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on 11 October 1989

Chairman: Mr. John M. Weekes (Canada)

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1. International Trade Centre
- Report of the Joint Advisory Group (ITC/AG(XXII)/116)

Mr. Rossier (Switzerland), Chairman of the Joint Advisory Group (JAG), introduced the report on its twenty-second session (ITC/AG(XXII)116). The Group had reviewed the activities of the International Trade Centre (ITC) during 1988 and had formulated recommendations to the governing bodies of UNCTAD and GATT. The year 1989 marked the ITC's 25th anniversary. The ITC's expenditures for 1988 had been US\$26.3 million, or 25 per cent higher than for 1987. The UNDP-financed projects accounted for half of that amount, while special project funds made up the other half. The Group had noted that the ITC's limited financial resources were the single most important constraint in its efforts to satisfy the developing countries' assistance needs in trade promotion. The Group had thus urged special projects funders and the UNDP to increase their contributions. The Group had also indicated the desirability of increasing the ITC's ordinary resources in line with the expansion of its programmes. It had recommended that ITC cooperation with international development assistance bodies be strengthened and that the ITC continue to pay serious attention to the conception, evaluation and technical support of its projects, as well as to the choice of experts. The Group had devoted particular attention to the five following sub-programmes: (1) institutional infrastructure for trade promotion at national level; (2) export market development; (3) specialized national trade promotion services; (4) staff development training for trade promotion; and (5) import techniques and operations. With regard to (1), the Group had invited the ITC to intensify its activities. As for (2), it had underlined the importance the ITC should attach to the development of non-traditional and new products exports. The Group had invited the ITC to seek increased support for its activities

related to the developing countries' commodity trade. With regard to (3), the needs far exceeded the available resources. The Group had noted the importance of services in world trade, and had invited the ITC to explore with GATT and UNCTAD the type of assistance it could offer. It had recommended that the ITC pursue its efforts in the promotion of export-oriented joint ventures and in the search for assistance funds for organizing export services fairs. With regard to (4), direct training activities had reached a peak, but the ITC should continue to provide for increased training needs in general. With regard to (5), the Group had highlighted the rôle of providing information and had encouraged the ITC to continue to focus on the utilitarian approach.

The Group had emphasized the importance of the priority the ITC gave to the least-developed countries, particularly in the light of preparations for the second UN Conference on these countries, scheduled for September 1990 in Paris. Under the heading "Other technical cooperation activities", the Group had encouraged the ITC to increase its efforts toward helping developing countries benefit from increased market access in socialist countries of Eastern Europe.

The Group had vividly encouraged the ITC's initiatives aimed at fostering the participation of women in the development of trade and had recommended that it develop a strategy to this end on the basis of the recommendation of the meeting held at the ITC in December 1988. The Group had endorsed the recommendation of the consultant on "national trade representation" and "fairs and commercial publicity". With regard to the preparation of the documentation related to the Mid-Term Plan 1992-97, the Group had planned a discussion at its 23rd Session to be held in January 1990.

In conclusion, he said that trust fund contributions to the Centre had been announced by the following: Austria, Canada, China, Denmark, Finland, France, the Federal Republic of Germany, India, Ireland, Israël, Italy, Japan, the Republic of Korea, the Netherlands, Norway, Poland, Spain, Sri Lanka, Sweden, Switzerland and the USSR. A large majority of these donors had announced that they were prepared to increase their contributions to the ITC.

The representatives of Bangladesh, Chile, Finland on behalf of the Nordic countries, Brazil, Indonesia, Peru, Uruguay, Israël, Colombia, India, Cuba, European Communities, Côte d'Ivoire, Morocco, Pakistan and Nicaragua expressed interest and appreciation for the useful and valuable work of the ITC and its secretariat.

The representatives of Bangladesh, Chile, Finland on behalf of the Nordic countries and Colombia suggested that high priority be given to technical assistance to the least-developed countries (paragraph 34).

The representatives of Bangladesh, Indonesia, Colombia, Côte d'Ivoire, Morocco, Pakistan and Nicaragua drew attention to, and thanked the ITC for, assistance which their respective countries had been given.

The representatives of Chile, Peru, Uruguay, Colombia, and Cuba drew attention to the lower level of ITC activities in Latin America and urged that these be increased in the future, as mentioned in the report (paragraph 35).

The representatives of Bangladesh, Indonesia, Colombia, Côte d'Ivoire and Morocco urged donors to increase their contributions to the ITC and appealed to other countries to make a contribution.

The representative of Bangladesh said that as a beneficiary of the ITC's activities, his country had been able to increase its exports of non-traditional items and launch many export oriented programmes in areas such as export packaging and design, export finance services, commercial publicity and quality control. His Government had given high priority to product diversification and market expansion, and many non-traditional and manufactured products had attained export potential; it had accorded high priority to encouraging the private sector with incentives. This had been facilitated through a policy of privatization and export-oriented growth of the economy. Bangladesh had widened export horizons by developing and adding new commodities to the export list and by expanding the export markets. The ITC dealt not only with export promotion but also with export development, and had moved into new areas to meet the rapidly changing needs of the developing countries. He hoped that the ITC would be able to strike a balance between its traditional activities and the new areas of action. He hoped that more funds would be available in future for expanded training support in the form of direct training in new fields. In light of the resource constraint under which the ITC had to operate, Bangladesh emphasized the need to augment the flow of resources to the ITC.

The representative of Finland, speaking on behalf of the Nordic countries, recalled their strong support for the ITC. As the focal point in the UN system for technical cooperation in trade promotion, it was playing an increasingly important role in enhancing the export capabilities of developing countries. When evaluating the ITC's work, the Nordic countries were judging its activities against the priorities they themselves had been advocating, namely, that commodity-related activities and programmes directed at the least-developed countries should continue to receive the ITC's greatest attention. Other areas which should also continue to be reflected were the promotion of sustainable development, strengthening of the role of women in development and human resources development in general. The ongoing Uruguay Round would also have an impact on the ITC's work, and this had been duly recognized by the ITC's management. The increased funding by the UNDP was a gratifying sign of the value UNDP attached to the ITC's activities. The Nordic countries also saw a useful ITC role in the contribution to the implementation of reforms in the trade area supported by the structural or sectoral adjustment loans by the World Bank and the regional development banks. The Nordic countries renewed their appeal to all countries to contribute, or to increase their contributions, to the ITC's operational activities.

The representative of Brazil reaffirmed Brazil's full support for the ITC's activities. He recalled the rôle played by Brazil at the time of the

ITC's founding. Since then, Brazil had been working with the ITC to improve developing countries' trading capabilities. Good management and specificity of purpose, together with a flexible and modern approach, had been at the root of the ITC's success during two and a half decades. If this formula had worked so far, there would be no reason to modify it. It would be even worse to try to transfer to the ITC the task of debating matters which did not belong either to the nature of its work or its mandate, and the ITC should be protected from the kind of thematic proliferation that seemed to haunt some international fora. The ITC had been developing new strategies in the trade field, such as the enterprise-oriented approach and the joint-venture programme, which should be encouraged by all members.

The representative of Indonesia said that his country had benefited from the ITC's assistance, particularly at the present time when it was trying to increase its non-oil exports. His delegation concurred with the view that the ITC had to increase the quality of its technical assistance to the developing countries and to increase its financial resources commensurate with the growing demand for assistance. Indonesia, for its part, had contributed US\$50,000.

The representative of Israel noted the high and professional level of the discussion which had taken place in the JAG and which he attributed to the ITC's maturity. Considerable work was being done in GATT, and in particular in the Uruguay Round, to open markets further. The ITC could help developing countries to benefit from this market opening in an even more important way. This priority had been fully reflected in the report, and work in that direction should be encouraged.

The representative of India commended the very useful rôle the ITC had played in the trade promotion of developing countries.

The representative of Cuba said that her delegation noted with satisfaction that, as stated in paragraph 35 of the report, the ITC would increase its activities in Latin America.

The representative of the European Communities noted that the ITC was one of the few institutions which, although working in a modest fashion, was nevertheless efficient. For that reason, the appeal for funds had been heard, and he would see what the Community could do in this respect.

The representative of the Côte d'Ivoire said that her delegation was grateful for the ITC's assistance to developing countries, particularly those in Africa.

The Council took note of the statements and adopted the report in ITC/AG(XXII)116.

2. Accession of Tunisia

- Time-limit for the signature by Tunisia of the Protocol of Accession (C/W/606)

The Chairman recalled that at its meeting on 21-22 June, the Council had taken note of the change in the time-limit in paragraph 5 of the draft Protocol of Accession of Tunisia to 16 October 1989 in order to allow time for the completion of the tariff negotiations required for accession. He drew attention to the communication from the Director-General in C/W/606 in which it was suggested that this time-limit be changed to 30 March 1990.

The representative of Tunisia said that the successive deferrals of the time-limit for the signature of Tunisia's Accession Protocol had been justified by the lengthy and complex process of the negotiations. These deferrals had nevertheless provided time for the conclusion of all the negotiations carried out over the two previous years. All negotiations on substance had been completed, and schedules of concessions had been signed with some contracting parties. Thus, only procedural and technical questions made it necessary to request a further extension of the time-limit. Her delegation hoped that the Protocol and its related schedule would be ready in the near future.

The Council took note of the statement and of the change suggested by the Director-General.

