GENERAL AGREEMENT ON

TARIFFS AND TRADE

RESTRICTED

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MINUTES OF MEETING

Held in the Centre William Rappard
on 2 February 1988

Chairman: Mr. A.H. Jamal (Tanzania)

The Chairman, on behalf of the Council, welcomed Lesotho as the 96th contracting party[1] and Zimbabwe as a member of the Council.

Item 1. Accession of Tunisia
- Working Party report (L/6277)

The Chairman recalled that at their Thirty-seventh Session in November 1981, the CONTRACTING PARTIES had established a working party to examine Tunisia's application to accede to the General Agreement.

Mr. Jaramillo (Colombia), Chairman of the Working Party, introduced its report (L/6277). He said that the Working Party had examined the foreign trade régime of Tunisia and its compatibility with the General Agreement. During the examination, Tunisia had supplied additional information and clarification regarding the different points raised. The Working Party had concluded that, subject to the satisfactory conclusion of Tunisia's tariff negotiations, it should be invited to accede to the

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[1] See also item no. 18.

General Agreement under the provisions of Article XXXIII. The Working Party had prepared a draft Decision and Protocol of Accession, which were annexed to the report. In submitting this report to the Council, he said that he wanted to draw attention to the fact that there had been a consensus in the Working Party that support for the approval of the texts and adoption of the report by the Council would depend upon the satisfactory conclusion of the bilateral tariff negotiations.

The representative of Tunisia, speaking as an observer, said that the tariff negotiations would be pursued in the coming days with the countries which had submitted request lists. His delegation hoped that these would lead to mutually satisfactory results and that the agreed calendar would be kept.

The representative of the European Communities said that the Community saw Tunisia's definitive accession as not only a good thing for Tunisia but also as a sign of faith in, and concrete reinforcement of, the multilateral trading system embodied in GATT.

The representative of Canada said that his country supported Tunisia's efforts to join GATT. Canada understood that Tunisia would endeavour to provide, to the extent possible, the Harmonized System concordance for at least the tariff items under consideration in the tariff negotiations relating to its accession.

The representative of Morocco expressed his authorities' firm support for Tunisia's accession, and recalled the numerous links between the two countries. His delegation hoped that contracting parties would do the maximum to facilitate the accession process.

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

Item 2. Generalized System of Preferences - United States' removal of Chile from GSP scheme
- Recourse to Article XXII:1 by Chile (L/6298)

The Chairman drew attention to the communication from Chile in document L/6298.

The representative of Chile said that on 28 December 1987, the United States had formally notified Chile of its removal from the US scheme under the Generalized System of Preferences (GSP), to take effect sixty days following publication in the US Federal Register. The United States had based this action on legislation prohibiting the President from granting GSP treatment to a country "that is not taking measures to grant its workers internationally-recognized rights". By doing so, the United States had not only caused unnecessary injury to a developing country and its people, but had also violated the provisions and principles of the General Agreement. The problem went well beyond a bilateral dispute: the United States had violated Part IV of the General Agreement, two Decisions by the CONTRACTING PARTIES and the Uruguay Round Standstill commitment. In

addition, it had violated the principles of the International Labour Organization (ILO).

The United States had violated Part IV because it did not ensure a rapid and sustained expansion of Chile's export earnings, make positive efforts to ensure that Chile secured a share in the growth in international trade, provide more favourable and acceptable conditions of access to US markets for Chilean products, facilitate the diversification of the structure of the Chilean economy to avoid dependence on exports of primary products, help Chile and collaborate in a close and continuing manner to alleviate the external debt burden, and refrain from introducing or increasing customs duties on imports of products of particular export interest to Chile. For all these reasons, the United States had violated Articles XXXVI and XXXVII of the General Agreement. In conformity with Article XXXVIII, contracting parties should therefore collaborate jointly with a view to ensuring that the United States restore Chile's status under its GSP scheme.

The United States had also violated the 1971 and 1979 Decisions of the CONTRACTING PARTIES. He recalled that after long negotiations, agreement on the GSP had been reached in 1970 within the framework of UNCTAD. To legitimize the GSP within GATT, the CONTRACTING PARTIES had granted a waiver in 1971[2] authorizing application of the GSP within a very precise framework. Later, in the Tokyo Round, and to regularize the GSP, the CONTRACTING PARTIES had adopted a further Decision on Differential and More Favourable Treatment, Reciprocity and Fuller Participation of Developing Countries.[3] He said that the legal principle that "exceptions must be interpreted restrictively" should be applied; i.e., the United States could not expand the exception contained in the 1979 Decision so as to eliminate the principle of non-discrimination from it. He stressed that the GSP was not governed in GATT by UNCTAD rules but rather by the 1971 and 1979 Decisions, and those Decisions had to be examined in order to determine whether a contracting party had violated the General Agreement by applying or not applying the GSP.

In the case at hand, the United States had violated the principle of non-discrimination. The 1979 Decision established the two basic characteristics of GSP schemes for GATT, namely, that they were unilateral and that they should be non-discriminatory; i.e., once a developed contracting party had unilaterally chosen to establish a GSP scheme, it could not apply it to some developing countries and not to others. These two principles had sometimes been erroneously confused by those contending that because the GSP was unilateral, it could be applied in a discriminatory way. The 1979 Decision was quite clear regarding the principle of non-discrimination when it referred to "generalized, non-reciprocal and non-discriminatory system of preferences beneficial to the developing countries". Since the United States applied its GSP scheme

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[2]Decision of 25 June 1971 (BISD 18S/24).

[3]"Enabling Clause". Decision of 28 November 1979 (BISD 26S/203).

to some countries and not to Chile, it was obviously discriminating against Chile and was thus in breach of the GATT rules.

The reason invoked by the United States for discriminating against Chile was that it "was not taking measures to grant its workers internationally-recognized rights". In doing so, the United States had introduced into GATT an element that was alien to it. Just as no contracting party could exclude another from its concessions on grounds of religion or race -- even if such grounds were provided for in its domestic legislation -- the United States could not invoke arguments that had nothing to do with trade. If concessions made within GATT were to depend on such subjective criteria, that would lead to the disappearance of the minimum legal security fundamental to GATT's functioning. Thus, the question of "workers' rights" could not be invoked by contracting parties.

Chile considered that the United States had also violated its Standstill commitment under the 1986 Ministerial Declaration. This point would be taken up in the Uruguay Round Surveillance Body.

Even though the subject of internationally-recognized workers' rights was not appropriate to GATT and the United States was wrong in invoking this as the ground for its discrimination, Chile could prove that it had fully lived up to all its international undertakings in that field.

Success in the Uruguay Round would only be attainable in a climate in which contracting parties and other countries taking part in the negotiations were assured that the agreements they reached would subsequently be respected. The United States had expressed concern in an earlier Council meeting at the growing politicization of GATT, but was it not, by its present policy, contributing to that politicization? He said that Chile had requested consultations under Article XXII:1; the arguments on which it had based its complaint had been set out in notes to the United States and to the Director-General and had been circulated in document L/6298. The United States had agreed to consultations, and Chile hoped that this would be the best means of settling this dispute.

The representative of the United States said that his country remained committed to the GSP program as an integral component of its trade and development policy towards developing countries. Its implementation of the program had been and remained fully consistent with GATT. He recalled that GSP schemes were unilateral and autonomous. The US program met several criteria that were necessary in order for there to be any program at all. These criteria applied to all potential beneficiaries. The US action with respect to Chile was based on a determination, after a thorough review, that Chile did not meet one of the mandatory criteria for eligibility for the US program. Contrary to Chile's claim, the US action was non-discriminatory; the same criterion applied to all countries and was implemented on a non-discriminatory basis. The decision made in Chile's case was taken after two and one-half years of review, and after numerous consultations on the issue, reflecting the United States' commitment to the importance of consulting fully with beneficiary countries. The United States remained ready to continue consultations with Chile as necessary.

The representative of Chile said that the US argument, that it was applying to Chile the same GSP criteria applied to other developing countries, merely confirmed Chile's claim. The US legislation contained a non-GATT element, namely the question of workers' rights, which introduced subjectivism and thus established discrimination. The US argument that Chile was not taking measures to grant its workers internationally-recognized rights was incorrect. What did the United States understand by this? -- apparently not the rights recognized by the ILO, but rather rights considered as such by the United States. The US action was thus discriminatory from the standpoint of the ILO as well. He outlined the ILO's supervision of compliance by member States with its international conventions and recommendations, and said that there were developing countries which did not observe internationally-recognized workers' rights, but which nevertheless continued to enjoy GSP benefits. However, the United States on its own initiative, had arbitrarily and discriminatorily considered that Chile had not taken steps to grant its workers internationally-recognized rights.

It was odd that the United States was fully applying its GSP scheme to countries which were not members of GATT and which, according to the ILO, violated workers' rights. If Chile's argument were accepted that observance of workers' rights could not be included as a requirement for granting or not granting GSP, the conclusion had to be drawn that the United States had to change its attitude. If the US argument were accepted, according to which workers' rights could be used as a requirement for its GSP program, the United States still had to change its attitude because Chile respected internationally-recognized workers' rights and because some other countries which did not, still benefitted from the US program.

The representative of Colombia said that his delegation was deeply concerned by the US action and in particular by the reasons invoked by the United States.

The representative of Peru said that his delegation was likewise deeply concerned. The GSP could not be used for political reasons, but should be based on GATT Decisions and should be non-discriminatory. His delegation noted with satisfaction that consultations would be held by the interested parties.

The representative of Argentina said his delegation was not in a position to judge the reasons invoked by the United States. He reiterated Argentina's position opposing the use of discriminatory coercive trade measures for political reasons. His delegation hoped that an adequate solution would be found through bilateral consultations.

