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RESTRICTED

TARIFFS AND TRADE

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Chairman: Mr. Rubens Ricupero (Brazil)

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1. Appointment of presiding officers of standing bodies
- Communication from the Chairman

The Chairman recalled that at the CONTRACTING PARTIES' Forty-Fourth session, the Council Chairman had suggested that "in future, at the first Council meeting each year, on the basis of a consensus which would have emerged from consultations, the Council Chairman should propose the names of the presiding officers of the Committee on Balance-of-Payments Restrictions, the Committee on Budget, Finance and Administration and the Committee on Tariff Concessions for the current year. This would not preclude the re-appointment of an incumbent" (SR.44/2). The CONTRACTING PARTIES had taken note of that suggestion. The proposal was to be preceded

by consultations, open to all delegations and conducted so as to ensure transparency of the process. At the Council meeting on 7-8 November 1989, the previous Chairman had announced that his successor would carry out such consultations. Now that the consultations had been completed, he announced that Mr. Boittin (France) had agreed to continue for another year as Chairman of the Committee on Balance-of-Payments Restrictions, Mr. Broadbridge (Hong Kong) as Chairman of the Committee on Budget, Finance and Administration and Mr. De la Peña (Mexico) and Mr. Tuusvuori (Finland), respectively as Chairman and Vice-Chairman of the Committee on Tariff Concessions.

The Council agreed to the reappointments.

2. European Economic Community - Payments and subsidies paid to processors and producers of oilseeds and related animal-feed proteins - Panel report (L/6627, L/6636, L/6638)

The Chairman recalled that at its meeting on 15-16 June 1988, the Council had established a Panel at the request of the United States to examine this matter. The report of the Panel was now before the Council in L/6627.

Mr. Nyerges, a Member of the Panel, introducing the report on behalf of its Chairman, Mr. Cartland, recalled that the Council had been informed of the terms of reference and composition of the Panel at its meeting in June 1989. The Panel had subsequently met twice with the parties to the dispute and once to consider written submissions from four interested third parties. The report of the Panel had been presented to the parties on 30 November and circulated to contracting parties on 14 December 1989.

As a result of its findings, the Panel had reached the following conclusions. It had found that the European Community regulations providing for payments to seed processors conditional on the purchase of oilseeds originating in the Community were inconsistent with Article II:4 of the General Agreement and had recommended that the CONTRACTING PARTIES request the Community to bring these regulations into conformity with these provisions. The Panel had further found that Article II benefits accruing to the United States in respect of the zero-tariff bindings for oilseeds in the Community Schedule of Concessions were impaired as a result of the introduction of production subsidy schemes which operated to protect Community oilseed producers completely from the movement of prices of imports and thereby prevented the tariff concessions from having any impact on the competitive relationship between domestic and imported oilseeds. The Panel had recommended that the CONTRACTING PARTIES suggest that the Community consider ways and means to eliminate the impairment of its tariff concessions for oilseeds. Finally, the Panel had considered that, as the inconsistency with Article III:4 and the impairment of the tariff concessions arose from the same Community regulations, a modification of these regulations in the light of Article III:4 could also eliminate the impairment of the tariff concessions. The Panel had therefore recommended that the CONTRACTING PARTIES take no further action under Article XXIII:2 in relation to the impairment of the tariff concessions until the Community

had had a reasonable opportunity to adjust its regulations to conform to Article III:4.

The representative of the United States urged the adoption of the Panel report. He said that all contracting parties had had a chance to study it since its circulation on 14 December 1989 and hoped that they would all agree with the United States that the report was well reasoned and clearly written. The report broke no new legal ground. The facts were complex -- because the Community subsidy schemes for oilseeds were complex -- but the GATT law underlying the two essential conclusions of the report was basic and had frequently been applied and expressed in the past. First, the Panel had concluded that a contracting party which had negotiated a tariff concession had a reasonable expectation that the benefits of that concession would not be nullified or impaired through the introduction or increase of subsidies; that was all that the Panel had found on the US "non-violation" nullification and impairment claim.

Similarly, the Panel's second finding, that payments to oilseeds processors conditional upon purchase of domestic oilseeds were inconsistent with the obligations of Article III:4, also did not break any new legal ground. While the facts were complicated, the Panel's finding was not. The payments were inconsistent with the Community's obligations under Article III:4 to accord to imported products in all respects treatment no less favourable than that accorded to like domestic products, and they could not be justified under Article III:8(b) because they were not made "exclusively" to producers.

In the light of the clear nature of the Panel's findings and their firm foundation within well-established GATT law, the United States hoped that the Community would accept adoption of the report at the present meeting, and would commit to, and in fact, implement its recommendations within a reasonable period. The United States would consider such actions to fulfil the Community's obligations under the General Agreement.

The representative of the European Communities said that the Community's reservations with regard to several of the Panel's interpretations of the relevant GATT provisions had been set out in detail in document L/6636. While the Community would not stand in the way of any consensus for the adoption of the conclusions of the report which might emerge during the course of the present meeting, it would not concur in any consensus unreservedly, for reasons set out in its communication. The Community considered that in at least some of its findings, the views of the Panel were erroneous, partial and sometimes non-objective. The Community viewed this approach as dangerous because negotiations in the Uruguay Round on these matters were difficult enough: taking a position in favour of one or another finding might place a direct responsibility on the Panel when the substantive negotiations got underway on these issues and also when the final results were adopted. Despite the difficult and complicated path that the Panel had been obliged to tread, it had arrived at conclusions. The latter contained recommendations which the Community considered as balanced. The Panel was to be commended for having risen above the specific dispute between the Community and the United States, or

more precisely between those on both sides of the Atlantic who drew their livelihood from oilseeds, in order to assess the interests of the multilateral system as such, its dynamics and its prospects.