3. Establishment of a streamlined mechanism for reconciling the interests of contracting parties in the event of trade-damaging acts

The Chairman recalled that at the Council meeting on 19 July, he had expressed the hope that the draft text prepared by the Secretariat, which attempted to capture the conclusions that seemed to be coming out of the consultations on this matter, could be read onto the Council's record at the present meeting. Since the July meeting, he had had further discussions with the Chilean and other delegations and an informal consultation had also been held on 9 October 1989. He said that a consensus seemed to have emerged on a slightly revised text, which he went on to read as follows:

"As representatives are aware, a number of informal consultations have taken place under my chairmanship on the possible establishment of a streamlined mechanism for reconciling the interests of contracting parties in the event of trade-damaging acts.

"These consultations were initiated originally at the request of Chile following discussion at the April Council meeting. During the course of the consultations and in the light of comments made by delegations, there seems to have emerged a consensus amongst the participating delegations that the matter under discussion is of interest to all contracting parties.

"Another element which emerged during the informal consultations was that some delegations, despite their recognition that a genuine problem exists, are doubtful whether it will be possible for their respective authorities in capitals to agree on a formalized GATT structure to deal with the problem.

"Some delegations have indicated to me that, in their view, it would be appropriate for me, as Council Chairman, to make the foregoing a part of the Council's record and, in addition, suggest how contracting parties might be advised to proceed in the future with questions raised in this area.

"My recommendations would be as follows:

1. A measure taken by an importing contracting party should not be any more severe, and should not remain in force any longer, than necessary to protect the human, animal or plant life or health involved, as provided in Article XX(b).
2. The importing contracting party should notify the Director-General as quickly as possible. A notification by telephone should be followed immediately by a written communication from the importing contracting party, which would be circulated to contracting parties.
3. The importing contracting party would be expected to agree to expeditious informal consultations with the principally concerned contracting party as soon as a trade-damaging act has occurred, with a view to reaching a common view about the dimension of the problem and the best way to deal with it effectively."

The Council took note of the statement and of the Chairman's recommendation that the above guidelines be used in the event of a trade-damaging act.

4. United States - Section 337 of the Tariff Act of 1930
- Panel report (L/6439, L/6487, L/6500)

The Chairman recalled that in October 1987, the Council had agreed to establish a panel to examine the complaint by the European Communities. At its meetings on 8-9 February, 6 March, 12 April, 10 May, 21-22 June and 19 July, the Council had considered the Panel report (L/6439), and in July had agreed to derestrict the report and to revert to this item at the present meeting.

The representative of the European Communities asked the US representative for a clear statement of intention as to adoption of the Panel report in light of the internal processes which had been going on.

The representative of the United States recalled that at the July meeting, he had advised the Council of the intensive efforts being undertaken at the highest levels of his Government to determine whether, to what extent, and in what context the United States could accept adoption of the Panel report. He had stated then that the United States would be prepared to make a full statement of its position and intentions in the autumn. His delegation was not yet prepared to make such a statement, but the commitment remained to make such a statement before the autumn ended. Since the last meeting, his authorities had spent considerable time reviewing this matter. During the examination of the report and its implications for enforcement of US law, his authorities had been made aware of the importance Section 337 held within the framework of the US system of intellectual property protection. This explained why there was such strong domestic opposition to any action by the United States that would diminish the level of enforcement currently provided under US law, particularly in a world trading system which lacked any credible standards and enforcement for intellectual property rights. Nevertheless, his authorities had actively explored detailed proposals on possible means of addressing the issues raised in the report, because they recognized the importance of a credible dispute settlement process. Such a process would often require countries to accept panel reports, even if they questioned the validity of some of the findings. In that context, there was no need to restate well-known concerns about this particular report.

Since the United States Trade Representative had assumed office, his authorities had chosen to focus on the question of how they might ultimately reconcile their own interests in effective intellectual property protection with their interest in abiding by GATT rulings. Congress, academics and the private sector had been engaged in this debate. However, the policy and legal problems presented by implementation of the report's recommendations were far more complex and difficult than had been imagined, and the review had not been completed before the present meeting of the Council. This did not mean that the United States had ceased its internal review. On the contrary, the review had been accelerated. But his authorities had grave concerns about the wisdom of agreeing to adoption before they had fully considered the ramifications of implementing this report. Furthermore, the importance of the issue of effective enforcement of intellectual property rights could not be overstated. The United States did not wish to handle this report in such a way as to make it more difficult to implement the report's recommendations, which, if the report was adopted, would take time and should reflect the evolving negotiations in the Uruguay Round on border enforcement of intellectual property. There should not be any illusions about the short-term prospects with respect to implementation. It would be impossible to reach a domestic consensus on how best to implement this report until one had a better international understanding to protect adequately the legitimate commercial interests of intellectual property rights holders. Despite the number and difficulty of the issues that needed to be resolved prior to adoption, his delegation anticipated final action on this matter in the near future.

The representative of the European Communities said that his delegation and the Council had had to learn patience. This was the seventh time that this point was on the agenda. To say that the Community was

disappointed that so little had happened in the US internal process was an understatement. The United States knew perfectly well what was at stake. The Community could not presume to know better than the United States what weight to attach to the maintenance of a legislative procedure found by a panel to be inconsistent with international obligations. However, the Community could and had to pass a judgement on the impact of the United States' refusals on the international stage, first and foremost on the GATT itself, on the Uruguay Round negotiations, and on the relative importance the United States attached to its international commitments compared to that attached to its industrial lobbies. There was no GATT mechanism to bring about adoption of a panel report, but contracting parties could only draw their own conclusions when narrow national interests prevailed over multilateral commitments. This Panel was about national treatment more than intellectual property rights enforcement. It was an area of sensitivity for the multilateral trading system, where credibility needed to be boosted and a lead was needed from the United States. The Community wanted this item to be kept on the agenda for the next meeting.

The representative of Japan said that his delegation was disappointed by the US statement and was concerned about the adverse effects which this further delay of adoption would have on the credibility of the GATT system as well as on developments in the Uruguay Round. The United States should be aware that it was sending a wrong message to the outside world that GATT was not functioning well. He again urged the United States to agree to the adoption of the report as soon as possible.

The representative of Canada supported the statements by the Community and Japan. Canada, too, was disappointed that so many months had passed since this report had first been before the Council. He had noted, however, a positive note in the US representative's statement on the progress so far in the internal review process.

The representative of Brazil reiterated Brazil's view that it supported the recommendation in the Panel report. His delegation was again disappointed that it could once again not be adopted. While Brazil did not prejudge the outcome of the negotiations on trade in intellectual property and believed that Council work should not be blocked by the expectations of some as to what the outcome of the Uruguay Round negotiations might be, it feared, however, that the Round would be adversely affected. His delegation hoped that the Panel's recommendations would be implemented as soon as possible in a demonstration of respect for the GATT dispute settlement mechanism as well as for the multilateral trading system.

The representative of Switzerland said that his delegation had listened carefully to the US representative's statement and had taken note that the internal review process was still going on and that the United States would have a clear position before the end of this autumn. It was important that the report, which had been before the Council for nine months, be adopted without further delay. His delegation was concerned with the impact that a further delay would have on the credibility of the system and firmly hoped that the United States would be in a position to accept the Panel's findings and conclusions by the next Council meeting.

The representative of Norway, on behalf of the Nordic countries, recalled that they had previously supported the Panel's recommendations and the adoption of the report. They agreed with the Community that the question was first and foremost one of national treatment. He added that the question was not of purely theoretical interest for the Nordic countries, as enterprises were being affected by some of the practices covered by the report and found to be inconsistent with GATT.

The representative of Israël recalled his delegation's support for the adoption of the report. Israël had taken note of the US statement and was encouraged that the internal review process was going on. His delegation urged the United States to finalize that review and to adopt the report as soon as possible.

The representative of India said that his delegation had listened carefully to the US statement. His delegation appreciated that problems existed but was disappointed that the United States had not been able to conclude the internal review and consultation process. The issue went far beyond the adoption of the report, and his delegation had a very deep interest in it. India endorsed the Community's view that it was first an issue of national treatment -- a fundamental principle in GATT -- and that the question of intellectual property enforcement was being negotiated in the Uruguay Round. Any link between the two aspects was invalid and unfortunate. He hoped that the United States would be able to adopt the report by the next meeting.

The representative of Mexico reiterated his country's commitment to respect and to strengthen the dispute settlement mechanism. Mexico, too, believed that this was primarily a question of national treatment. His delegation hoped that the report would be adopted at the next meeting.

The representative of the United States reiterated the assurance he had given earlier and which he hoped had given rise to optimism on the part of certain delegations. One would have to wait for the next Council meeting to hear a final US statement on the issue. The United States would have an opportunity in the future to remind some contracting parties of their commitment to the principle of automatic adoption of panel reports. Some who had strongly advocated that principle at the present meeting had, in past disputes involving GATT rules, not shown such a profound belief in the system. He recalled having had to wait indefinitely to know whether the Community would ever accept the findings of a panel under the Subsidies Code¹. That had caused a great deal of frustration for the United States which eventually had had to settle beforehand a number of issues falling outside the Subsidies Code. For the United States' part, he would continue his best efforts to press for a solution of the problem.

¹Agreement on Interpretation and Application of Articles VI, XVI and XXIII (BISD 26S/56).

The representative of the European Communities expressed disappointment with the US statement. The Council was confronted with a new situation which needed to be seen in light of what was being done in the Uruguay Round to try to improve the dispute settlement procedure. It was obvious that there had been difficulties in the past, but the Subsidies Code, as was well known, was particular and had been an area of exceptional difficulties.