The representative of Brazil supported Chile's statement. He recalled Brazil's position that the GSP had to be applied according to the principles of universality, non-discrimination and non-reciprocity which were embodied in Resolution 21(II) of UNCTAD, as well as in the CONTRACTING PARTIES' 1971 and 1979 Decisions. His delegation reiterated its concern with the discriminatory exclusion of developing countries from GSP schemes. Preference-granting was no doubt a unilateral gesture; however, the exclusion of a country constituted a discriminatory act which, apart from

its pernicious consequences for the trade of the affected country, was not covered by the rules on which the system was established.

The representative of Uruguay reiterated his delegation's position on the GSP that any discussion thereof in GATT should be in conformity with the standards and principles adopted by the CONTRACTING PARTIES. He expressed serious concern at the trend toward discriminatory and unilateral practices to exclude countries from the GSP. His delegation noted with satisfaction that the parties would be starting consultations and hoped that these would be concluded rapidly and successfully in accordance with the principles of the General Agreement.

The representative of Jamaica said he would not comment on the arguments put forward by Chile and the United States, but would note the importance that had been attached to the principle of non-discrimination, particularly in the context of the applicable waiver, i.e., joint action by the contracting parties. Any action should be in conformity with the terms of the waiver; this was not a matter purely for the parties to the dispute. His delegation awaited the results of the consultations, and the statements that would be made by Hong Kong, Singapore and others, in order to understand better the implications of this matter.

The representative of Hong Kong considered that this matter had to be seen in the same context as the other GSP issue to be considered later in the meeting under "Other Business".[4] He said that there was a growing cause for wider concern, and supported the points made by Jamaica.

The representative of India said that in his delegation's view, the application of unilateral and subjective criteria for preference schemes such as GSP could only be a matter of grave concern to all contracting parties. India would follow developments in this matter with great interest.

The representative of Nicaragua said that his delegation, without prejudging the United States' reasons, considered that it had not followed the appropriate procedures. Nicaragua was deeply concerned that a country was casting itself as both judge and jury in disregard of the international legal framework. Nicaragua was not surprised, however, since the same country had not taken into account the judgement of the International Court of Justice on another matter.

The Council took note of the statements.

Item 3. Committee on Balance-of-Payments Restrictions

The Chairman, speaking on behalf of Mr. Girard (Switzerland), Chairman of the Committee on Balance-of-Payments Restrictions, said that full

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[4] See item no. 20.

consultations had been held under GATT's balance-of-payments provisions with Korea and Brazil in November 1987, and with Peru in December 1987.

(a) Consultation with Korea (BOP/R/171 and Add.1)

The Council adopted the report.

(b) Consultation with Brazil (BOP/R/172 and Add.1)

The Council adopted the report.

(c) Consultation with Peru (BOP/R/173)

The Council adopted the report.

(d) Meeting of 19 January 1988 (BOP/R/174)
(e) Schedule of consultations for 1988 (C/W/535)

The Chairman said that at its meeting on 19 January 1988, the Committee had adopted its program of consultations for 1988 (C/W/535). The report of the meeting was contained in BOP/R/174. He drew attention to the views expressed in paragraph 2 of the report and to the request made by the Committee to the International Monetary Fund (IMF) in paragraph 3.

The representative of the European Communities, referring to paragraphs 2 and 3 of BOP/R/174, and in particular to paragraph 2 which summarized well what had been a fairly difficult meeting, underlined the Community's strong concern with the way the cooperation between GATT and the IMF seemed to be working in the balance-of-payments context. The original intention had been that the consultation with Egypt would take place in sufficient time for the reports to be adopted prior to the Forty-third Session of the CONTRACTING PARTIES. Even this represented a certain delay as the consultation should have taken place during 1986. There was now a further six-month postponement. Whereas GATT was obliged to accept the IMF's findings and was supposed to cooperate with it, it was becoming extremely difficult for the Balance-of-Payments Committee to fulfill its remit and hence ensure respect for GATT obligations. While the wider question of GATT-IMF relations would be taken up in the Uruguay Round, the Community wanted to emphasize its concern and the need for the Committee and the IMF to reflect seriously on how to find a way for GATT to be able to meet its obligations.

The representative of the International Monetary Fund, speaking as an observer, said that the IMF was aware of this problem and was very concerned by it. He realized that some GATT delegations were unhappy because the full consultations of the Balance-of-Payments Committee seemed to be dependent on the Fund's schedule of its own Article IV consultations. There was indeed a problem of how to synchronize or reconcile the calendars of the two institutions. This difficulty had become evident just recently in the case of two countries. He said that these were isolated cases and that this problem had not often arisen in the past. He assured the Council that the IMF did its best to present its statements on a timely basis. On the other hand, one could not dictate to a member country when a

consultation had to take place. In some instances, postponements were unavoidable. Beyond the important question of reconciling calendars lay the more basic issue of substance, which had to do with the policy content of the Fund's statement. He assumed that the Balance-of-Payments Committee was basically interested in getting from the Fund a thorough analytical presentation and not only a statistical description of a given country's balance of payments. What mattered, in his view, was the analysis of the underlying macroeconomic policies that produced a statistical balance-of-payments outcome. For the Fund to be able to do this, and to do it well, in a way that best served the interest of the Committee, it needed to have an Article IV consultation or an equivalent exercise with the country. The IMF was ready to explore, with the Committee Chairman and with delegations, possible solutions to these two sets of interdependent problems.

The representative of Yugoslavia, referring to paragraph 4 of BOP/R/174, expressed her country's interest in the Committee's informal consultations and hoped that these would be conducted with the usual transparency and for the information of all countries.

The Council took note of the statements and of the information in C/W/535.

Item 4. Canadian provincial liquor board practices

The Chairman said that this item was on the Council's agenda at the request of the European Communities.

The representative of the European Communities said that the discriminatory character of Canadian liquor board practices had been a matter of long-standing concern to the Community. On 12 March 1985, the Council had established a panel. The Panel had submitted its report to the parties in October 1987. At the end of November, the Community had accepted Canada's request for an extension of the deadline for the circulation of the report, in order to provide time for bilateral consultations with a view to seeking a satisfactory resolution of this matter. Regrettably, the two sides remained very far apart. The Community was disappointed, but did not despair of reaching agreement in the future. Although the report was not before the Council for consideration at the present meeting, his delegation could already congratulate the Panel for its report -- even if the Community was not fully satisfied with every aspect of it -- and was looking forward to its speedy circulation later in the week, and a thorough discussion to be followed by the report's adoption at the March Council meeting. His delegation remained ready to continue negotiating with Canada at any time.

The representative of Canada said that in keeping with the purpose of the dispute settlement process, Canada had sought to negotiate a mutually satisfactory bilateral solution of this matter with the Community. Regrettably, these negotiations had not produced a satisfactory outcome. As the Panel's report would be circulated to contracting parties only in the next few days, his delegation considered it premature to engage in

substantive discussion at the present meeting. Having concentrated its efforts on the development of a bilateral solution, Canada would be considering its response to the Panel's report with a view to a fuller discussion at the March Council meeting.

The representative of the United States said that this dispute was of obvious commercial interest to US exporters. The United States had thus participated actively as an interested third party, and had made two lengthy submissions on the legal questions concerned in the case. These were subtle and complicated, and had potentially broad significance for GATT as well as for US access to Canada's market. His delegation was pleased to hear that the report would at last be circulated to contracting parties, as it had been prepared to ask the Council what the implications of non-circulation would be for the dispute settlement process and for GATT itself.

The Council took note of the statements.

Item 5. Consultative Group of Eighteen
- Composition for 1988

The Director-General, Chairman of the Consultative Group of Eighteen, recalled that when the question of the Group's composition for 1988 had been taken up at the most recent CONTRACTING PARTIES' Session, he had announced that consultations were still underway. It had been decided then that this matter should be deferred until the present meeting. He had since held consultations with a large number of delegations but could not yet make a proposal for approval by the Council. He said that the points raised during the consultations had related to the size of the Group and to the need to ensure attendance at the level of policy-makers from capitals. He would pursue the consultations with a view to making a proposal for the Council's approval at its next meeting.

The representative of Hong Kong confirmed that Hong Kong had expressed interest in participating in the Group's work; this had been one of the points on which the Director-General had been consulting. His delegation would cooperate fully in the consultation process.

The representative of Mexico thanked the Director-General for his invitation to participate in the consultations. His delegation, too, was interested in joining the Group and would participate in any future consultations.

The representative of Yugoslavia proposed that the respective Chairmen of the Committee on Trade and Development, of the Council and of the CONTRACTING PARTIES be invited to attend the Group's meetings as observers. In view of the Group's importance in the context of the Uruguay Round, her delegation hoped that this proposal would be examined in the informal consultations.

The Council took note of the statements.

Item 6. Trade with Romania
- Report of the Working Party (L/6282)

The Chairman recalled that in November 1986, the Council had established a working party to carry out the sixth consultation with the Government of Romania and to report to the Council.

Mr. Rosselli (Uruguay), on behalf of Mr. Lacarte (Uruguay), Chairman of the Working Party, introduced its report (L/6282). He said that the sixth consultation had been carried out according to the plan in Annex A of Romania's Protocol of Accession. The Working Party had heard statements on how the general economic and financial crisis had affected Romania's foreign trade with contracting parties, which had declined more in 1985 and 1986 than Romania's global exports. Foreign debt servicing had caused unsustainable strain and had hampered Romania's efforts to ensure the growth and structural adjustment of its economy. The question of the compatibility of Romania's commitment under its Protocol of Accession to increase its imports from contracting parties as a whole at a rate not smaller than the growth of total Romanian imports provided for in its 5-year plans, had been raised in the context of the massive drop of Romania's imports from contracting parties. The Working Party had also discussed the restrictions still maintained by some contracting parties on imports from Romania, as well as the need for improvement in trade information, in particular the publication of bilateral trade agreements with countries of the Council of Mutual Economic Assistance according to the provisions of Article X of the General Agreement.

