of the waiver with Article I was a moot point. With respect to questions raised about the consistency of the Agreement's provisions on fresh fruit and vegetables (Article 702) and on grain and grain products (Article 705) with Article XXIV:5(c), the parties considered these provisions to constitute a type of emergency clause not inconsistent with the requirements of Article XXIV. They also noted that the Working Party's discussion of the relationship between Articles XIX and XXIV similarly highlighted a lack of consensus among contracting parties, and recalled the effort in the Uruguay Round negotiations to try to achieve a common interpretation on this relationship. With respect to concerns about the provisions of Article 1603, Canada did not apply sourcing requirements on third party investors any more than on those from the United States; moreover, undertakings in the FTA vis-à-vis third party investors reached beyond the findings of the FIRA panel and amounted to the extension of FTA benefits to them. Finally, the parties to the Agreement noted that, of necessity, the FTA could only have reaffirmed GATT rights and obligations as these existed at the time the FTA entered into force but that, nevertheless, they would consider how Uruguay Round results would apply with respect to the FTA once these had been implemented.

78. Members of the Working Party which took the floor recognized the major political and economic significance of this free-trade agreement and noted that it established one of the most comprehensive free-trade areas to be brought under the GATT.

79. One member considered that, because of the sheer volume of trade between Canada and the United states and the enormous rôles they played in the world trade relations, contracting parties would have concerns about the impact of the FTA on commitments to the multilateral system under GATT. Because of its substantial interests with the parties as trading partners this member had a keen interest in the Agreement. Another member was particularly concerned about the compatibility of the Agreement with the General Agreement, in view of the economic significance of the two parties to the Agreement and consequently the impact of the Agreement on the trade flows of third parties and in fact on international trade, the increasing trend toward regional agreements, and the precedent-setting nature of this free-trade agreement in terms of its scope and comprehensiveness. Her delegation underlined that according to the terms of reference of the Working Party the examination of the compatibility of the Agreement with the GATT should not be examined solely in the light of Article XXIV but also extend to all other relevant provisions of the General Agreement. Another member stated that when the General Agreement was negotiated there were one or two limited economic integration arrangements in sight. Since then regional and sub-regional arrangements purporting to be covered by Article XXIV had grown in number and in significance. While customs union and free-trade area agreements might have fostered bilateral trade, the fall-out had been a rapid contraction in the proportion of trade conducted on a most-favoured-nation basis. The conclusions of the Working Party should be drawn up against this background. Another member expressed the hope that the parties to the Agreement would operate it in a manner consistent with the provisions of the General Agreement and thus minimize its effect of trade diversion, and not in a way that would create an exclusive trade block. One other member welcomed the ambition of the parties to enter into a free-trade agreement consistent with the provisions of the General Agreement. However the extent to which that attempt was successful would depend on the future application of many of its provisions and further clarification in certain areas where his delegation had expressed concerns during the examination.

80. Regarding Article XXIV:7(a) requirements for information on the proposed free-trade area, one member considered that the information available to the Working Party at this stage was not adequate to enable it to make definitive judgements on the full compatibility of the Agreement in the light of the General Agreement, in particular Article XXIV. During the examination of the provisions of the Agreement, members had indicated a number of issues that remained unresolved (cf. paragraphs 19-31, 40-41, 52, 56 and 64 above). The Agreement had been in operation for just two and a half years and the impact of some of these outstanding questions, such as the operation of dispute settlement procedures, on third parties was only now emerging.

81. Several members found it difficult, essentially due to the limited availability of detailed statistical information, to appreciate whether trade with third parties had in fact increased over the past two years or whether the Agreement would result in trade creation bilaterally and multilaterally in the long term. One member felt that the effect of the Agreement on some trade conducted prior to the formation of the free-trade area through bilateral trade agreements was an outstanding question. For another member parties to the Agreement had not so far produced information that supported their contention that the Agreement would be complementary to the process of liberalization of multilateral trade. Some other members were of the view that it was too early to make the judgement that the Agreement had been demonstrated to be trade-liberalizing and had not had a trade-diverting effect. This question would need to be looked at some time in the future. The representative of Canada reiterated that the economic assessment of the Agreement conducted by the Canadian government suggested that, over the long term, trade with third countries would increase because of a rise in economic output in Canada resulting from the positive economic impact of the Agreement.

82. Many members regretted that the first meeting of the Working Party had been held more than two years after its establishment. This was due mainly to the delay in the submission of necessary documents by the parties to the Agreement and in their response to questions put by members of the Working

Party. One member considered that this delay to the work of the Working Party, the purpose of which was to examine whether the Agreement was consistent with the GATT, had appeared to diminish the rôle of the Working Party and had, to some extent, made the formation of the Agreement a "fait accompli". It was hoped that the delay in this case would not be a precedent in the examination of other free-trade areas or customs unions by working parties in the future.