The Chairman said that it seemed to him that the nature of the discussion had evolved somewhat as compared with earlier meetings. He hoped that a breakthrough could be made at the next meeting.

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

5. Korea - Restrictions on imports of beef - Panel reports

- (a) Complaint by Australia (L/6504)
- (b) Complaint by New Zealand (L/6505)
- (c) Complaint by the United States (L/6503)

The Chairman recalled that in May and September 1988, the Council had established panels to examine the complaints by Australia, New Zealand and the United States related to Korea's restrictions on imports of beef. At its meetings on 21-22 June and 19 July, the Council had considered the reports of the three Panels in documents L/6504, 6505 and 6503 respectively, and at its meeting on 19 July, had agreed to revert to this item at the present meeting.

The representative of New Zealand recalled that this dispute had been underway for almost exactly five years. Korea had been in possession of the report for five months -- quite sufficient time for any contracting party to study the implications of a panel report. New Zealand did not consider any further delay justifiable, and had a right to action from Korea. The adoption of the report would allow appropriate negotiations to take place among the interested parties. New Zealand was surprised that Korea had so far wanted to stand in the way of GATT dispute settlement procedures. Dispute settlement could be a two-way street. Countries like New Zealand and Korea, which were reliant on and successful in international trade, were dependent upon multilateral disciplines being respected both in letter and spirit. As to the resolution of this dispute, Korea was well aware of his authorities' views on the principles which should govern the negotiation, among which was the adoption of this report. New Zealand was well aware that Korea had created linkages of a political nature between the resolution of this very particular dispute and the wider issues involved in Korea's continued invocation of Article XVIII. Those linkages were not helpful to either process, or to the GATT. The fact was that the Council had set up, as Article XXIII provided, a process to resolve a dispute over a single product -- namely fresh and chilled beef. Korea had had every opportunity to make its views known to the panelists. Those views had been tested in the Panel report. The issues involved in the Committee on Balance of Payments (BOP) process were much wider. Whatever the outcome might be from that process, it was of considerable importance

to ensure that any conclusions in respect of balance of payments did not cut across a clearcut decision pursuant to Article XXIII. His delegation urged Korea to adopt the Panel report at the present meeting.

The representative of Korea said that his delegation was not in a position to agree to the adoption of the Panel reports at the present meeting. His Government continued to have serious concern about the implications of the reports which were not limited to Korea's beef import régime only, but would, once adopted, constitute a precedent with regard to the invocation of Article XVIII:B by a number of developing contracting parties. Therefore the reports warranted further examination. In addition, the adoption would inevitably prejudice the result of the upcoming BOP Committee's consultation with Korea, which would resume in the week of 23 October. His delegation continued to believe that only that Committee could, and was authorized to, pass judgement on the BOP situation of contracting parties. Lastly, as stated at the most recent Council meeting, Korea was conducting consultations with complaining parties and was in the process of increasing 1989 beef imports to the pre-1984/1985 level when restrictions on beef imports had been intensified. His Government would continue to endeavour to find a practical solution to this matter.

The representative of Australia noted that this was the third time the report had been before the Council. Korea had had almost a further three months to consider the implications of the Panel findings, and Australia was most disappointed that once again Korea had chosen to block adoption of the report. He stressed the strength of Australia's resolve and commitment to reaching a distinct solution to a distinct dispute over beef restrictions. Australia's foregone trade was in the hundreds of millions of dollars. Australia had at all times been prepared to be flexible in trying to resolve this dispute satisfactorily. At the July Council meeting, Korea had expressed interest in finding a solution and had proposed consultations without delay to this end. Australia had accepted the invitation and had sent a delegation to Seoul in August, only to find that Korea was not in a position to enter into meaningful consultations at that stage. In the meantime, trade was flowing again and Australia welcomed that, while, of course, it was watching closely the conditions applied to this trade. Once again, the clear Panel findings on the basic beef issues were before the Council. At the July meeting, there had been considerable support for Australia's position and wide acceptance that the reports should be adopted. In this regard, several countries had pointed to their commitment to the dispute settlement process and to the need for strengthening the multilateral system -- a system from which Korea had reaped handsome benefits over recent years. His delegation again urged the Korean Government to reconsider its position, and to accept the obligations its current position within the multilateral system entailed, by agreeing to the adoption of the report.

The representative of Mexico said that his delegation agreed, as the United States had said under another agenda item, that the implementation of panel recommendations should be adhered to. Mexico had always stood by that central principle of good behaviour in GATT, and had stated previously that panel reports and recommendations should be adopted as soon as possible, no matter which were the parties to a dispute, because an

efficient, opportune and dependable dispute settlement system was fundamental to GATT work. His delegation, however, had expressed some doubts as to the contents of the three reports when they had been first introduced in the Council, and more particularly as to their relationship to other provisions of the General Agreement, namely the implications for the rights of contracting parties under Article XVIII. Given that, and without wishing to interfere with established procedures, his delegation wanted to put on record that it would not oppose adoption of the reports by consensus, on the understanding that the results of these reports did not constitute any precedent that could impair the rights of parties under Article XVIII.

The representative of the European Communities recalled that the Community, too, had on previous occasions supported rapid adoption of these Panel reports. More than enough time had elapsed for Korea to reach a decision which could only lead to its adoption of the reports. The Community had noted Korea's statement that adoption at the present meeting would risk prejudging the outcome of the forthcoming BOP consultation. It was to be hoped, therefore, that no further excuses would be presented after that consultation had taken place.

The representative of the United States associated his delegation with the views expressed by New Zealand, Australia and the Community.

The representative of Canada associated his delegation with the views expressed by New Zealand, Australia and others. Canada supported immediate adoption of the reports. Canada had been an interested third party in the disputes and had a very strong commercial interest in the outcome thereof. He reiterated Canada's request to be associated with any consultations related to the adoption and implementation of the reports.

The representative of Egypt reiterated his delegation's position with regard to the adoption of the reports and the observations it had made earlier with regard to some aspects of the proceedings of the Panel reports. He drew a distinction between the invocation of Article XVIII:B by a developing country and the specific case addressed by the Council at the present meeting. Hypothetically, if Article XVIII:B was disinvoked, that did not imply that the restrictions would be removed overnight. Thus, the issue should not be addressed within the scope of Article XVIII:B, but should be limited to the case before the Council.

The representative of Pakistan said that his delegation, as Mexico, had had difficulties in expressing definitive views on the reports at the June Council meeting, because they raised fundamental questions which required time to consider and which related to the Panels' findings on the jurisdiction of panels established under Article XXIII and of the BOP Committee under Article XVIII. A problem arose as to the primacy of one GATT rule over another. However, Pakistan did not wish to hamper the smooth functioning of the dispute settlement system. Pakistan had sympathy with the difficulties faced by Korea and had taken note of its statement that it could not agree to adopt the reports at the present meeting, but that it would continue to endeavour to find a practical solution to the

matter. In light of the statements at the present meeting, he wished to put on record that when the reports were adopted, that would not imply endorsement of all aspects of the Panel proceedings and reports; in particular it would not prejudice or compromise in any way the work of the BOP Committee, or the primacy of certain GATT provisions over others.

The representative of Yugoslavia said that his delegation shared Mexico's and Pakistan's views. Yugoslavia did not oppose adoption of the reports, but its support was given on the understanding that the Panel reports dealt only with Korea's restrictions on beef imports and that their adoption did not prejudice the work of the BOP Committee and other measures taken under Article XVIII:E. Furthermore, the reports' adoption should not be taken as dealing with restrictions taken by developing countries for balance-of-payments purposes.

The representative of Uruguay associated her delegation with previous statements made by developing countries.

The representative of Korea reiterated his country's commitment to the GATT and its dispute settlement process. However, the issue under discussion was so special and with such far-reaching economic and political ramifications, that Korea needed more time before it could agree to adoption of the Panel reports. He would report the points made at the present meeting to his authorities.

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

6. Canada - Quantitative restrictions on imports of ice cream and yoghurt - Recourse to Article XXIII:2 by the United States - Panel report (L/6568)

The Chairman recalled that in December 1988, the Council had established a panel to examine the complaint by the United States related to Canada's quantitative restrictions on imports of ice cream and yoghurt. The report of the Panel was now before the Council in L/6568.

Mr. Anell, Chairman of the Panel, introducing the report, said that at issue were import quotas and other import restrictions imposed by Canada beginning in 1988 on yoghurt and various ice cream products. The Panel had met twice with the parties to the dispute and had received written submissions from the parties and from two other interested contracting parties. The report had been presented to the parties on 12 September and circulated to contracting parties on 27 September 1989. It contained a summary of the relevant facts, the main arguments of the parties and of interested third parties, and the Panel's findings and conclusions. The Panel had reached the conclusion that Canada's restrictions on the importation of ice cream and yoghurt were inconsistent with Article XI:1 and could not be justified under the provisions of Article XI:2(c)(i); in particular, the Panel had found that ice cream and yoghurt did not meet the requirements of Article XI:2(c)(i) for "like products" "in any form" to

Canadian raw milk because they did not compete directly with raw milk, nor would their free importation be likely to render ineffective the Canadian measures on raw milk production; and further, that the restriction of imports of ice cream and yoghurt was not necessary to the enforcement of the Canadian program for raw milk. The Panel, therefore, had recommended that the CONTRACTING PARTIES request Canada either to terminate these restrictions or to bring them into conformity with its obligations under the General Agreement.