The representative of Romania said that his country had made considerable efforts, amidst deeply unfavourable international economic circumstances, to ensure a development of its trade with contracting parties in conformity with the forecasts in its Protocol of Accession. He pointed out that the evolution of imports from contracting parties had been more favourable than that of Romania's total imports for 1985 and, excluding petroleum imports, for 1986. He emphasized that export earnings from contracting parties had been channelled back to these same countries in the form of import and external debt service payments. His authorities were studying carefully the statements made by Romania's trading partners during the consultation, and hoped that a similar process was underway in the latters' capitals concerning Romania's statements to the Working Party.

The Council took note of the statements and adopted the report (L/6282).

Item 7. South Pacific Regional Trade and Economic Co-operation Agreement (SPARTECA)
- Biennial report (L/6279)

The Chairman drew attention to document L/6279, containing information given by the parties to the Agreement.

The representative of New Zealand said that the arrangement was working well. The report was self-explanatory and his delegation was ready to answer any points that other delegations might wish to raise.

The representative of the United States agreed that the arrangement had operated to improve the trade opportunities of the Pacific Forum Island Countries without significantly affecting contracting parties' trade. It appeared to operate in the same fashion as the US Caribbean Basin Initiative and the Canadian Caribcan program, both of which operated under GATT waivers. Accordingly, the United States considered that Australia and New Zealand should seek such a waiver for this arrangement.

The representative of Jamaica said that as the report did not contain information from the recipient countries, it would be difficult to say whether, overall, the Agreement worked well. He asked for a table showing New Zealand's total exports to the island countries. He said that the report was rather scant and that this arrangement was not receiving the same searching treatment as some other regional arrangements. For instance, the information concerning licensing and quantitative restrictions was insufficient for judging the importance of the Agreement's liberalization provisions. Full information would also be useful for determining whether a waiver, as suggested by the United States, was necessary. Such information might be provided not only by Australia and New Zealand but by an appropriate body comprising all the participants in the arrangement.

The representative of New Zealand said that his delegation could provide such a table to Jamaica after the meeting, although this was not really germane to the arrangement since it represented a non-reciprocal offer which did not have implications for the specific trade policy framework within which Australia and New Zealand exported to these countries. As to the US point, New Zealand did not understand why, seven years after the Agreement's presentation to GATT, "presentable GATT clothes" should now be put around it. Australia and New Zealand provided virtually totally free access to the products from the island countries concerned, with a few exceptions which were being narrowed progressively through broader industry policy considerations. Australia and New Zealand knew from talks with the countries concerned, which were not GATT contracting parties, that they were satisfied with the arrangement. As to the GATT aspects of the arrangement, legal cover had been sought at the time in the Enabling Clause[5], particularly paragraph 2 thereof. Moreover, no contracting party had then expressed displeasure with the arrangement and Canada and the United States had spoken in favour of it.

The Council took note of the report (L/6279) and of the statements.

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[5]Differential and more favourable treatment, reciprocity and fuller participation of developing countries (BISD 26S/203).

Item 8. Canada - United States Free-Trade Agreement
- Communication from Canada and the United States (L/6299)

The Chairman drew the Council's attention to the communication from Canada and the United States in document L/6299.

The representative of Canada said that this matter had been placed on the Council's agenda in accordance with GATT practice simply to draw attention to the fact that on 2 January 1988, the Canada - United States Free-Trade Agreement had been signed by President Reagan and Prime Minister Mulroney. It was Canada's intention that when the Agreement was ratified, it would be formally circulated in accordance with established GATT practice.

The representative of the United States said that pending approval by the US Congress, a text was not yet available for circulation. As soon as the Agreement entered into force, it would be promptly circulated.

The representative of Mexico said that it was not clear from the communication in L/6299 when the text of the Agreement would be distributed. Mexico reserved all its GATT rights with regard to the implications of this Agreement, and was interested in participating in any consultation on setting up a working party to examine it.

The representative of Japan expressed his country's great interest in this Agreement. His delegation looked forward to early circulation of the text and would take an active part in a working party, which it hoped would be established soon to examine the Agreement's compatibility with GATT.

The representative of Brazil reserved his country's GATT rights regarding the implications of this Agreement. Brazil was interested in participating in any consultations on its GATT compatibility.

The representative of Korea said that in view of the trade impact of the Agreement, his delegation was also interested in participating in a working party.

The Council took note of the statements.

Item 9. United States - Customs user fee
- Panel report (L/6264)

The Chairman recalled that in March 1987, the Council had established a Panel to examine the complaints by Canada and the European Communities. The Panel's report (L/6264) had been circulated shortly before the CONTRACTING PARTIES' Session in December 1987, at which it had been agreed that this matter should be considered by the Council at its first meeting in 1988.

Mr. Donovan, Chairman of the Panel, introduced the report. He said that thanks to the full and timely co-operation of the three parties concerned, the Panel had been able to complete its work in less than six

months after the Council Chairman's announcement of its terms of reference and composition as well as the understanding among the parties on the organization of the Panel's work (C/147). Given the complexity of the legal issues raised by the complaints, he felt that this time period was not unreasonable. He noted that although the title of the report referred to "'customs user fee'", the more precise term "merchandise processing fee" had been used in the body of the report. Before moving to the findings and conclusion, he drew attention to paragraph 54: "It had been the clear intent of Congress that proceeds not be spent on extraneous activities but only on the Customs activities necessary and useful to the import trade. The United States authorities had endeavoured to be true to that Congressional intent and to Article VIII." He also quoted from paragraph 99: "In the course of reaching its conclusions on these issues, the Panel also took into account that the United States Government had made a substantial effort to conform to GATT requirements when calculating the basis of the fee. The fact that the entire budget for the US Customs Service had been restructured in order to create a separate 'commercial operations' account testified to the seriousness of that effort." He emphasized that the fact that the Panel took a different view from that of the United States on what was a fairly complicated issue, did not detract from the latter's statements of intent. He also stressed that the Panel's findings and conclusions (paragraphs 68-124, including the summary in paragraphs 125-126), and the reasons behind them, had been reached unanimously. In conclusion, he drew attention to the Panel's suggestion that the CONTRACTING PARTIES recommend that the United States bring the merchandise processing fee into conformity with its obligations under the General Agreement.

The representative of the European Communities said that this Panel was another example of a multi-party procedure. It also showed that the panel process could be effective if all sides worked together in good faith. In the Community's view, the report was very sound. The Panel had carefully analysed all the issues and had reached clear conclusions which were fully in conformity with the letter and spirit of the General Agreement. In particular, the Community was pleased that the Panel had confirmed the view that the term "cost of services rendered" in Articles II:2 and VIII:1(a) should be interpreted to refer to the approximate cost of customs processing for the individual entry in question. The Panel had also concluded that the cost of certain activities of the US Customs Service could not be included in the charges for the cost of services rendered to the commercial importers paying the merchandise processing fee. The Panel had therefore recommended that the United States bring the fee into conformity with its obligations under the General Agreement. The Community strongly supported the adoption of the report and the proposed recommendation at the present meeting, and urged the United States to implement this recommendation without undue delay.

The representative of Canada supported the statement by the Community. Canada had found the report to be sound and recommended its prompt adoption. His delegation was concerned, however, that the recent US Omnibus Budget Reconciliation Act included a provision for extending for a further year this same measure which the Panel had found inconsistent with the General Agreement.

The representative of the United States said that his delegation was pleased that the Panel had agreed with the United States that the General Agreement permitted contracting parties to recover the full cost of customs processing through a user fee paid by importers. However, as the United States had stated both earlier and during the case, use of an ad valorem fee was a reasonable and fair means of allocating that cost over the total volume of imports. As the Panel had stated in paragraph 83, the ad valorem method was the least distortive method of levying such a fee, had the lowest ad valorem impact for any total amount collected, created no distortion in relative prices between imports, was most predictable for traders and investors, and was simpler and cheaper to administer than any other method. A number of other contracting parties maintained ad valorem user fees, most of which were considerably higher than the US fee. The GATT dispute settlement process was of vital importance to the United States and to the effectiveness of the General Agreement. He noted that on the agenda of the present meeting there were other dispute settlement matters in which the United States was the complaining party, or had expressed its views as an interested third party. If GATT was to remain viable, parties should accept the results of dispute settlement even if such results were not entirely favourable. For these reasons, the United States had accepted the "Superfund" Panel report[6] when it had first been presented to the Council in July 1987. The United States now supported adoption of the present Panel report. His authorities would move quickly to comply with it. In the spring of 1988, the US Administration would transmit a legislative proposal to the Congress to conform the merchandise processing user fee to the directions of the Panel's report. The United States would pursue this proposal with the objective of getting the changes enacted before the end of the current fiscal year, i.e., 30 September 1988. He noted that in the case of low-value shipments, the ad valorem incidence of such a fee would rise compared to the current fee. However, that was the automatic consequence of implementing the Panel's recommendation. As the United States implemented its own conversion to a transaction-based fee system, it would be inquiring into the progress of other countries maintaining ad valorem user fees in bringing these fee systems into conformity with Article VIII of the General Agreement as interpreted by this Panel report. His delegation hoped and expected that formal GATT dispute settlement procedures would not be necessary.

The representative of Jamaica said that in joining in the adoption of the Panel's findings, his delegation did not share its views concerning some points which had not been properly before it. He noted that in the parties' main arguments there were references to Articles II and VIII of the General Agreement, but none to Article I. On the other hand, in the Panel's findings and conclusions in paragraphs 121-123, there was a reference to the m.f.n. provision of Article I:1. That raised the issue of whether such a reference would amount to obiter dictum, i.e., something mentioned in passing by a tribunal but having no bearing on the findings.