83. The Working Party generally recognized that, in terms of its coverage, this Agreement was one of the more comprehensive free-trade agreements examined in GATT so far. The Canada-United States Free-Trade Agreement did not attempt to exclude the whole of the agricultural sector from its coverage. Nevertheless several members raised doubts as to the consistency of the Agreement with the definition of a free-trade area in Article XXIV:8(b) and as to whether it covered "substantially all" the trade between the parties. These members remained concerned about the exceptions allowing restrictions on trade between the two parties in a number of specific products: the snapback mechanism for fresh fruit and vegetables (Article 702); quantitative restrictions on meat goods (Article 704); import permit requirements on grain and grain products (Article 705.5); restrictions on poultry and eggs (Article 704) and on dairy products; and restrictions on products containing more than 10 per cent sugar (Article 707). Another member referred to the exception in the industrial sector under the Jones Act which the United States justified under its Protocol of Provisional Application. Some members felt that, at this stage, it was not possible to appreciate the impact of the exceptions mentioned on the overall trade between the parties to the Agreement. The representative of Canada pointed out that the measures on fresh fruit and vegetables and on meat goods could not be considered as restrictions that were maintained currently between the two parties. In both instances, the provisions related to emergency arrangements for addressing any unforeseen developments in these sectors.

84. One member expressed doubts on the GATT compatibility of export licensing scheme for short supply or conservation purposes (Article 409) in terms of the exceptions referred to in Article XXIV:8(b).

85. The Working Party discussed the question of whether certain provisions of the Agreement met the criteria in Article XXIV paragraphs 4 and 5(b) that the purpose of a free-trade area should be not to raise barriers to the trade of contracting parties outside the free-trade area and that duties and other regulations of commerce on the trade of third parties should not be higher or more restrictive than those existing prior to the formation of the free-trade area. Several members were doubtful, in particular, about the consistency of the provisions which related to rules of origin, suppression of the duty drawback scheme and waiver of customs user fee with these criteria.

86. On the question of rules of origin, it was maintained that the operation of the provisions on rules of origin for goods in the context of the Agreement should avoid creating any adverse effects on trade of countries not parties to the Agreement. These rules should not be used to undermine the market access of goods from those countries. One member noted that a recent case had indicated the complexity and lack of predictability of the rules of origin applied by Canada and the United States in the context of the free-trade area. Another member noted that the issue of rules of origin was under discussion in the Uruguay Round and a detailed standard for calculating the value added had not been stipulated clearly in the draft text of an agreement on rules of origin. The consistency of the provisions on the rules of origin in the Agreement with the provisions of GATT could therefore be determined only in the light of a future review of any trade-diverting effects they might have on the exports of third parties.

87. Some members argued that, with the suppression of the duty drawback scheme as well as of export-based duty remission in the automotive sector, the formation of the free-trade area would have the effect of raising the tariff rate on goods from third countries.

88. Several members also questioned the justification of the waiver of the customs user fee only on imports from Canada. They feared that third parties, because of the costs that might have to be incurred by them, might be disadvantaged by the operation of the customs user fee in a manner which, in their view, was proscribed by Article XXIV:5(b). Some other members also questioned the compatibility of the elimination of fees only with respect to Canada with the obligations of the United States under Article I of the General Agreement.

89. With regard to the requirement referred to in Article XXIV:5(c) that free-trade areas be formed "within a reasonable length of time", the Working Party noted that the plan and schedule for the elimination of tariffs in the Agreement did not exceed the time period of ten years. Furthermore, bilateral emergency actions (Article 1102) allowing the suspension of reductions in duty or a return to m.f.n. rates of duty would be limited to the transition period and the elimination of restrictions on lottery materials (Article 407.5 and Annex 407.5), on energy goods (Article 902.5 and Annex 902.5) and on used automobiles (Article 1003) would be phased out before the end of this period. However one member was unable to take a definitive position on the consistency of the Agreement with Article XXIV:5(c) because of the absence of a clear plan and schedule for the elimination of certain non-tariff barriers in agricultural products, in particular the existence of a twenty-year snapback provision for fresh fruit and vegetables (Article 702) and the indefinite time-frame allowing the imposition of restrictions on grain and grain products (Article 705).