The representative of the United States urged adoption of the report as soon as possible. The issue examined by the Panel -- whether import restrictions could be maintained on certain dairy products -- was of importance to the United States, both because of the commercial interests of US exporters and because the report confirmed certain fundamental GATT principles. Article XI permitted exceptions to the prohibition of quantitative restrictions only in very limited circumstances. The Panel had addressed whether Canada's restrictions on ice cream and yoghurt met the strict conditions of the exception pertaining to domestic supply management programs. The Panel had confirmed that this exception was indeed very limited and that Canada had not met the conditions. In particular, the Panel had found that imports of these processed dairy products did not compete directly with raw milk, the fresh product subject to domestic supply management in Canada. The Panel had found that Canada had not proven that unrestricted importation of these products would render ineffective Canada's domestic restrictions on raw milk or that quotas were necessary to the enforcement of its domestic restrictions. Finally, the Panel had found that Canadian import permit requirements for these processed dairy products had no justifiable basis. These findings significantly buttressed prior panel reports which made clear the extremely narrow scope of exceptions to the general prohibition of quantitative restrictions. For these reasons, the United States was anxious that the Council adopt the report and that Canada bring its import policy into GATT conformity as soon as possible.

The representative of Canada said that his authorities' examination of the Panel report had raised a number of questions and concerns regarding the implications of its finding, not only with respect to Canada's policy but also with respect to the operation of the General Agreement. The Panel had noted that exceptions under the GATT were to be interpreted narrowly and that "the requirements of Article XI:2(c)(i) for invoking an exception to the general prohibition on quantitative restrictions made this provision extremely difficult to comply with in practice" (paragraph 59). They had also noted that there existed dissatisfaction with Article XI:2(c)(i) and that its revision was under discussion (paragraph 60). However, they had concluded in the same paragraph that "although... there could be concern over the practicability of applying the criteria of Article XI:2(c)(i) with respect to processed products, it was not the function of panels to propose changes to the provisions of the General Agreement but to make findings regarding their interpretation and application".

The development of Canada's dairy program had been undertaken with the requirements of Article XI in mind. It had been Canada's intention to put in place a system for dairy which would be fully consistent with

Article XI as Canada understood it. As the Panel had rightly noted, virtually all trade in dairy products took place in a variety of processed forms, including ice cream and yoghurt. There was little trade in fresh milk or cream, and virtually no raw milk was traded internationally due to its perishability and the difficulty of transporting it. For these reasons, Canada was concerned that the Panel's finding on the interpretation of Article XI, and specifically the key provision "directly competitive", had serious implications for the application of Article XI to the dairy sector. Given the pattern of trade in the dairy sector and the Panel's interpretation of "directly competitive", Canada wondered whether it would be possible for any country, in operating a dairy program, to avail itself of the provisions of Article XI.

Canada questioned whether it had been the intention of the drafters of the General Agreement to exclude a complete branch of agriculture such as dairy, which had a place of importance in the agricultural sector of most economies, from the provisions of this Article. Canada had found no evidence to support such a view. If one could not make a program compatible with Article XI, how was it possible to operate a system of production controls in this sector without having to resort to derogations, protocols of accession or waivers from existing rules in the GATT? This underlined the basic inequity of the current situation. For example, the United States could use its waiver to prohibit the importation of ice cream from Canada, but would expect Canada to abide by the rules of Article XI. Canada also could not help but react to what could only be described as the US "double standard" in seeking adoption of this report at this first meeting, while blocking adoption of another panel report. Given the implications of this finding and the other recent cases, it was clear that this Article needed revision in the Uruguay Round negotiations, so that the same unambiguous rules would apply to all contracting parties.

In conclusion, Canada considered that the Panel's finding had significant implications for the interpretation of Article XI, for the dairy sector and for the balance of rights and obligations under the GATT. Canada required more time to reflect on the implications of this report and would welcome the views of other contracting parties. He asked that the report be derestricted at the present Council meeting, as this would facilitate the process of consideration in Canada.

The representative of the European Communities said that the Community had a considerable interest in this matter and, in fact, had intervened in the Panel proceedings to the effect that in the Community's view, Canada's import restrictions were inconsistent with its GATT obligations. The Panel had come to the same conclusion on the basis of what appeared at first sight to be sound reasoning. The Community recognized that the report had been circulated only recently and that Canada might require more time to consider it. The Community, too, would be studying it along with the arguments put forward by Canada at the present meeting. The Community could sympathize with Canada's argument concerning the double standard applied by the United States as a result of its waiver.

The representative of New Zealand expressed his country's satisfaction with this report. It was a very orthodox report -- its conclusion and findings were predictable and predicted. Nothing in this report should be

surprising to anyone, as it confirmed a number of recent existing interpretations of Article XI with respect to the issues of perishability, like products, the competitive relationship between processed products and the raw product, and the relationship between the import restrictions and the domestic measures taken -- or not taken -- to restrict domestic production. The fact that the report was orthodox did not make it any less valuable. In fact, the body of jurisprudence being built up on Article XI in recent years was proving to be extremely valuable. He was sure that the United States was very pleased with this result, from a legal and commercial perspective. From a wider perspective, many contracting parties would no doubt equally welcome this further indication that action needed to be taken on the whole issue of import restrictions on agricultural products. Contracting parties would be aware that while Canada's supply management system and import regime were at least subject to scrutiny under Article XI:2(c), the United States was exempt from challenges to many of its agricultural policies, which included strict dairy import controls. The Uruguay Round provided an unprecedented opportunity to tackle the myriad system of agricultural protection which caused such distortion to production and trade. New Zealand looked forward to further proposals on this important issue in the near future. That matter was, however, something for another day and another forum. The General Agreement as it stood had to be implemented and enforced. For that reason, New Zealand believed that the Panel report should be adopted. New Zealand realised that this report posed considerable political difficulties for Canada. It was not just a question of imports of US ice cream and yoghurt -- which added up to, as recorded in the findings, less than one-hundredth of one per cent of Canadian milk production. The report, while not addressing directly the fundamentals of Canadian supply management, highlighted some interesting questions about its effectiveness and its standing in the GATT. He was well aware that Canada was giving its close attention to these wider issues; that need not, however, impede the prompt adoption of this report.

The representative of Australia said that on the basis of its preliminary examination of the report, Australia welcomed the Panel's findings and recommendations. He noted the consistency of the findings with those of other panel reports which had been adopted recently relating to Article XI measures. Australia would be considering the report carefully and encouraged other contracting parties to do likewise. Following due examination, however, his delegation would expect early adoption of the report by the Council. His delegation supported New Zealand's statement, in particular with regard to contracting parties' unequal obligations under GATT in the area of agriculture, which he considered as conservative, since the issue went far beyond that.

The representative of Japan said that his country had made a submission to the Panel expressing its views on the concept of "like products" under Article XI:2(c). His Government was carefully examining the report, especially from the viewpoint of whether it might have serious implications regarding the interpretation of Article XI:2(c). Therefore Japan, too, considered it appropriate to come back to this issue at the next Council meeting.

The representative of Finland, speaking on behalf of Norway and Finland, said that the reasons given by Canada for a postponement of the consideration of the report seemed valid. The report touched on some fundamental issues concerning the application of Article XI and needed, therefore, to be carefully studied.

The Council took note of the statements, agreed to derestrict the Panel report in L/6568 and agreed to revert to this item at its next meeting.

7. United States - Taxes on petroleum and certain imported substances - Follow-up on the Panel report
- Communication from Canada (L/6559, C/W/608)

The Chairman recalled that at its meetings on 8-9 February, 12 April, 10 May, 21-22 June and 19 July 1989, the Council had considered this matter, and that at the July meeting, Canada had announced its intention to seek the Council's authorization to withdraw equivalent concessions from the United States under Article XXIII:2. He drew attention to the communications from Canada in L/6559 and C/W/608.

The representative of Canada said that his delegation had kept the Council continuously informed of its intentions through its statements made at recent Council meetings and also through the documents that Canada had circulated, the most recent being C/W/608, which contained Canada's present request for authority to withdraw concessions.

The representative of the United States recalled that at the most recent Council meeting, he had indicated that the US Administration had forwarded a bill to the US Congress to amend the "Superfund" tax legislation currently in effect, to equalize the current tax as it was applied to imported and domestic petroleum and petroleum products. This legislation, contained in the US Budget Reconciliation bill, had been passed by the House of Representatives and was now before the Senate. The Administration remained committed to full compliance with the Panel's recommendation in this respect, and hoped to see the matter resolved very soon. He stressed that the Administration was doing all it could to bring about a satisfactory solution to this matter in the US Congress. The United States was studying Canada's request. However, considering that legislation to achieve compliance with the Panel's recommendation was imminent, his delegation believed it was inappropriate to consider retaliatory withdrawal of tariff concessions. Given the Government's serious efforts to respond to the Panel's recommendation, the United States could not agree that Canada's withdrawal of concessions was justified.

The representative of the European Communities recognized that the United States was actively trying to persuade the US Congress to amend the US legislation in such a way as to bring the present "Superfund" measure into conformity with the General Agreement. It was remarkable, however, that one had to come back to this issue time and again. He recalled that the Community had requested the Council for authority to withdraw equivalent concessions in March 1988. In May 1988, the Community had

notified its proposed list of products for compensatory withdrawal. It was interesting to note that that list was not dissimilar to Canada's and that the same 2.5 per cent was contemplated in both cases. In June 1988, the Council had decided to request a technical report with a view to determining the precise amount of the withdrawal. Thereafter, the matter had gone through a bilateral process. Progress had still not been made. He asked whether the United States could explain when circumstances were serious enough to justify withdrawal of equivalent concessions by contracting parties, as provided for in Article XXIII:2, and in cases of non-implementation of panel reports, how many months were needed before the United States would accept that withdrawal of equivalent concessions was justified.