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[6]United States - Taxes on petroleum and certain imported substances (L/6175).

His delegation could not leave unchallenged the Panel's rather superficial treatment of the exemption of products or countries, nor could it agree that the Panel was in a position to be aware that there could be no legal arguments other than those reflected in its findings and conclusions (paragraph 123). The references in question were merely the views of the panelists on issues which were not properly before them and for which the views of other interested contracting parties had not been sought. In summary, Jamaica supported adoption of the report and the speedy implementation of its recommendation, while not leaving unchallenged the views expressed in paragraphs 121, 122 and 123.

The representative of Sweden, speaking on behalf of the Nordic countries, said that they could support the Panel's basic reasoning with respect to the proportionality of fees to actual costs of services rendered, and could support adoption of the report.

The representative of Mexico said that his delegation supported adoption of the report and in particular its paragraph 126. He said that even though there was no legal relation between the Panel's report and measures taken by Mexico, he wanted to inform the Council that in addition to the measures for liberalizing trade which Mexico had notified to the Uruguay Round Group of Negotiations on Goods at its meeting in December 1987, effective 1 January 1988, the additional charges mentioned in paragraphs 20 and 21 of the report of the Working Party on Mexico's accession (BISD 33S/57) had been withdrawn.

The representative of Australia supported adoption of the report and welcomed the US position on the matter.

The representative of Switzerland said that his delegation also favoured adoption of this careful and well done report. He stressed that the object of this report was not only the question of ad valorem fees, but also that of proportionality of such fees levied to services rendered.

The representative of India said that as a third party having an interest in the dispute, India welcomed the Panel's findings and supported adoption of its report. The proceedings had shed an interesting light on the situation of third parties. As there had recently been a proliferation of such disputes involving interested third parties, such cases might be examined in the Uruguay Round Negotiating Group on Dispute Settlement Procedures with a view to seeking improvement and examining their implications.

The representative of Hong Kong noted the views expressed concerning the interests of third parties. While not objecting to adoption of the report, he further noted that the scope of the report was limited to the GATT consistency of the US customs user fee and that the findings should be interpreted in that light.

The Council took note of the statements and adopted the report (L/6264).

Item 10. Japan - Restrictions on imports of certain agricultural products - Panel report (L/6253)

The Chairman recalled that at their Session in December 1987, the CONTRACTING PARTIES considered the Panel report in L/6253 and agreed that it would be before the Council for consideration and appropriate action.

The representative of the United States recalled that the Panel report had already been before the Council and that his delegation had explained why it should be adopted. The United States hoped that the report would be adopted in full at the present meeting.

The representative of Japan said his country believed that this Panel report posed some serious problems, as Japan had explained in detail at the CONTRACTING PARTIES' Session in December 1987. First, the Panel's interpretation and application of GATT provisions with respect to some agricultural items was highly questionable, as was its interpretation of provisions relating to state trading. No appropriate consideration had been given to the "pertinent elements" specifically referred to in the Panel's terms of reference. Although the 12 agricultural items had been considered by a single panel, its judgement on GATT conformity had been reached on an item-by-item basis. Accordingly, it would be appropriate for the Council to consider the report on an item-by-item basis. With these considerations in mind, Japan had stated at the Session that it could not accept the parts of the report concerning certain dairy products and starch, and state trading. However, Japan had expressed readiness to accept adoption of the remainder of the report, in spite of its shortcomings, and had stated that it would take appropriate measures on the basis of the Panel's recommendation. Regrettably, many contracting parties had opposed Japan's position on the grounds that partial adoption of a panel report should not be established as a precedent. His Government had since deliberated carefully on its position, taking fully into account the discussion at the Session. As a contracting party, Japan fully recognized the importance of assuring the effective functioning of dispute settlement procedures, the basic structure of which was conciliatory rather than adjudicatory in nature. Japan recognized the importance of expeditious adoption of the report in its entirety in order to ensure the effective functioning of dispute settlement procedures. He said that, therefore, Japan would not oppose a consensus to adopt the report in its entirety at the present meeting, provided the Council took note of and put on record his statement in its entirety.[7]

He then emphasized three points. (1) Regarding items other than certain dairy products and starch, Japan would endeavour to implement appropriate measures on the basis of the Panel's recommendation as soon as possible, although it was constrained by domestic difficulties. It would do this in spite of obvious shortcomings in the report, such as interpretations clearly opposed to precedents and without cogent reasoning,

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[7] See C/W/538.

for example, that on the "perishability" of tomato juice and fruit products. Japan would have to give full heed to the domestic effect of measures to be taken to implement the Panel's recommendation and would, therefore, need a reasonable period of time to do so. (2) Regarding certain dairy products and starch, Japan still considered highly questionable the report's logic regarding requirements for permitting import restrictive measures. Japan did not agree with the Panel's interpretation of Article XI:2(c)(i) with respect to those items, and reserved its position as to the use in future of that interpretation. In view of the domestic situation, it would be extremely difficult to implement measures in accordance with the Panel's conclusion based on such an interpretation. (3) The interpretation of state trading provisions totally ignored the drafting history and could not be considered appropriate. Japan did not agree with, and therefore reserved its position as to the use in future of, the Panel's interpretation of those provisions. It was his Government's understanding that Council adoption of the report in its entirety would not establish a generally applicable interpretation of the provisions relating to state trading.

He then elaborated on those points in the report which Japan found objectionable. First there was the Panel's conclusion on conditions which would permit import restrictions of processed agricultural products under Article XI:2(c)(i), particularly that on "perishability", which was based on a perfunctory judgement removed from the reality of trade in specific products. The Panel's finding was tantamount to affirming that for dairy products, no import restrictions were allowed under Article XI:2(c)(i) except on fresh milk. The Panel had also ignored pertinent facts related to the "perishability" of starch and of tomato juice and fruit products. In respect of the latter, the Panel's finding contradicted that of the earlier panel on the EEC Programme of minimum import prices, licenses and surety deposits for certain processed fruits and vegetables (BISD 25S/68), which had found that canned and barrelled tomato concentrates were perishable. Moreover, the present Panel did not pay adequate attention to the Japanese Government's policy to secure the best possible access for imports by not imposing restrictions on the raw material of starch and fruit products, and seemed to argue that the importation of raw materials must be restricted in order to make import restrictions on starch consistent with the General Agreement.

Second, the Panel's interpretation of provisions relating to state trading not only ignored drafting history, but lacked legal precision and was inappropriate. The drafting history made it clear that the GATT provisions on restrictions in the field of private trade and those concerning the discipline on state-trading monopolies were originally moulded as two distinct sets of legal frameworks. Without adequate reasoning, the Panel had concluded that the "General Elimination of Quantitative Restrictions" provided in Article XI:1 applied to import restrictions made effective through a state-trading monopoly on the basis of the wording of the interpretative Note ad Articles XI, XII, XIII, XIV and XVIII. The Panel had thus made an excessively policy-oriented judgement instead of developing a solid legal argument based on objective facts.

Third, there were "pertinent elements" which Japan had requested be examined and to which reference had been made in the Panel's terms of reference. He said that the Panel had treated these as irrelevant to the examination, without giving any appropriate consideration to them, and had reached extremely inequitable conclusions.

He concluded by saying that Japan was convinced that the above points were not only its own concerns but also a matter of common interest for a number of other contracting parties. His statement was made in a constructive spirit vis-à-vis the work of the Panel and GATT's dispute settlement mechanism as a whole.

The representative of the United States said that his delegation appreciated the efforts made by Japan since December 1987 to ensure full political clearance of its position expressed at the present meeting, and appreciated the indication that Japan would support adoption of the report. This report demonstrated that agriculture was not outside the GATT, and that GATT was meaningful and effective in settling agricultural disputes. For this reason, it was important to the US agricultural exporting community and to other agricultural exporting nations that it be adopted. Its implementation should provide substantial benefits to agricultural exporters including, in particular, developing countries. Although the United States had not achieved all that it had sought in this case, it was satisfied that the Panel had made a fair and exhaustively detailed examination of the factual evidence and the legal issues. In the US view, the factual and legal basis for the Panel's findings was impeccable; the report was a welcome examination of the agricultural import quota issues involved in this case. Regarding Japan's reference to the historical background of this case, he said that according to the Panel report, the only possible justification for restricting imports of 10 of the 12 categories at issue had ended 25 years earlier.

Regarding Japan's criticism of the Panel's findings with respect to "like products", the Panel had looked at the basic rationale for the agricultural quota exemption in Article XI:2(c), and the text of the General Agreement, in the light of a careful reading of the actual negotiating history, and had found that the dairy products involved did not meet GATT criteria. Japan's argument that dairy products were reversible and substitutable made sense only if Article XI:2(c) was read as legitimizing pure protection for food processors, which it did not do. The Panel had found that the claims of perishability made for some of these products went beyond either the letter or the objectives of Article XI:2(c)(i). This narrow exception to Article XI's broad prohibition on quantitative restrictions was intended solely to protect the interests of agricultural and fisheries producers, not the value added in food processing. Regarding the Panel's interpretation of the issue of state trading, the Note Ad Articles XI, XII, XIII, XIV and XVIII stated plainly that throughout these Articles, the term "import restrictions" included restrictions made effective through state-trading operations. Japan's propositions on the subject of state trading were particularly dangerous to the GATT because they would make any import quotas run through state trading legal. These propositions were not confined to agriculture, and if accepted, could result in a mushrooming of industrial quantitative

restrictions, which would be in no one's interest. In conclusion, he said that the United States expected Japan's speedy implementation of measures consistent with the Panel's findings.