90. The Working Party addressed the concerns of a number of members about the GATT compatibility of the provisions of the Agreement regarding global emergency actions. These provisions (Article 1102) allowed a party taking action under Article XIX to exclude the other party to the Agreement from such actions. For these members, selective non-application of safeguard measures to the other party was not consistent with the provisions of Article XIX of the General Agreement. In their view Article XXIV did not permit parties to a free-trade agreement to take such selective safeguard

measures. One member considered that discriminatory provisions of the Agreement on global emergency actions diluted the principle of non-discrimination and m.f.n. application of emergency measures, particularly when imports from the other party contributed to the serious injury.

91. One member expressed concern that the provisions in the Agreement (Article 1603), which made a distinction between investors originating in a party to the Agreement and those originating in third parties, might not be consistent with Article III of the General Agreement.

92. Another area of concern to one member was the provisions of Article 1002 which limited the extension of the Auto Pact status to any new members. These provisions which put new foreign investors in a less favourable position in comparison with the United States or Canadian competitors were not, in his view, in conformity with the objectives of Article XXIV:4.

93. The foremost concern of many members of the Working Party was the relationship between the rules in the Agreement with those under GATT, and particularly the question of precedence of the Agreement over GATT. The Working Party noted that the parties to the Agreement had reaffirmed their existing GATT obligations and had maintained that the Agreement did not affect the rights and obligations of parties under GATT with regard to third parties. Yet for many members the fact remained that, unless otherwise stated in the Agreement, precedence would be accorded to the rights and obligations under the Agreement over those under the GATT (FTA Article 104). This was a matter of utmost concern because of the possible implications of such a stance on the interests of third parties as well as on the ultimate functioning of the multilateral trading system. Precedence of the FTA provisions over GATT provisions had the potential of undermining the credibility of the GATT system.

94. Many members were also concerned about the implications for the GATT dispute settlement system of the dispute settlement provisions under the Agreement, especially as regards their impact on the GATT interests of

third countries. Many of the issues raised in disputes between the two parties could be of interest to all contracting parties. It had not been clear from the answers of the parties, during the examination of this issue, that third-party interests would not be compromised by the examination of similar issues under the bilateral procedures of the Agreement. It was also pointed out that, apart from adversely affecting the interests of third parties, the dispute settlement provisions of the Agreement could lead to delays in the adoption and implementation of GATT panel reports, as was recently evidenced in the adoption of the panel report on a dispute between the two parties. At the very least, the blocking of GATT panel reports, pending outcomes under the dispute settlement process of the Agreement, added another dimension to the problem of non-implementation in GATT dispute settlement. It was emphasized further that there was a possibility of conflict between the outcomes in relation to complaints lodged by third parties in GATT and bilateral disputes addressed under the Agreement. Parties had not been able to clarify the consequences, for the implementation of multilateral dispute settlement system, of potential contradictions between the outcomes of bi-national panels and the findings and recommendations of panels established under the GATT dispute settlement procedures.

95. A number of delegations also noted uncertainty over the extent to which results of the Uruguay Round would be incorporated into the Agreement. This was an example of the concerns they had over the fundamental question of whether multilateral or bilateral obligations would prevail.

96. With regard to areas which were not covered by the General Agreement, such as services and investment, one member considered that it was not appropriate for the Working Party to draw conclusions on the provisions of the Agreement on these matters, as consideration of them were outside the terms of reference of the Working Party. Another member considered it was useful to exchange information on the provisions of the Agreement regarding these matters.

97. The Working Party supported periodic review of the implementation of the Agreement, in accordance with the agreed reporting requirements for customs unions and free-trade areas laid down in BISD 18S/38 and as reiterated in paragraph 11 of the draft text of the understanding reached on the interpretation of Article XXIV in the Uruguay Round. Another member noted that after the conclusion of the Uruguay Round GATT would have additional norms and disciplines in the areas which were not currently part of the General Agreement, such as services and investment. In addition, certain rules in the General Agreement such as rules of origin and safeguards would be made more clear in the process of the Uruguay Round. It was reasonable to invite the two parties to report any significant development in the Agreement including, for example, the incorporation of Uruguay Round results. Another member added that in view of the significant economic and political importance of the Agreement, contracting parties should have the opportunity to review the impact of the provisions of the Agreement as they took effect.

98. At the conclusion of its examination of Agreement, the Working Party noted that examination of the Agreement had brought to light some areas which, in the view of some members, remained questionable in terms of requirements under the provisions of the General Agreement. It noted also that some members had reserved their rights under the General Agreement. As it was unable to reach agreed conclusions as to the consistency of the provisions of the Agreement with the General Agreement, it considered that it should limit itself to reporting to the Council the views expressed by its members during its discussions. It agreed to forward this report to the Council and recommended that the CONTRACTING PARTIES invite the parties to the Agreement, in accordance with the decision of the CONTRACTING PARTIES (BISD 18S/38), to furnish reports on the operation of the Agreement, the first such report to be submitted in 1993.