The representative of New Zealand said that an important issue was at stake: GATT existed for both small and large trading entities. He asked what should be done when a large one did not play by the rules. After two and a half years, Canada should have been able reasonably to expect some action on the Panel report. The system had to be seen to work expeditiously. For this reason, New Zealand supported Canada's position.

The representative of Japan said that his delegation understood and sympathized with Canada's frustration over the United States' failure to implement the Panel's recommendation. However, the Council had just been told that the United States was now making serious and concrete efforts to comply with the Panel's recommendation. He wondered if it would be acceptable for contracting parties to wait until the next Council meeting before agreeing to Canada's proposed action, because in Japan's view, retaliation under Article XXIII:2 should be taken only as a very last resort.

The representative of Mexico recalled that it had been more than two years since the Council had adopted by consensus the Panel's recommendation, and that approximately three years had passed since the measures in question had been applied. Mexico was concerned that during all that time, nothing concrete had been done to solve the problem satisfactorily. The US Administration, together with the US Congress, had taken steps to this end, but unfortunately without results. Like the Community and Canada, Mexico had often reiterated its preference for the solution to be found in the modification of the US legislation in conformity with GATT. Notwithstanding this position and given the requests which had been presented, Mexico understood and shared to a certain extent the Community's and Canada's positions in that it was necessary to adopt measures. Consequently, Mexico fully supported their requests for the Council to authorize the suspension of concessions from the United States in conformity with Article XXIII:2. Given the circumstances, those suspensions were justified. Mexico, as a developing country, reserved its procedural and substantial rights under the General Agreement. Finally, he asked the US representative when he would know if the Congress would modify the "Superfund" legislation in its definitive form, or if the United States was ready to negotiate compensation as a provisional measure pending achievement of this objective.

The representative of Canada welcomed the support for its request. His delegation had taken note of the US statement but was disappointed that the United States could not go along with Canada's request at the present meeting. Canada considered that more than a "reasonable period of time" had been provided to the United States. All other options for resolving the dispute had been exhausted and, regrettably, the only option left was to withdraw concessions. The United States was a major market for Canadian oil and Canada considered the United States' failure to remove the discriminatory tax, after more than two years, to be serious enough to justify action to withdraw substantially equivalent concessions. Under these circumstances, Canada considered its proposed action to be appropriate, since the impairment to trade which would be caused by such action would not exceed the impairment caused by the US discriminatory tax. Canada's request had already been circulated to contracting parties in documents C/W/608 and L/6559. Canada was proposing to add a 2.5 per cent increase to the applied duty on a number of US products. This action would affect only US goods and not goods from other contracting parties. The impairment to Canada's trade caused by the US measure was approximately Cdn \$10.8 million annually. Canada's proposed action was worth approximately Cdn \$8.76 million annually. The US tax added a small additional charge to certain imports. Canada's proposal would do the same. Canada believed that the Council possessed sufficient information to allow it to determine the two essential points: (1) that the circumstances were serious enough to warrant Canada's proposed action, and (2) that Canada's request was appropriate in the circumstances. One option for dealing with this matter would be to establish a small group, perhaps along the lines of a panel, to examine Canada's request against these two criteria and to report quickly. Both Canada and the United States could present information to the group, but neither would participate in the group's decision. This would be consistent with the only existing precedent, established in 1952, regarding a dispute between the Netherlands and United States.¹

The representative of Australia said that Australia's preference was clearly for panel recommendations to be implemented rather than for parties to be forced to consider retaliatory action and withdrawal of concessions. His delegation had also heard Japan's counsel. As to Canada's suggestion, given the long period without action by the United States to comply with the Panel's recommendation, Australia could support the setting up of a small working group, and would want its findings and recommendations to be considered as soon as possible by the Council.

The representative of the United States said that his delegation had listened carefully to all the statements. He suggested that contracting parties should seek a solution to this matter which would aim at liberalizing or maintaining a liberalized trade environment. While recognizing Canada's impatience, he would make a plea on behalf of the US Administration that one try to seek a remedy through the legislative process, however frustrating that process might be. He would try to comfort Canada by pointing out that the US 1985 measure had not led to such

¹Netherlands action under Article XXIII:2 to suspend obligations to the United States (BISD 1S/62).

a trade deterioration that retaliation should be so urgently contemplated. He expected that this matter would be considered again at the next Council meeting and that further statements would be heard that would help resolve it in a satisfactory manner.

The representative of New Zealand recalled the 1952 precedent and said that his delegation saw merits in having a working group look further into this question, so that fairness could be seen to have been obtained. There was still, of course, the prospect that the US Administration could clear legislative action through the Senate and implement the Panel's recommendation, thus making retaliation unnecessary. However, the two steps were not mutually exclusive.

The representative of the European Communities said that the Community could not but endorse Canada's proposal, the more so because it had reached that same stage itself before the Secretariat had been asked to provide its technical report.

The representative of Canada said that the term "small group" had been used in the case of the 1952 precedent. The small group had operated in fact along the lines of a panel, having heard arguments from the two sides on the question of whether (1) the circumstances had been serious enough to warrant the action, and (2) the action proposed had been appropriate under the circumstances. The group had then made up its mind, in the absence of the two parties concerned, and had come up very quickly with its recommendation to the Council. That was the process his delegation was suggesting to the Council at this stage.

The Chairman suggested that, in light of the fact that this procedure had not been used since 1952, Canada might submit its specific proposal in writing for consideration at the next Council meeting, if by that time the United States had not been able to enact the legislative proposal mentioned earlier by the US representative.

The representative of Canada said that his delegation would prefer discussing this matter at the present meeting. Its request was very simple, and such a group could be established quickly; Canada was willing to leave it to the Council Chairman to work out, in cooperation with the parties concerned, the exact terms of reference and chairmanship.

The representative of the United States asked representatives to understand the US position that the establishment of a group at the present meeting was neither necessary nor constructive in obtaining action towards implementation of the Panel report. The United States could not agree to establishing such a group at the present meeting.

The representative of Canada said that his delegation had put its proposal to the Council and had heard the United States' reaction to it. His delegation was prepared to revert to it at the next Council meeting. He wanted to have on record that Canada had made its suggestion first and that no delegation had taken issue with the specific proposal in terms of the action Canada was proposing to take, as set out in C/W/608. Canada would welcome reactions from other delegations but wanted it to be on record that no delegation had objected to the proposed methodology.

The representative of the European Communities said that the Community could agree to a review of the suggested procedure at the next meeting, possibly on the basis of a written submission by Canada. The Community's request for authority to withdraw concessions was also before the Council and the Community expected that this request would be treated in the same manner as Canada's proposal in the event that the Council decided that a group be set up.

The representative of Mexico said that his delegation's preliminary view was that, while not objecting to the suggested procedure, it did not like it much because it would bureaucratize the process of implementing the Panel report. Mexico agreed, however, that the Council revert to the suggested procedure at the next meeting.

The Chairman pointed out that he did not think that Canada's suggested procedure was related in any way to reconsidering the Panel report. It was solely related to considering whether or not Canada's request to suspend concessions should be approved.

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

8. United States - Increase in the rates of duty on certain products of the European Economic Community (Presidential Proclamation No. 5759 of 24 December 1987)
- Communication from the European Communities (L/6438)
- Recourse to Article XXIII:2 by the European Economic Community

The Chairman recalled that at its meetings on 10 May, 21-22 June and 19 July, the Council had considered this item, and that in July it had agreed to revert to it at the present meeting.

The representative of the European Communities said that he was aware that the same monologues and litanies would be heard again and that the debate would be sadly monotonous. For that reason, he would introduce a touch of humour by circulating a photocopy of a cartoon about hormones. His purpose was to speak about unilateral measures, but as the United States liked to speak of linkages, he himself had no choice but to speak also of hormones. He asked the Council whether it knew what lay behind the hormones issue, and what economic stakes it represented. But rather than elaborating on this, he would ask the US representative whether his Government was prepared to accept the establishment of a panel which was being requested for the ninth time. He recalled the sequence of events in this respect over the past months, and asked for a yes or no answer.

The representative of the United States said he recognized that this dispute had a long history and that it would not be resolved at the present meeting. As he had indicated at the two previous Council meetings, the United States and the Community had reached agreement in May on an interim measure in the beef hormones dispute to allow partial resumption of the affected trade. In July, in response to a shipment of US beef to the Community under the interim measure, the United States had announced a

reduction in the countermeasures imposed on Community imports in the context of this dispute. The United States had agreed to reduce its countermeasures to the extent that additional shipments of US beef took place under the interim measure. The United States remained committed to exploring all possible avenues for resolving this dispute and hoped to continue its bilateral discussions with the Community with a view to finding a solution which would enable a full resumption of trade between the two countries. However, any such solution had to encompass the Community's action against US beef exports as well as the United States' response to this action. A discussion that focused only on the US measures would be unproductive and would only escalate tensions on both sides. The two parties were at an impasse as a result of the Community's decision to block the dispute settlement process under the Standards Code¹. The Community had decided to ban imports of US beef and block any fair examination of the scientific basis for this ban, to which the United States was entitled under the Standards Code. There was no scientific basis for the Community's ban. Instead, the Community had sought to block the US request for a scientific examination with legal arguments apparently meant to show the Community's willingness to be reasonable in this dispute. Only after the Community had blocked the dispute settlement process in the Standards Code for over 18 months had the United States taken countermeasures to correct the imbalance. He referred to the Community's statement that this kind of blockage created grave doubts as to a country's commitment to the GATT process. The United States was willing and prepared, for its part, to show some degree of commitment to the dispute settlement process, but would not do so until the Community had ended its two-year old blockage of the request for examination of its hormones directive. Only at such time would the United States feel more favourably inclined towards an overall discussion of this matter in the Council. The United States was looking for an opportunity for the Community to practice what it preached about giving a party a right to a fair dispute settlement process that should apply to the Standards Code disputes as well as to disputes before the Council.