The representative of Australia said that his delegation also recognized the political significance of Japan's announcement that it would adopt this Panel report in spite of domestic difficulties. This showed Japan's recognition that its contribution to liberalizing trade in agriculture had to include providing for greater market access. This was a particularly important point in the Uruguay Round, and highlighted the significance of the contribution Japan could make by recognizing that its own import barriers were important impediments to trade in agriculture. Australia wanted to know the full import of Japan's statement that it had reservations on two of the items in the report, in particular certain dairy products, and state trading. What did that mean for Japan's action regarding the Panel's finding on illegality in those issues? What action would Japan take? Would it include compensation and in what form? Later in the meeting, Australia would challenge some of Japan's interpretations on the issue of state trading.

The representative of the European Communities said that the Panel had produced a carefully reasoned report. The Community could support its adoption and expected its rapid implementation. The Community had concrete interests in this matter and had intervened before the Panel in support of the conclusion that the Japanese quantitative restrictions in question were in contravention of Article XI of the General Agreement. The report made clear that the Panel's findings were limited to the specific measures under examination.

The representative of Thailand, speaking on behalf of the ASEAN contracting parties, welcomed Japan's willingness to adopt the Panel's report in its entirety, its recognition of the need for effective dispute settlement, and the political decision to abide by its commitment to multilateralism. However, Japan's position regarding adoption of the Panel report gave rise to many questions and concerns. First, the implication of Japan's reservation regarding implementation of the Panel's recommendations on starch and dairy products; second, the time required for Japan's implementation of the recommendations, which the ASEAN countries hoped would be expeditious. Those countries believed that the solution to this dispute would be for Japan to withdraw the measures in question which had been found to be inconsistent with the General Agreement. Any eventual solution should be applied on an m.f.n. basis. The ASEAN contracting parties associated themselves with Australia's question regarding the action Japan intended to take.

The representative of Japan said that there appeared to be a consensus for adoption of the Panel report and suggested that this be done. While Japan did not object to this action, he reiterated that the report presented some difficulties.

The representative of New Zealand said that his country welcomed Japan's decision, in terms similar to Australia's. His delegation would examine closely Japan's statement regarding the interpretation of the

Panel's report, which was of great significance to GATT and to the new Round. New Zealand expected that any discussion of the implementation of the Panel's recommendations would be conducted in a full multilateral context.

The representative of Australia said that his delegation understood that Japan's first statement on this matter at the present meeting represented the limit of Japan's position at present. While Australia accepted and would join a consensus to adopt the report in toto, it had questions regarding the implications -- for implementation of the Panel's recommendation in two areas of the report -- of Japan's statement that it could not accept the logic of the argument. He had noted that at no stage had Japan said it did not accept the report in toto. Australia therefore sought advice from the Secretariat on two points. First, whether whatever action taken to implement the report would carry an inherent obligation to act fully within the provisions of the General Agreement, in particular, the obligation to take actions having an m.f.n. effect. Second, if, at some point in the implementation of this report, the question arose of compensation as a means of implementation, whether the following terms of paragraph 4 of the Annex to the 1979 Understanding[8] would fully apply: "The provision of compensation should be resorted to only if the immediate withdrawal of the measure is impracticable and as a temporary measure pending the withdrawal of the measures which are inconsistent with the General Agreement."

The representative of Argentina expressed his delegation's satisfaction with Japan's acceptance of the Panel's report. It was perplexed, however, by Japan's lengthy explanation of its views on the report. Should that explanation constitute conditions on Japan's acceptance of the Panel's recommendations or delay in their implementation, this would set a serious precedent which would compel the Council to intervene again. Argentina hoped that this would not happen.

The representative of Uruguay expressed his delegation's satisfaction with Japan's acceptance of the Panel's report. Uruguay shared Argentina's perplexity regarding Japan's statement, which it looked forward to having circulated to contracting parties for study. However, acceptance of the report as a whole implied acceptance of all elements contained in it, particularly the conclusions, which Uruguay hoped would be respected in accordance with the provisions of the General Agreement.

Mr. Mathur, Deputy Director-General, replying to Australia's questions, referred, on the first point, to paragraph 22 of the 1979 Understanding which indicated that the responsibility of the CONTRACTING PARTIES was to keep under review a matter which had been the subject of a recommendation or ruling. If such a recommendation, adopted by the Council, were not implemented, it remained open to the contracting party

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[8]Understanding regarding Notification, Consultation, Dispute Settlement and Surveillance (BISD 26S/210).

concerned to bring the matter to the CONTRACTING PARTIES for further action. Were the CONTRACTING PARTIES to make "suitable efforts" on the basis of this referral by the contracting party bringing the case, such efforts could only be made with a view to finding an "appropriate solution", for which only a solution within the terms of the General Agreement would qualify. On the second point, his understanding was that it was clearly preferable that a solution mutually acceptable to the parties could be reached before the matter became the subject of a decision by the Council or the CONTRACTING PARTIES. Were that not to be the case, the CONTRACTING PARTIES' action following consideration of the matter and the adoption of any recommendations would be directed, as paragraph 4 of the Annex stated, to securing the "withdrawal of the measures concerned", and were that not possible, to providing for compensatory adjustment until the withdrawal became possible.

The representative of Australia said that his country's concerns were based on the unusual character of Japan's reservations on the interpretation of some parts of the report and on the speculation as to the possibility of Japan's seeking to pay compensation rather than lifting the restrictions. Thailand had mentioned an important principle that whatever action was taken should be m.f.n. consistent. There was a history of bilateral negotiations outside GATT's scope, and it was for this reason that Australia had emphasized a contracting party's obligation in a GATT dispute settlement process to act fully within the terms of the General Agreement. Therefore, it would be unacceptable for any solution in the present case not to be m.f.n. consistent. Australia had noted Japan's statement that it intended to meet its full obligations. Regarding the substantive aspects of the points raised by Japan, his delegation found Japan's complaint that the Panel's interpretation of Article XI:2(c)(i) was rigid and inequitable, to be curious since the origin of the measures in question had never fallen under that Article's provisions, and in 1970 Japan had reported them (L/3212) as measures applied inconsistently with GATT provisions and not covered by waivers. Australia regarded as a relevant interpretation of the provisions on state trading, the Panel's findings in paragraph 5.2.2.3 of the report, from which he quoted. This pointed out that measures under Article XX(d) could not be taken to override other provisions of the General Agreement.

The representative of Japan said that his delegation had listened carefully to the statements, including the Deputy Director-General's explanation which, it was hoped, had clarified some of the contracting parties' doubts. He would report those statements to his authorities.

The Council adopted the Panel report (L/6253).

The representative of Canada said that his country was one of the contracting parties most familiar with the operation of agricultural supply management programs as provided for in Article XI, and had therefore studied this report carefully. The legitimacy of national supply management of agricultural production was fully recognized in the General Agreement, not only in terms of its technical legality under Article XI but in the context of the overall desirability of preventing the build-up of production surpluses which could lead to extreme distortions and imbalances

in world agricultural trade.

As a practitioner of supply management, Canada was particularly concerned to ensure that the interpretations of GATT provisions in this area were valid and well-founded, and consistent with interpretations previously accepted by the CONTRACTING PARTIES. Canada was also concerned about abuses of Article XI:2(c)(i) provisions and about attempts to justify under these provisions import-restrictive measures implemented to underpin policies which did not meet the test of genuine supply management. In Canada's view, this was the situation regarding the measures examined by the Panel; these were residual quotas which, prior to 1963, had been justified as balance-of-payments measures under GATT Article XII, and had clearly not been put in place for supply management purposes. In fact, the Panel report seemed to highlight that a more important and pervasive element of these import quotas was to provide additional protection to Japan's food processing industry. For instance, on many of the items examined, the Panel had noted that imports of upgraded products were subject to quotas while no controls were placed on imports of the corresponding raw material inputs. Clearly, such an import control policy could not be related to an effective supply management system at the primary producer level. However, the Panel report did not deny that the effective maintenance of a supply management system might be seriously affected by the uncontrolled importation of further processed products.

Canada was concerned, however, about parts of the report which raised important interpretative questions in this regard, in particular, the Panel's interpretations regarding the concepts of "like product", "perishability" and "early stage of processing". Canada considered that the Panel had, in some respects, given insufficient consideration to the economic and other linkages between processed and fresh products; in interpreting Article XI:2(c)(i), an excessive and overly rigid differentation between primary products and their derivatives would, in certain cases, render inoperable the general application of the Article as intended by its drafters.

The report did not identify measurable criteria regarding perishability, nor was it clear which products were considered not to meet the test of perishability or for what reasons; its interpretations leaned in a direction opposite to the less ambiguous conclusions of the earlier panel on tomato concentrates (BISD 25S/68), which had clearly found canned and barrelled tomato concentrates to be perishable products since, after a certain time, they would decline in quality and value. The CONTRACTING PARTIES had accepted this finding without reservations, and it remained a clear and valid interpretative precedent. Similarly, on the question of "early stage of processing", the precedent of the tomato concentrates panel, as well as the force of logic, suggested that the critical issue to be determined was whether the necessary practical linkage could be established between the effectiveness of domestic measures aimed at restricting production of the fresh product, and the likelihood of imports of such products undermining the production control system.

With regard to some of these specific issues, Canada felt that the report had significant shortcomings; moreover, it contained considerable

ambiguity and was open to a variety of interpretations. On issues such as "perishability", "stage of processing" and "like products", it did not provide a clear or valid precedent, and Canada did not consider that it in any way displaced or limited the previous interpretations already agreed by the CONTRACTING PARTIES on the basis of the tomato concentrates case and in other investigations of Article XI exceptions. However, in his delegation's view, these issues were not the central ones in terms of the present Panel's overall conclusions. The Panel did make clear that almost all of the Japanese quotas in question failed to meet the test of Article XI:2(c)(i) for a wide range of reasons. The overall thrust of the report was to unmask an import quota system which was clearly not one in support of a genuine domestic supply management program. In this context, Canada had fully accepted adoption of the Panel's recommendations and urged their implementation at the earliest possible date. In doing so, however, his delegation wanted to register the concerns he had outlined on specific interpretative issues related to this case.

The representative of Finland, on behalf of the Nordic countries, said that they had carefully examined the report and had followed the discussions on this matter with keen interest. The Panel had, in overall terms, succeeded in its work, and the Nordic countries had not opposed adoption of the report at the present meeting. However, they recognized that the report posed certain intricate questions regarding the interpretation of Article XI. Some of the Panel's findings, notably those relating to the definition of "like product", the term "in any form" and the notion of perishability, as well as the views presented on the burden of proof regarding market shares in a previous representative period, were, in the Nordic countries' view, unnecessarily tight and would lead to an excessive interpretation of the provisions in question if applied generally. The Nordic countries wanted to make it clear that their acceptance of the report's adoption should not in any way prejudge their position regarding the interpretation of Article XI in other contexts, notably in the Uruguay Round negotiations.

The representative of Austria said that his Government had not opposed adoption of the report but had some concerns with it regarding the disequilibrium in contracting parties' rights and obligations. For example, while one major contracting party which had not yet ratified GATT maintained import restrictions on agricultural products on the basis of a "temporary" waiver, which had become practically a permanent one, others were not allowed to do the same. The beneficiary had become a complainant. Another contracting party which had not yet ratified GATT applied quantitative restrictions without having offered a justification under GATT. It was not his delegation's intention to defend the measures considered by the Panel; however, Japan had taken important measures for liberalization which were the very ones used in the Panel report as arguments against the maintaining of quantitative restrictions. In Austria's view, the Panel had not taken thoroughly into account some of Japan's arguments, for example, concerning dairy products. In sum, Austria saw some disequilibrium and found some conclusions to be inconclusive; this could become counterproductive for future liberalization.

The representative of Thailand, on behalf of the ASEAN contracting parties, expressed their hope that Japan, after having adopted the report in toto, would follow the report's recommendations in toto as well. They understood that the Secretariat's response to Australia's questions could be taken as answers to those questions. However, regarding the solution that the two parties in this case might reach, the ASEAN contracting parties urged that this be brought to the Council's attention, and reserved their right to revert to this matter.

The representative of Switzerland said that whereas his country had not opposed adoption of the Panel report, this should not be understood as prejudging any position Switzerland might take in the context of the Uruguay Round negotiations.

The Council took note of the statements.

Item 11. Canada - Measures on exports of unprocessed salmon and herring - Panel report (L/6268)

The Chairman recalled that at their Session in December 1987, the CONTRACTING PARTIES had considered the Panel report in L/6268 and had agreed that this matter should be considered by the Council at its first meeting in 1988.

The representative of the United States said this was the second time that this Panel report was being considered for adoption. At the CONTRACTING PARTIES' Session in December, Canada had requested more time to study the report. Two months later, his delegation now hoped that Canada would accept adoption of the report, as the United States had done with respect to the Customs User Fee Panel report. The report at hand was well reasoned and its conclusions were well presented and sound. His delegation strongly urged its adoption at the present meeting and hoped that Canada would move expeditiously to implement the Panel's findings.

The representative of Canada pointed out that when this report had been considered at the CONTRACTING PARTIES' session, it had been circulated only ten days earlier. In addition, at that time delegations had been dealing simultaneously with a number of important matters, including Ministerial participation at the Session. These factors had precluded a thorough airing of the issues involved in this dispute, which was of great importance to Canada.

While his country was well endowed with natural resources, many of these, including fish, were exhaustible, and thus required careful management and conservation programs. This entailed two fundamental responsibilities -- preserving the fish habitat, and carefully planning and controlling the catch. Pacific salmon was a particularly tricky resource to manage because the migration patterns of these fish made them unusually vulnerable to overfishing. This problem had been recognized in the Law of the Sea Treaty, where special provisions had been included for anadromous species. Management of the herring fishery was also a complex task in light of the cyclical nature of this resource, the short and intense harvesting period and the high degree of exposure to overfishing. A

further complicating factor related to geographic location. The mouths of Canada's two main salmon-producing rivers were adjacent to its borders with the United States, thus necessitating careful management to ensure stringent enforcement of catch limits and to maintain optimum resource levels in the face of interceptions of Canada-origin fish by US fishermen. In the fisheries area, conservation required major ongoing governmental efforts and investment. Clearly, such conservation efforts anticipated a certain economic return. Salmon and herring accounted for 90 percent of the annual harvesting and processing earnings of Canada's West Coast fishing industry.

Canada maintained strict controls over the annual harvest to prevent further declines in these species. The export restrictions on salmon and herring which were the subject of this Panel were part of the overall regulatory environment for Canada's West Coast fishery, and dated back to 1908. They had been an integral part of the overall conservation and management régime which had developed over the decades for these species, and played an important rôle in maintaining domestic employment and processing activity in the West Coast fisheries. While this was one of the primary motivations for their introduction and maintenance, these were multi-purpose measures which also played a rôle related to Canadian quality standards, the development and maintenance of marketing niches for its high-quality exports, and its overall fisheries conservation and management program for these species.

In this context, Canada had argued that these measures were justified under the provisions of Article XI:2(b) related to standards and marketing, and Article XX(g) which dealt with conservation measures. With regard to Article XI:2(b), the Panel had found that while the measures might bear some relationship to grading and quality, they were not necessary to the application of those standards. Moreover, the Panel had not considered these to be marketing regulations in the sense of Article XI:2(b). Canada basically accepted these conclusions, particularly in light of the stringent test of "necessity" which applied under this Article.

However, Canada was still deliberating on the Panel's interpretation of Article XX(g) with regard to measures "relating" to conservation. The test under that provision was not whether a measure was necessary for conservation purposes, or whether these ends could be pursued by other means, but rather whether the measures in question bore a relationship to conservation. The Panel had made a strict interpretation on this aspect of Article XX(g), concluding that while a trade measure under Article XX(g) did not have to be necessary or essential to the conservation of an exhaustible natural resource, it had to be primarily aimed at conservation. He stressed the word "primarily", because it was not included in the text of Article XX(g). Moreover, the Panel's interpretation on the words "made effective in conjunction with restrictions on domestic production or consumption" was that the measures had to be "primarily aimed at rendering effective these restrictions". The Panel's finding that Canada's measures did not meet this strict interpretation was not surprising; in fact, it was difficult to envisage how any quantitative export restriction could meet those criteria. Conservation essentially took place at the point of production or harvesting, rather than at the border. Export restrictions

therefore applied only once a decision to extract or harvest the resource had been taken. Accordingly, it would be difficult to argue in any circumstances that the primary purpose of export restrictions was to ensure production limitations for conservation reasons. Nevertheless, such export restrictions might bear a significant relationship to the overall conservation system, as Canada felt was the case for the measures in question.

The question was whether the Panel's rather stringent interpretation on Article XX(g) was valid and sustainable, and what its broader implications were for the GATT rights and obligations of all contracting parties. This was the first Panel case to deal with export measures under Article XX(g). Canada questioned whether the drafters of Article XX(g) had intended to preclude the possibility that at least some export restrictions might be among the types of conservation-related measures covered by this Article; however, the Panel's finding seemed to suggest this interpretation. Canada considered that further careful study of the Panel's report by all GATT members was needed prior to a decision on its adoption. His delegation wanted to reflect further on these issues, on which it welcomed other contracting parties' views, and to revert to this matter at the Council's next meeting.

The representative of the United States said it was important that the Council understand that the Panel had found Canada's quantitative restrictions on exports of unprocessed fish to be inconsistent with international trading rules, because at present, Canada did not allow the export of herring and salmon to the United States unless it had first been processed in a Canadian facility. By contrast, Canadian processors had free access to US unprocessed fish and often entered the market in large numbers, causing a harmful price spiral in US markets. Canada had indicated the need for more time to study the report, but in the US view, the finding was clear; it called for the illegal restrictions to be eliminated, in compliance with GATT rules. The United States hoped that Canada would accept the report at the present meeting.

The representative of the Philippines, on behalf of the ASEAN contracting parties, said they had listened carefully to the points made by the two parties to this dispute and were convinced that the broad implications raised by Canada regarding Article XX(g) deserved further consideration and study. Those delegations therefore saw the need for additional time to reflect on those points.

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

Item 12. United States - Taxes on petroleum and certain imported substances
- Follow-up on the Panel report (L/6175)

The Chairman recalled that in June 1987, the Council had adopted the Panel report contained in document L/6175. This matter was on the agenda of the present meeting at the request of Canada, the European Economic Community and Mexico.

The representative of the European Communities recalled that at the October 1987 Council meeting and thereafter at the CONTRACTING PARTIES' most recent Session, the United States had been asked for more precise information on how it intended to implement the Panel's recommendation. In the Community's view, the US replies so far had been evasive, and his delegation was not aware of any concrete steps taken by the United States to comply with its GATT obligations. This undermined the credibility of the GATT dispute settlement mechanism to which the United States, in particular, attached so much importance. The Community expected the United States to give a clear indication at the present meeting of how it intended to implement the Panel's recommendation.

The representative of Mexico said that his delegation shared the Community's concerns, and wondered how much longer it would be before a satisfactory solution was found. Mexico considered that every contracting party had an obligation to comply with such recommendations within a reasonable time. He reiterated Mexico's deep concern with the way the United States had proceeded in this case; that attitude diminished the credibility of the GATT dispute settlement mechanism. Mexico asked the United States to implement the Panel's recommendation and to provide information on the measures taken to do so.

The representative of Canada shared the concerns expressed by the Community and Mexico, and said that his delegation was very interested to hear the US plans regarding implementation of that recommendation.

The representative of Kuwait supported the statements by Mexico and Canada.