The representative of the European Communities recalled that the economic stakes behind this issue were relatively minor -- a mere US\$100 million. However, the Community wished to make a precedent of this case. The United States had made the usual and familiar argument. He then referred to the Director-General's statement made at the 8-9 February Council meeting (C/163, page 17) concerning unilateral measures. The Community was being affected by a US unilateral measure taken in response to a Community guideline which had been found neither consistent nor inconsistent with the GATT. This meant that the United States was both judge and party, and even executor of the sentence. Since, at the present meeting, the United States had labelled this as a hopeless case, where did the Council stand? He asked whether the Council had been courageous? Could it answer the question as to whether the Director-General had been right? If so, what were the consequences and what should be done about them? All contracting parties should be concerned by what was blatantly a

¹ Agreement on Technical Barriers to Trade (BISD 26S/8).

GATT-inconsistent measure, and one which the Council had done nothing about since December 1988. As regards the "Task Force", it was best left to the sands of the desert, since the sanctions were in force.

The representative of the United States said that he would hopefully conclude this discussion by making it exceedingly clear that in the United States' view, the trade damaging act, which had not been allowed to be brought before the appropriate GATT body, was the initial ban on beef imports by the Community. Under US law there existed the concept of the maxim of equity whereby "He who seeks equity must do equity". In this case it was exceedingly difficult for the United States to take seriously the Community's pleading about unilateralism, when there was such a clear record of its blockage of the United States' right to an examination of this issue in the Standards Code. He reiterated the United States' current position, which it would maintain as long as the blockage existed, that the United States would show the same degree of commitment as that which the Community chose to preach but not to practice.

The representative of the European Communities said that he was determined to get a process underway, as this situation could not be tolerated any longer. It was inappropriate for the United States to repeat that it had done something to the Community because the Community had not done something else to the United States. Enactment of the Community's directive affecting imported and domestically produced meat alike, could not be compared with discriminatory unilateral measures. He had purposely quoted the Director-General to recall that the United States had indeed taken measures without any prior authorization. He was sorry to note the absence of courage; the Council's silence was very significant. He recalled that at an earlier Council meeting he had indicated that he had no more arguments to prevent the Community from taking, as a precaution, its own retaliation measures. He wondered what would be the Council's reaction if the Community took such measures. He did not exclude this possibility, because the situation was becoming intolerable. He asked whether, under such conditions, it was really worthwhile continuing the Uruguay Round negotiations. Words such as "reinforcing the dispute settlement mechanism" were being used in GATT, but they were no more than words, if, indeed, the United States did respect the Decision taken in April regarding dispute settlement¹. There was no point in arguing the fact that the matter had come up quite some time prior to that date. What was really being done with the improvements in the dispute settlement mechanism? He formally requested that immediately after the present meeting, the Council Chairman and the Director-General conduct consultations with the contracting parties concerned in order to find a solution to this matter.

The representative of Brazil reiterated that his delegation deeply regretted that the matter under consideration had become a problem of such large proportions due to -- it had to be said -- the lack of willingness

¹L/6489 - "Improvements to the GATT Dispute Settlement Rules and Procedures".

by one of the parties concerned to submit the matter to the GATT dispute settlement mechanism. Unilateral retaliatory measures not only did not contribute to a solution to the problem, but also undermined the very basis of the multilateral trading system. Brazil reiterated once again its support of the Community's request for a panel.

The Chairman drew the Council's attention to the established procedures for seeking the good offices of the Director-General in situations such as this.

The representative of the European Communities suggested that the Chairman weigh well his conclusions, because the Community might dissociate itself from such conclusions. He had indeed formerly requested that the Chairman and the Director-General conduct consultations on this matter, failing which, he would hold a press conference and dissociate himself from the Council's conclusions.

The Director-General said that he preferred to handle GATT matters in this room rather than in front of the press. Secondly, he reminded the Community that there existed formal procedures for handling requests such as this -- which he interpreted as one of asking for good offices. The formal procedures implied that the good offices would be requested from the Director-General, or an individual or group of persons nominated by the Director-General. Therefore, his question to the Community was whether the request was for a formal good-offices action by the Director-General with the suggestion that the Director-General ask the Council Chairman to join him, or an informal request, addressed to the Council Chairman and the Director-General, to look at the situation which had emerged during the present meeting and to try to see what could be done at the next meeting.

The representative of the European Communities said that the Director-General knew very well that when good offices were requested, the opposite party also had to agree. He had heard the US representative say that he thought that this was a hopeless case. If he had to wait for the United States' agreement to find a solution, he would be waiting forever. What he had suggested was somewhat more modest, in order to get things to move forward. It was usual Council practice that whenever there was an impasse, the Council Chairman carried out consultations in order to try to find a solution. He had asked the Director-General to be associated with such consultations because he had referred to the latter's statement, and therefore, the Director-General would have to say at least what he thought of the contents of his own statement which applied urbi et orbi. If his request was not granted, he would dissociate himself from these conclusions and keep his full liberty of action, because this case was too blatant for him to stay quiet.

The representative of the United States said that he simply wanted to ascertain that the Community was prepared to accept that the Standards Code had as much relevance to the GATT as the Director-General's statement. He could not imagine how consultations on this matter could be conducted, either formally or informally, without also including the Chairman of the

Standards Code Committee in which the United States' original request for dispute settlement had arisen. He therefore enquired as to whether the Community would intend that the informal consultations include the Chairman of the Standards Code Committee to help determine, for both parties, what the respective rights and obligations under that Code might be.

The representative of the European Communities replied that he was placing himself in the GATT and not elsewhere.

The Chairman said that in this situation, and taking account of the pragmatic way in which the GATT operated, the Director-General and himself, in their personal capacity, would be prepared to engage in consultations on this issue, and in pursuit of those consultations, would consult with all interested and relevant persons as they saw fit. He emphasized again that this would be done in their personal capacity. He said that such consultations could only be successful if the parties involved were willing to see those consultations progress.

The Council took note of the statements, including the Chairman's and the Director-General's, and agreed to revert to this matter at a future meeting.

9. Indonesia - Establishment of a new Schedule XXI
- Request for extension of waiver (C/W/609, L/6571)

The Chairman drew attention to the request by Indonesia in L/6571 for a further extension of its waiver from the provisions of Article II of the General Agreement and to the draft Decision in C/W/609, which had been circulated to facilitate consideration of this item by the Council.

The representative of Indonesia recalled the CONTRACTING PARTIES' Decision of 8 November 1988 (L/6427) granting his Government an extension of the waiver from its obligations under Article II of the General Agreement until 31 October 1989. His Government had made significant improvements in its Harmonized System documentation and had taken into account as far as possible the concerns of the interested contracting parties. The revised version of the documentation had also been circulated to contracting parties in July 1989 for their consideration. While the documentation had been refined, the transposition had not yet been fully accomplished. His delegation had received additional comments and queries from other delegations for further clarification on several items of interest to them. Requests for consultations under Article XXVIII had been submitted to his Government. While recognizing the need to hold the necessary consultations to improve and finalize the documentation immediately, his Government felt that the extension of the time-limit provided in the CONTRACTING PARTIES' Decision of 8 November 1988 was not sufficient to enable it to complete this task, and therefore requested the Council to grant a further extension of the time-limit, until 30 June 1990, in order to enable his Government to finalize the consultations.

The Council took note of the statement, approved the text of the draft Decision extending the waiver until 30 June 1990 (C/W/609) and recommended its adoption by the CONTRACTING PARTIES by postal ballot.

10. Communication from the United States concerning the relationship of internationally-recognized labour standards to international trade
(L/6196, L/6243)

The Chairman recalled that the Council had last discussed this matter at its meeting on 21-22 June. It was on the Agenda of the present meeting at the request of the United States.

The representative of the United States suggested that the statement he would normally make at the present meeting be circulated instead, in order to facilitate discussion of this matter. This statement explained the reasons and justification for the US request for a working party to examine this matter. He recognized that some delegations would still have objections to the setting up of a working party, and for that reason he did not see a need to have another prolonged discussion. He hoped that in the ensuing weeks he could engage in an informal discussion with other representatives in further pursuance of US interests in this matter and in an attempt to clarify better the objections which still existed, so that in the not too distant future this matter could be resolved in a manner that was acceptable to all parties. At the present meeting he would only urge acceptance of the working party and suggest that the Chairman seek ways to further the discussion by asking whether delegations' positions had changed. Those could then be reflected in the record without actually having to be elaborated at length in the debate.

The Chairman said that the US statement that had been circulated would not be reflected as such in the record of the meeting. He noted that extensive discussion on this matter had been held in the Council on earlier occasions and that the positions of all delegations had been reflected in the record of those meetings. He asked whether the position of any delegation had changed in this respect.