The representative of the United States recalled that his country had accepted adoption of the Panel report when it had first been presented to the Council, even though the report had found that a politically sensitive program with wide support had aspects inconsistent with the General Agreement. This stood as evidence of the high priority the United States placed on an effective GATT dispute settlement process. His delegation did not argue with the GATT inconsistency of the excise tax differential on petroleum. Resolving this matter would require legislation. He said that the Administration had written to the chairmen of the key Congressional committees, pointing out in clear terms the dimensions of this issue, and his delegation was confident that they would understand the importance of this issue to other contracting parties.

The representative of the European Communities said his delegation had the impression that it had already heard the US explanation. There still seemed to be no precise indication regarding implementation; the situation in the US Congress did not seem to have changed, and so far there had been no offer for compensation regarding this discriminatory tax which had been in effect for some time. The Community had stated at the most recent Session that unless this situation were remedied quickly, it would have no choice but to request, at the next Council meeting, and in conformity with Article XXIII:2, Council authorization to withdraw equivalent concessions granted to the United States, in order to compensate for the damage caused to the Community by this discriminatory tax. The relevant technical

elements with respect to this request were being prepared and would be presented to the Council in due course. However, the Community still hoped that prior to the next Council meeting, there would be a satisfactory reply from the United States which would obviate such a request.

The representative of Nigeria said the views expressed by representatives suggested that the most logical course of action would be for the United States to reconsider the legislation in question. For a number of developing countries, every cent was important, not to mention a differential of 3.5 cents per barrel between imported and domestic oil. His delegation affirmed that benefits accruing to interested exporters like Nigeria, which were struggling to recover from their arbitrary removal from the US scheme under the Generalized System of Preferences, were nullified and impaired by the US measure. The Council should endorse the views of many contracting parties by requesting the United States to proceed unconditionally to implement the Panel's recommendation.

The representative of Malaysia said that as an oil-exporting country, Malaysia had an immediate interest in this matter and had made a submission to the Panel. It was equally concerned at the very slow process of the US implementation of the Panel's recommendation, and hoped that quick steps would be taken to address this situation.

The Council took note of the statements and agreed to revert to this matter in due course.

Item 13. Japan - Customs duties, taxes and labelling practices on imported wines and alcoholic beverages
- Follow-up on the Panel report (L/6216)

The Chairman recalled that in November 1987, the Council had adopted the Panel report (L/6216). This matter was on the agenda of the present meeting at the request of the European Communities.

The representative of the European Communities recalled that when the report had been adopted, his delegation had asked that Japan inform the Council without undue delay of the measures taken to comply with the Panel's recommendations. The moment was thus ripe, three months later, for Japan to give more precise information regarding its implementation of the necessary fiscal reform with respect to the liquor taxes. The Community remained concerned about how this would be done and particularly about the delays involved. It seemed that a link had been made between the specific liquor tax reform and the broader reform of indirect taxes, which could take a longer period of time than that acceptable for the implementation of a panel recommendation. The Community was also concerned by the substance of the reform.

The representative of Japan said that a fundamental revision of the liquor tax, in the context of the overall tax reform and involving a decision by the Diet, would require time. He reiterated that his Government was making its best efforts to proceed with the necessary domestic steps to implement the Council recommendation. Japan had decided

on 12 January on the basic direction of the revision of the liquor tax law: (1) abolition of the ad valorem tax; (2) abolition of the grading system for whiskeys/brandies, thereby unifying the current tax rates applied to special grade, first grade and second grade whiskeys/brandies; (3) review of the tax classification depending upon, inter alia, the extract content of wines and liquors; (4) narrowing the difference in tax rates applied to distilled liquors by various means including raising the tax rate applied to shochu; and (5) revision of the indirect tax system as part of the overall tax reform. The liquor tax would be examined with due consideration given to narrowing the differences in tax burdens among various alcoholic beverages, including the review of the grading system for Japanese sake. His delegation could not indicate at the present meeting a specific date for bringing this revision into force, but he assured the Council that the details would be worked out without delay.

The representative of the United States said that he wanted to register US exporters' substantial trade interests in many of the products concerned. While welcoming Japan's indications of intent, his delegation shared the Community's concerns.

The representative of the European Communities said that the information given was not new and did not lessen the Community's concerns; in particular, the time needed for implementation, and the orientation of the broad reform, remained somewhat vague. Consequently, the Community would ask for inclusion of this item on the agenda for the next Council meeting and expected much more precise information concerning Japan's implementation of the recommendation.

The Council took note of the statements.

Item 14. Roster of non-governmental panelists
- Proposed nomination by the European Communities (C/W/536)

The Chairman recalled that in November 1985, the Council had approved a roster of non-governmental panelists, and in November 1987 had agreed to extend the roster for an additional year.

The representative of the European Communities drew attention to document C/W/536 containing an additional nomination by his delegation, and recommended its approval by the Council.

The Council took note of the statement and approved the proposed nomination.

Item 15. Committee on Budget, Finance and Administration
- Belgium - Request for membership (L/6301)

The Chairman drew attention to a communication from Belgium (L/6301) containing a request to join the Committee on Budget, Finance and Administration.

The representative of Japan said that his delegation had no specific objection to Belgium's request but wondered whether it did not raise the wider question of principle as to admitting a new member to the Budget Committee. Japan felt it was important to maintain the appropriate size of the Committee for the sake of efficiency. He asked on what principle the request would be considered, and suggested that the Council chairman conduct informal consultations on this matter.

The representative of Australia said that his delegation had the same question as Japan, although perhaps for the opposite reason. The most recent time the Committee had been expanded was when Singapore and Korea had joined. At the time of those requests, it had been argued that for vaguely expressed reasons of the balance between developing and developed country representation, that should not take place. His delegation could not see what the status of developing or developed country had to do with membership on the Committee. However, the question had been asked, and as far as he could recollect, there had been no proper answer. The point Australia and other contracting parties had made at the time was that it was not a sound basis to invoke an anachronistic principle to govern the Committee's composition. They had expressed the strong view that the Committee should be open to those countries interested in participating. That position remained as valid a basis as any other for the Chairman's consultations. His delegation would welcome suggestions for ways to arrive at a structured basis for the Committee's composition.

The representative of the United States said that his delegation was interested to know the Chairman's answer to Japan's question. The United States, too, believed that this question deserved consultation, and therefore supported Japan's proposal.

The representative of the European Communities said that the Communities and their member States were interested in the Chairman's reply. Australia's recollection was probably correct. It could well be that in due course, consultations on this matter would be useful. The Community regretted that the views just expressed had not been made available prior to the present meeting, as this created an embarrassing situation. A satisfactory solution would be to approve the present membership proposal on the basis of the indications given by the Chairman's predecessor, and to submit the question raised to consultations in the most appropriate way.

The Director-General said that he would prefer to see greater eagerness for timely payment of contributions than for membership in the Committee. However, looking back during the period 1956-1959, for example, Australia had been a member, but not in 1960, 1961, 1962 and 1963; Belgium, on the other hand, had not been a member in the period 1956-1959 but had been in 1960, 1961, and 1962. There had been a completely different approach to membership on the Committee in the past. The then Director-General had looked for a group of responsible persons prepared to work with him to prepare the budget and to look at administrative matters. That had been a sense of keeping numbers small, never with the intention of excluding any country, but simply of having a group of people prepared to share the Committee's hard, difficult work. It seemed that contracting

parties' approach to the Committee was changing, and that its composition was becoming a matter for general debate. Should the Council members think it useful to have consultations on the matter, he would be the first to agree, but would suggest that the discussion not be about numbers of members or whether it should be open to everybody, but rather aimed at finding the best practical instrument to prepare a good and solid budget for the Council's approval. The Committee's membership had started with 14-15 members, had risen to 18, had gone down again and currently stood at 23. The ratio between the number of members of the Committee and the number of contracting parties had not been increasing. Thus, taking this criterion, one or two additional members would not affect the ratio. He emphasized the need to keep in mind the purpose of this Committee. One approach might be to have an open Committee; another would be to revert to the previous approach whereby every year the Council designated, after consultations, those delegations which were prepared to share with the Secretariat the responsibility of preparing the budget.

The representative of Australia suggested that the Council follow the same procedure used for the most recent applications, namely, that if there were no dissent, the Council would approve the present request.

The representative of Canada said that his delegation agreed largely with what the Director-General had said. However, the principal matter for concern ought to be the problem of ensuring an adequate cashflow for GATT's ongoing programs and activities. As the Director-General was actively engaged in consultations with delegations on this important matter, perhaps the Committee's composition could be addressed as a related matter within this larger process.

The Chairman suggested that in the light of the discussion and having regard to the Community's statement, the Council approve Belgium's request for membership on the Budget Committee and agree that some further work was needed in order to find a way for the Committee to reflect the Council's wishes.

The Council so agreed.

The representative of India said his delegation had hoped that consultations would be held on the membership and functions of the Committee.

The Chairman acknowledged that consultations would have to be undertaken for that purpose.

Item 16. Communication from the United States concerning the relationship of internationally-recognized labour standards to international trade
- Request for a working party (L/6196, L/6243)

The representative of the United States, speaking under "Other Business", recalled that at the November 1987 Council meeting, it had been agreed that the Chairman would hold informal consultations on the US

proposal to establish a working party on the relationship of internationally-recognized labour standards to international trade. He said that a useful and informative informal consultation had been held the previous week and that his delegation looked forward to further informal consultations with interested parties with a view to developing a consensus to establish a working party.

The Council took note of the statement.

Item 17. India's implementation of the Customs Valuation Code

The representative of the United States, speaking under "Other Business", referred to the two extensions of time granted to India regarding its obligation to implement the Customs Valuation Code,[9] and to India's indication at the November 1987 meeting of the Committee on Customs Valuation that it had not implemented the Agreement. His delegation had notified the Committee of its decision to suspend application of the Agreement with respect to India. At the present time, no further actions were planned, but the United States reserved its rights to revert to this matter.

The representative of India said that his country was committed to honour its obligations under the Code, which enabled developing countries to delay its application by five years. Paragraph I:2 of the Protocol to the Code recognized that this delay might not be sufficient for some developing countries. In order to introduce the necessary legislative changes and to carry out the required administrative arrangements, India had requested a further three and one-half year extension, but had been granted one for only 18 months. India's keenness to implement the Code was reflected in the necessary legislative amendment's having been listed for consideration in both Houses of Parliament in 1987; it was expected that it would be considered during the Parliamentary session beginning on 22 February. He said that in practice, India was honouring its commitment under the Code, although the detailed procedures envisaged by that instrument were yet to be incorporated in India's legislation. His delegation did not understand why this matter had been brought before the Council when India had been keeping the Committee on Customs Valuation and its members fully apprised of developments in this regard.

The Council took note of the statements.

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[9] Agreement on Implementation of Article VII of the General Agreement on Tariffs and Trade (BISD 26S/116).

Item 18. Lesotho's succession to GATT (L/6296)

The representative of the United States, speaking under "Other Business", referred to Lesotho's recent succession to GATT under the provisions of Article XXVI:5(c) (L/6296). The United States welcomed this move, but was not clear about the terms of Lesotho's association with the General Agreement. In order to understand more fully the implications for contracting parties' trade interests, the United States was considering the possibility of requesting a working party to examine Lesotho's rights and obligations, and to report back to the Council. This initiative would not affect Lesotho's status in GATT but would simply make it more clear and might also be helpful in the work undertaken in the Uruguay Round Negotiating Group on GATT Articles.

The representative of Japan said that his delegation shared the concern expressed by the United States and had raised this very question in that Negotiating Group. Japan was interested in following this question in a working party and supported its establishment.

The Council took note of the statements.

19. Sweden - Restrictions on imports of apples and pears

The representative of the United States, speaking under "Other Business", said that the United States had been engaged for some time in discussions with Sweden concerning Sweden's maintenance of quantitative restrictions on apples and pears, which were believed to be inconsistent with Sweden's GATT obligations. His delegation hoped to be informed sufficiently prior to the March Council meeting of Sweden's intention to eliminate these restrictions, so that a US request for a panel to examine this matter would not be necessary.

The representative of Sweden confirmed that consultations had been held and said that Sweden was prepared to continue them in the near future. Sweden had also made concrete proposals regarding a mutually satisfactory settlement, but was concerned at what appeared to be a rigid approach by the United States on this matter. Sweden hoped that the United States would approach the continued consultations in a constructive spirit.

The representative of Australia said that this delegation understood that the discussions would be m.f.n.-consistent.

The Council took note of the statements.

Item 20. Generalized System of Preferences - United States' removal of Hong Kong, Korea and Singapore from GSP Scheme

The representative of Korea, speaking under "Other Business", regretted the recent decision of the United States to remove Korea, along with three other countries, from its scheme under the Generalized System of

Preferences (GSP), effective January 1989. Earlier at the present meeting, contracting parties had already expressed their views on this issue in another context.[10] He stressed that the GSP was special and differential treatment in concrete form and practice. It was a unique system within the GATT framework under which developed countries had made contributions to the economic growth of developing countries through trade. From its inception, the GSP had been designed to be generalized, non-reciprocal and non-discriminatory in character according to the CONTRACTING PARTIES' Decision of 25 June 1971 (BISD 18S/24); however, these elements had not been fully respected. In announcing its decision to graduate four Asian trading partners, the US Government had said that it had taken into consideration these countries' remarkable advancements in economic development and their recent improvements in trade competitiveness. Nevertheless, the criteria for graduation had been neither clearly nor convincingly spelled out. He illustrated how this decision would especially damage small- and medium-sized industries with limited competitiveness. Korea feared that such unilateral action would have a negative influence on the Uruguay Round negotiations, dampening the enthusiasm not only of the affected countries but also of other developing countries which might well become subject to similar measures. His delegation reserved all its GATT rights and firmly believed that the benefit of special and differential treatment embodied in GATT provisions and the MTN Agreements should not be prejudiced.

The representative of Singapore said his Government was extremely disappointed with the decision of the US Administration to "graduate" Singapore from its GSP Scheme with effect from January 1989, because in January 1987, the United States had affirmed Singapore's GSP status and had provided a favourable package of GSP benefits effective July 1987. This had been in recognition of Singapore's responsiveness to the US Government and business concerns with regard to the protection of US intellectual property, as well as Singapore's clean record of free and fair trade. The US decision to graduate Singapore would undermine the promises of good faith and predictability which underlay US-Singapore economic relations. Moreoever, at a time when the United States was encouraging its trading partners to open up their markets and to reduce or eliminate unfair trade practices, it would be sending the wrong signal. He said that Singapore had enjoyed a trade surplus with the United States only since 1984. In 1986, the US trade deficit with Singapore had been US$1.5 billion, less than 1 percent of the total US trade deficit; 52 percent of Singapore's exports to the United States were from US-owned corporations, and a major part consisted of components which helped make US final products more competitive in the world market. Also, Singapore had not contributed to the global trade imbalance by pursuing a single-minded policy to export, but had always run a deficit in its overall balance of trade with the world. In 1986, that deficit had amounted to S$6.6 billion, approximately 17.5 percent of GDP. Despite that, Singapore had not engaged in protectionist practices, but had continued to maintain its free-trade

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[10] See item no. 2.

régime. He stressed that the US action should in no way affect Singapore's GATT rights, which it reserved, as well as the right to raise this matter again in other appropriate GATT bodies.[11]

The representative of Hong Kong said that his Government deeply regretted the US decision to remove Hong Kong, along with others, from the scope of its GSP scheme as from 2 January 1989. About 15 percent of Hong Kong's exports to the United States currently benefitted from the scheme, which had served as an incentive to diversification away from textiles and apparel products, which did not benefit from the scheme. He questioned the view of those who might see the exclusion as some sort of levelling of the playing field. He noted that US products entering Hong Kong at zero tariff were roughly double the value -- at US$3 billion -- of Hong Kong products currently entering the United States tariff-free -- at US$1.4 billion. The reasons given for exclusion were at best questionable. It had been claimed that the removal of four beneficiaries which accounted for 60 percent of US GSP benefits would open additional opportunities for the remaining beneficiaries. However, these four beneficiaries had long been subject to annual product exclusions under the competitive-need criteria, and the experience had been that whenever they had lost market share as a result of product exclusion, the gap had not been filled by the other developing beneficiaries most in need of the program, but mainly by developed countries. Moreover, if the US Administration was responding to concern about the US trade deficit, it should be noted that only about four percent of worldwide imports to the United States attracted GSP benefits. Substituting about half of that with non-GSP imports from developed countries would do little or nothing for the trade deficit. The m.f.n. waiver granted for the GSP in 1971[12] and extended under paragraph 3 of the 1979 Decision[13], required that GSP benefits be provided on a generalized, non-discriminatory and non-reciprocal basis. The US Administration had given its reasons for totally excluding Hong Kong and others only in general terms. It was hard to see how the exclusion of Hong Kong could not be regarded in some sense as discriminatory. He further questioned the view of those who might see the exclusion as some sort of balancing of benefits or equalizing of the burden of obligations. Hong Kong had no tariffs and maintained no barriers to trade. He asked how the so-called "graduation" of economies that already freely accepted a higher level of obligations than others, through the pursuit of open-market policies, could possibly contribute towards market opening in the context of the Uruguay Round. He reserved all Hong Kong's rights in respect of this matter.

The representative of the United States said that his delegation had taken note of the statements concerning the US scheme under the GSP and the

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[11]The full text of the statement by Singapore was circulated in L/6303.

[12]BISD 18S/24.

[13]"Enabling Clause". Differential and more favourable treatment, reciprocity and fuller participation of developing countries (BISD 26S/203).

recent announcement by the US President to graduate several countries from beneficiary status under the US temporary and unilateral preference program, effective 2 January 1989. This graduation action, which was similar to that taken by other donor countries, was in keeping with the provisions of the Enabling Clause and the temporary nature and intent of unilateral GSP schemes. The decision had been based on the President's authority under the US Trade Act of 1974, as amended, to designate GSP beneficiaries, taking into consideration levels of their economic development and competitiveness. During the review, the Administration had considered a broad range of economic and development indicators, including growth rates, per-capita GNP and an ability to export manufactured goods to the United States. Beneficiaries had been aware of the review and discussions had been held at senior levels of government. The review had concluded that four beneficiaries had reached a level of economic success such that the special advantages offered by the United States' broad program were no longer justified. The purpose of GSP programs was to provide temporary advantages to beneficiaries which would otherwise not be in a position to compete in the market without the aid of special tariff preferences. Having reached the conclusion that the preferences were no longer warranted for four beneficiaries, it had been decided to establish a process of graduation that would provide for a reasonable interval for the beneficiaries and for the many firms, both American and foreign, to make necessary adjustments. The decision was not designed to penalize or to express displeasure with the policies of any beneficiary. For that reason, the action had been announced nearly a year in advance of its effective date, 2 January 1989.

The Council took note of the statements.

21. European Economic Community - Article XIX Action by Spain on certain steel products (L/6179/Add.4)

The representative of Canada, speaking under "Other Business", said that his delegation had asked to have this matter considered under "Other Business" prior to having received document L/6179/Add.4, which notified an extension of the time-limit in Spain's action on steel. His delegation was pleased that the notification had been made, but noted that Article XIX required advance notification, an obligation which a number of contracting parties did not always meet. Advance notification would permit consultations with interested contracting parties prior to the implementation of trade measures.

The Council took note of the statement.