The representative of Nicaragua recalled that this matter had been discussed many times in the Council and in informal consultations where it had been very clearly established that a large number of contracting parties believed that GATT was not the competent body within the UN organizations to deal with this issue. The International Labour Organization (ILO) was the only competent body for that purpose. The establishment of a link between international trade and labour standards was an important issue, but one for which the GATT did not have competence. Each state would follow its political judgement and this would put the developing countries, which had signed a large number of international ILO conventions, at a disadvantage vis-à-vis certain developed countries which had ratified fewer of them. There were contradictions in L/6243: the United States had unilaterally established a list therein of what it claimed to be internationally-recognized labour standards, but the latter were in fact not even recognized by the United States itself. He listed a number of ILO Conventions which the United States had not ratified. The United States had ratified only nine of the 168 conventions of the ILO. Seven of these were inoperative, obsolete or had been replaced by other Conventions. This demonstrated the United States' dual approach. It was up to the Council members to draw their own conclusions as to why the United States was bringing this matter to the Council when it knew perfectly well that a consensus did not exist.

The representative of the European Communities recalled that on earlier occasions the Community had supported the request for a working party. He reiterated the Community's firm belief that there should be a fairly undogmatic approach to handling the establishment of working parties in GATT to the extent that the requesting party could explain the trade relevance of the issue. In the case at hand, the Community believed that the trade relevance had been sufficiently demonstrated to start examining the issue. In fact, the representative of Nicaragua had, more eloquently than he would have done himself, made it very clear why there might be merit in looking at this difficult issue in more detail and at an expert level.

The Chairman said that he understood that delegations which were not asking for the floor had not changed their positions.

The representative of Sweden, speaking on behalf of the Nordic countries, said that they agreed with the Community with regard to the generous attitude that should be adopted concerning the establishment of working parties. The starting point was that there existed some link between international trade and internationally-recognized labour standards; a working party would provide a forum for discussing that very issue as well as its relevance to GATT. The Nordic countries had said in the past that they wanted to explore this issue but would not continue to do so if it was found that it could not be dealt with without introducing protectionist measures. That position had been made very clear in the statement which had been distributed by the United States.

The representative of India confirmed that his delegation's position, as recorded in the Minutes of the June Council meeting, remained unchanged and that, in the view of his delegation, none of the statements made at the present meeting warranted a change.

The Chairman remarked that the Indian representative had spoken, he thought, for a large number of delegations.

The Council took note of the statements.

11. Report by the Director-General on ways to achieve greater coherence in global economic policy making
- Note by the Director-General (L/6566)

The Chairman recalled the Council's Decision (L/6490) at its meeting on 12 April 1989, and drew attention to the note by the Director-General in L/6566 which contained the Director-General's report related to the "Invitation by the CONTRACTING PARTIES to report on ways to achieve greater coherence in global economic policy making". He pointed out that this was essentially a matter for the Uruguay Round negotiations, but as the Council had invited the Director-General to prepare the report, the note appeared on the present Council's agenda by way of information.

The representative of Brazil said that while he was aware that the present note by the Director-General was only for information, the prominent rôle of the Council and the importance of the debt-trade issue

prompted him to submit preliminary remarks on the report which he would address at length in the Negotiating Group on the Functioning of the GATT System (FOGS). The Director-General's report conformed to the standards previously set, i.e., to stimulate, enrich and focus the debate without losing sight of its exploratory character and of the need for further consideration of the proposals, first and foremost, in the FOGS Group. It was clear from the proposals in sections A to D that the report's purpose in those descriptive sections was mainly to redirect attention to the ideas still under examination and not to repeat the debate on those same ideas which had taken place in the Negotiating Group. The Director-General had added in sections E and F conclusions of a somewhat more operational nature, many of which seemed useful, practical and deserving of a more thorough discussion in the Negotiating Group. He commended the careful and balanced approach to some complex issues which was perceptible in a number of passages, e.g., in paragraph 43 concerning institutional arrangements, and in the penetrating analysis of the many fundamental differences between the GATT, on one side, and the IMF and the World Bank, on the other. In the light of these differences, it would be quite inappropriate to model GATT on the structures of the Bretton Woods institutions. How, in effect, could one conciliate the decision-making process in GATT -- where legal obligations were contracted on the basis of consensus -- with that of other organizations where effective influence over decisions was confined to a small number of holders of large capital quotas?

He then turned to the substantive aspects of coherence in global economic policy making, and to paragraph 32 and the key question of how to attribute negotiating credits to developing countries in GATT for trade policy reforms introduced by them under IMF and World Bank programs. While conceding that the line followed by the report corresponded to the conventional wisdom of the past, he feared that it was too narrow and conservative, prejudging in a way a controversial issue which ought to be settled through negotiations. This was not the place to open a discussion on the matter. However, he singled out that one of the difficulties faced by developing countries regarding the binding of concessions was that these countries had to meet debt payments, which, in turn, were determined by a factor that was very much unbound -- namely, interest rates. There again, one was confronted with the inescapable link between finance, debt and trade.

The second point related to paragraph 24, where it was stated that "the heads of the three institutions are in broad agreement that problems of this kind are among those least amenable to improvement through actions by the international agencies themselves" and that "these issues tend to rely on co-operation at government level, especially through meetings of Ministers". The problems mentioned were the inconsistencies between monetary, financial and trade policies listed in paragraphs 6 and 7, i.e., the same questions that basically shaped the global macroeconomic environment in which trade liberalization took place. Among these problems, one found not only the fundamental issue of the link between debt and trade, but also what was described in paragraph 6 (d) as "the reliance by governments on trade restrictions to resolve economic difficulties for which the proper medium- or long-term remedy lies in adjustments in macroeconomic policies". This broad phrase could be interpreted as a

catch-all definition of a widespread behaviour, but, in reality, it was particularly applicable to the major macroeconomic disequilibria between the United States, on one side, and Japan and the Federal Republic of Germany, on the other. These disequilibria were universally regarded as the root cause not only of the lingering uncertainty in the world economic outlook, but also of the escalation of protectionism and unilateralism.

In this situation, should one simply resign oneself to the fact that these agencies disqualified themselves from addressing the problem which lay at the very heart of the present difficulties, i.e., the question to which the solution was the key to the future normalisation of the world economy? Everyone knew that if the slowing down in the correction of the major disequilibria continued, the final phase of the Uruguay Round would take place under very adverse conditions. Was it admissible that multilateral cooperation should be less adequate a tool to confront a problem with implications for all, than "the reliance on co-operation at government level" -- a euphemism for the determination of the three major economic powers to keep the matter to themselves, and without results? If this were the case, then one would be justified in fearing that, as had already occurred with the adjustment programs of the IMF and the World Bank, the scope for increased cooperation among the three agencies would result in the imposition of additional burdens and disciplines on the weak and dependent -- those whose impact on world trade was negligible -- with a closed eye to the real transgressions and dangers coming from the powerful. As Brazil's Minister of Finance had said at the annual meeting of the Board of Governors of the World Bank on 26 September, "a great part of the positive results, achieved at high social costs by the adjustment policies of debtor countries, has been offset by the lack of adjustment and macroeconomic policy mismatches among major industrial countries". In the same vein, what useful purpose could possibly be served by the search for greater coherence in global economic policy making through a strengthened GATT relationship with other relevant international organizations, if no lasting and satisfactory solution was found for the foreign debt problem? If an explosive aggravation of the problems of the 1980s was to be avoided over the next decade, it was indispensable to put to rest the failed gradualist approach and to give the debt problem a truly definitive solution. This would not be achieved by the continuation of substantial net transfers of resources abroad, at an annual average of around three per cent of Gross Domestic Product for nearly a decade, as had been the case for Latin America. In the absence of a solution that broke the vicious circle, one would remain hostage to the more perverse side of the debt-trade link, as was happening now, when the improvement in the trade surplus of the region would be completely offset by the increase in interest rates. If interest were paid in its totality, the net transfer abroad would reach \$US 35 billion in 1989, the highest amount since the crisis had started seven years earlier.

These flesh and blood problems could not be brushed aside in the name of realism and a concentration on subjects of a more technical and modest scope. The latter, while it had value and merit, would appear as an exercise in irrelevance and futility if the fundamental substantive issues were thus removed altogether from the agenda. These were problems that went far beyond the Director-General's mandate and report, but which fell

squarely within the competence, the political will and the sense of co-responsibility of the Governments represented in GATT, the IMF and the World Bank. In no other subject area would the success of the negotiations depend so much on an integrated and comprehensive approach, which would include the substance, the institutional links, the decision-making by Governments at national or international levels, and the multilateral involvement of the three agencies. That was why the opportunity provided by the Director-General's stimulating and valuable contribution should not be missed to recall once more that, in order to be effective and meaningful, the search for greater coherence had to involve everyone concerned and include the solutions to the central problems of today.

The Chairman said that it was the Director-General's intention to introduce the report to the FOGS Group.

The representative of Colombia said that he wanted to offer preliminary remarks of a general character without prejudice to the comments his delegation would make in the FOGS Group with regard to the objective, presentation, formula and content of the report. First, the way to achieve greater coherence in global economic policy making should not lead to a weakening of the Group's mandate. Indeed, paragraphs 5, 18 and 29 of MTN.GNG/NG.14/W/35 seemed to imply that the model adopted for the country reports would consist of a revision of national policies as a prior condition for achieving that coherence. While Colombia had participated in the elaboration of the framework for country reports, it would not agree to have GATT turn that framework into a pre-requisite for coherence and a way of monitoring national policies, as was the case in the IMF. Colombia agreed with Brazil that GATT should not be assimilated to the Bretton Woods institutions.

Colombia was also concerned by certain remarks in paragraph 32 of the document, which prejudged the results which would be achieved in the Uruguay Round. Colombia shared Brazil's view that there was a link between trade, finance and debt, and did not think that the possible consolidation of concessions, as envisaged in the said paragraph, took account of the financial obligations arising from the external debt service and its related unbound interest rates, which were aggravating the existing disequilibrium.

On the other hand, while the Uruguay Round was not over yet, the so-called exceptional opportunity mentioned in the document for obtaining counterpart concessions from trading partners was not evident. For example, the Punta del Este Declaration attached special importance to tropical products, but the developed countries were saying that after the efforts achieved in Montreal, their Administrations had exhausted all possibilities and could not react accordingly. The same was true for the Groups on Tariffs and Non-Tariff Measures, where these same countries had presented proposals for seeking concessions from developing countries.

Colombia considered, as mentioned in paragraph 49, that none of the observations concerning the viability of the proposals contained in the document constituted the last word on the issue. However, it wanted the

discussions between the GATT, the IMF and the World Bank to develop without any misunderstanding as to what the CONTRACTING PARTIES had agreed in April 1989.

The representative of the European Communities said that he did not intend to comment in detail at the present meeting on the Director-General's report. His delegation took note of the latter's intention to introduce the report at some stage in the FOGS Group. However, the Community was of the view that in the first instance, this report was the property of the CONTRACTING PARTIES, as it had been mandated by them. Thus it should probably be discussed first in the Council. The Community's view, subject to greater study, was that the report was a useful document, not least for its descriptive part. It was enlightening, particularly for the less initiated, on precisely how the three institutions inter-acted. The Community also noted with interest the pointers directed at national policy. Those pointers would not go unnoticed by those seeking to achieve greater coherence among monetary, economic and financial policies. The Community looked forward to a further discussion of the report in the Council as well as in the FOGS Group.

The representative of Japan said that the report was a good step toward better cooperation between GATT, the IMF and the World Bank. Japan considered this matter to be very important. It would be given thorough consideration and study in the FOGS Group.

The representative of Czechoslovakia referred to paragraph 3 of the note by the Director-General regarding matters which had to be examined in the FOGS Group. This paragraph gave rise to certain questions which had to be addressed in that Group first. He noted that in due course, the issue would come back to the Council for further discussion.

The representative of Peru said that the report would have to be analyzed in detail in the FOGS Group. In her delegation's view, a general orientation toward improving coherence at the global level had to be maintained. For this to be achieved, convergence of policies at the domestic level was necessary. The international monetary system and, in particular, the inflow of capital resources to the developing countries also had to be improved. One had to take into account the overall situation in order to correct distortions created by large trading partners. Peru shared the concern that this might lead to the imposition of additional conditions on developing countries, thus increasing further the present distortions. The details of the report would have to be studied in the FOGS Group, but she wanted to stress in the Council the particular problems of developing countries as net food importers.

The representative of India said that he recognized that the subject matter was being discussed in the Council for technical reasons and that the substance of the report would be discussed in the FOGS Group. His delegation was studying the report and had found so far that what the report said was important, but even more important was what had been left unsaid. For that reason, several issues had to be raised with regard to the institutional aspects and those of the mandate, i.e., the coherence in

global economic policy making. India would have much to say about these issues in the FOGS Group as well as in the Council when it considered this issue again.

The representative of Chile said that as stated by the Director-General in paragraph 3 of L/6566, this report would have to be analyzed in the FOGS Group. There were also other matters of great importance which would have to be discussed by the Ministers.

The Council took note of the statements and of the information contained in the note by the Director-General in L/6566.

12. Trade Policy Review Mechanism - Conduct of reviews
- Communication from the Chairman (C/W/607 and Corr.1)

The Chairman drew the Council's attention to his communication in C/W/607 and Corr.1 related to the conduct of reviews to be carried out in the framework of the Trade Policy Review Mechanism.

The Council took note of the information contained in C/W/607 and Corr.1.

The Chairman informed the Council that the Director-General would present his first Annual Report under paragraph F of the Decision of 12 April 1989 on the Functioning of the GATT System (L/6490) at a separate Council meeting to be held on Monday, 11 December.

The Council took note of this information.

13. Austria/Luxembourg/Netherlands/Norway/Spain/Sweden/Switzerland/United Kingdom - Measures to be taken under the European Convention on Transfrontier Television
- Request for consultations under Article XXII:1 by the United States

The representative of the United States, speaking under "Other Business", informed the Council that on 1 September, the United States had written to eight signatories of the European Convention on Transfrontier Television requesting consultations under Article XXII:1 (DS4/1). The United States' concern was that Article 10 of the Convention contained a European content rule that would obligate signatories to discriminate against non-European films in their TV programming. The United States believed this would violate GATT provisions and nullify or impair benefits accruing to it. The four non-EEC recipients of the US request had agreed to consultations to be held soon; however, the four Community member-State recipients had referred the United States to the Commission, which had said the request was premature since the Community directive implementing the Convention had not yet been approved. Subsequently, on 3 October, the Council of the European Communities had adopted such a directive, which carried the misnomer "Television Without Frontiers". The directive raised clear questions about the Community's GATT obligations. As recently as the previous day, Commission officials had still been contending that GATT

consultations in respect of the Convention were not yet appropriate. Recently agreed rules on dispute settlement were supposed to have eliminated such procedural manoeuvring. The United States asked the Commission and the four affected member States to agree to schedule the requested GATT consultations promptly. He recalled paragraph C.2 of L/6489, which entitled the United States to request a panel on 1 November (60 days from the date of the request for consultations) unless the dispute had been resolved satisfactorily prior to that date through GATT consultations.

The representative of the European Communities said that he was not expected to, and would not, under an "Other Business" item, go into substantive details of the question of GATT's ability to deal with the Community's directive on transborder television at this time. His delegation had taken note of the United States' points. The United States' request for Article XXII:1 consultations had been made available to contracting parties. The Community had in no way indicated that it was not willing to undertake consultations. The question was simply where and under what guise they should take place. The Community was not in any way denying the right of any contracting party to request consultations, provided that the subject matter was relevant to GATT's mandate. The Community had very serious doubts as to the relevance of the US complaint to GATT and believed that at the present stage, the question of broadcasting, whether by television or any other means, belonged essentially to the area of services and was, therefore, a matter for negotiation within the Uruguay Round. It could well become a GATT issue in the future, but the Community could not prima facie take the view at this stage that GATT was involved. The Community had noted the US request which would no doubt be followed up in writing.

The representative of Japan said that his country was interested in this matter and that his authorities were examining its various implications.

The Council took note of the statements.

14. EEC - Poland Agreement

The representative of the European Communities, speaking under "Other Business", informed contracting parties that the Community had negotiated an Agreement on Trade, Commercial and Economic Cooperation with the Polish People's Republic. The Agreement had been signed on 19 September 1989 and, as it was a matter of interest to the CONTRACTING PARTIES, it was the Community's intention to notify the Agreement to them at the earliest practicable time.

The representative of Poland confirmed the information just given by the Community. The Agreement signed in Warsaw on 19 September 1989 represented an important development in bilateral trade and economic relations. Its objectives were to create favourable conditions for the harmonious development and diversification of trade and the promotion of commercial and economic cooperation on the basis of equality, non-

discrimination, mutual benefit and reciprocity. The Agreement was of a non-preferential character and was in full conformity with GATT. It provided for most-favoured-nation treatment in accordance with the GATT and the Protocol of Accession of Poland (15S/46). The Agreement should not affect or impair the rights and obligations of the parties under the General Agreement or under Poland's Protocol of Accession. It set out the timetable for the Community's phasing out of quantitative restrictions on imports originating in Poland referred to in paragraph 3(a) of the Protocol of Accession of Poland, i.e., quantitative restrictions which were inconsistent with Article XIII of the General Agreement. The Community and Poland had granted each other reciprocal tariff concessions in regard to several agricultural products; these would enter into force on an m.f.n. basis as of 1 January 1990. In view of the importance of their trade in agricultural products and the implications of multilateral negotiations in the framework of GATT, the Community and Poland had agreed to examine in a Joint Committee the possibility of granting new reciprocal concessions. The Community and Poland had further agreed to ensure the publication of comprehensive commercial and financial data and information in accordance with Article X, and to maintain and further improve favourable business regulations and facilities for each others' companies in their respective markets. In this context, his authorities stressed that there was no Polish undertaking in the Agreement that would not already have been implemented or would not be extended, on the basis of m.f.n. and non-discrimination, to all other contracting parties. Poland had already taken, or would introduce in the near future, measures aimed at stabilizing its economy and transforming it into a market economy with a strong private sector. The Government's policy intentions with respect to the complex program of economic reforms had been outlined to the IMF and World Bank during the meetings of their governing bodies in September. The program sought, inter alia, a further liberalization of foreign trade in Poland. A supportive external trading environment, including improved access to export markets for products originating in Poland, was indispensable for the success of Poland's stabilization and reform program. A positive contribution to this objective would be a speeding up of the elimination of quantitative restrictions referred to in paragraph 3(a) of Poland's Protocol of Accession, with a view to terminating that process before the final deadline foreseen in the recently-concluded bilateral agreement.

The Council took note of the statements.