While the Community's position on these conclusions and recommendations was clearly set out in L/6636, the Community representative wished to supplement the document with the following remarks in respect of the three recommendations.

First, the Panel recommended that the CONTRACTING PARTIES request the Community to bring its regulations into conformity with the General Agreement. If the CONTRACTING PARTIES made that recommendation, the Community would comply with it. Second, the Panel recommended that the CONTRACTING PARTIES suggest that the Community consider ways and means to eliminate the impairment of its tariff concessions for oilseeds. Here again, if the CONTRACTING PARTIES made that recommendation, the Community would comply with it in the light of the arguments put forward in L/6636. Third, the Panel had recommended that the CONTRACTING PARTIES take no further Article XXIII:2 action in relation to the impairment of the tariff concessions until the Community had had a reasonable opportunity to adjust its regulations to conform to Article III:4. If that was the CONTRACTING PARTIES' wish, the Community would abide by it. The Community's understanding was that the United States, for its part, would renounce the use of unilateral measures to achieve compliance with these recommendations. Bringing its regulations into GATT conformity would be difficult and painful, but the Community was confident that it would be achieved.

The representative of Switzerland said that his country did not wish to oppose the Panel's conclusions. Switzerland, nevertheless, had some problems regarding certain legal interpretations in the findings (paragraphs 131 to 154). With regard to its interpretation of Article III:8(b), the Panel considered that the mere fact that a system designed to offset the additional cost resulting from purchase of domestic rather than imported products, depending on the circumstances of the individual purchase, could create an incentive to purchase domestic rather than imported products, made it inconsistent with Article III:8(b). Switzerland considered this an unduly restrictive interpretation, which did not take account of trade realities. The Panel's interpretation condemned what was current practice in the operation of a production subsidy. If governments often operated producer-aid schemes of this type, it was essentially because such schemes allowed savings on administrative mechanisms and were much more flexible to manage. In Switzerland's view, Article III should not be interpreted so as to render inconsistent with the General Agreement measures that held down the price of an economic policy, provided the scheme concerned did not systematically result in any discrimination against imported products. Switzerland considered that the Panel's conclusions would have the effect of obliging contracting parties to transform subsidy schemes that were consistent with the spirit of Article III into much more costly administrative measures. It regretted that the Panel had not taken sufficient account of economic considerations and had focused on excessive legalism. In so doing, the Panel had condemned a trade practice that was used very frequently and had not thus

far given rise to any major problems because it had rightly been considered as consistent with the spirit of Article III by the contracting parties applying it.

Switzerland also had reservations regarding the Panel's interpretation of Article II. The Panel had found (paragraph 152) that benefits accruing under Article II in respect of bound items had been impaired as a result of subsidy schemes which operated to protect domestic producers completely and which prevented tariff concessions granted from having any impact on the competitive relationship between domestic and imported products. Switzerland was of the view that, to a certain extent, any subsidy insulated or protected domestic production from the world market. To state that benefits accruing under Article II were nullified upon the introduction of a subsidy that did not exist when the concession was granted was tantamount to prohibiting outright any domestic subsidization. This conclusion seemed inconsistent with the provisions of Article XVI and of the Subsidies Code¹, for it limited the possibility of recourse to measures authorized under those two instruments. Switzerland considered therefore, that in order to determine whether there was any nullification or impairment of GATT benefits, one should refer to the conditions on subsidies set forth in the specific disciplines of the GATT and its legal instruments. Furthermore, Switzerland maintained that the conditions for observance of Article XVI were set out in the Subsidies Code, in particular Article 8 thereof. Consequently, Switzerland considered that the relationship that could lawfully be expected following the grant of a tariff concession was only altered when the conditions set forth in Article 8:4 of the Subsidies Code were met. The grant of a subsidy that did not exist at the time of the tariff binding was not sufficient to warrant a determination that a benefit accruing under Article II was being nullified or impaired. It would further have to be shown that the subsidy was producing effects inconsistent with the specific disciplines applicable to subsidies.

The representative of Canada observed that the previous statements, in particular those of the US and Community representatives, had confirmed again that GATT could usefully address even the most difficult and sensitive trade problems among its contracting parties. For its part, Canada welcomed the Panel's findings and conclusions and fully supported adoption of its report. Canada had reserved the right, in its third-party submission to the Panel, to request a panel on the Community's oilseeds régime with respect to Canada's rapeseed interests, and had initiated formal Article XXIII consultations with the Community in this regard. Canada had noted that the present Panel had specifically included rapeseed in its review of the Community's oilseed regulation and its effects, and Canada expected confirmation from the Community that its implementation of the Panel's recommendations would fully recognize the broad product coverage of the Panel's finding (soybeans, rapeseed, sunflower seed, etc.) and that it would implement them equally with respect to all suppliers.

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

Canada also considered it appropriate that the Community implement the Panel's recommendations in the context of the outcome of the Uruguay Round negotiations. Canada considered the Panel's reasoning and findings as sound, and the Community's views in respect thereof as a statement of national position. It was Canada's expectation that the Community would implement the Panel report in accordance with the findings and conclusions as given.

The representative of Austria said that Austria did not oppose adoption of this report but felt bound to express serious concern in respect of certain paragraphs of the report that contained the Panel's findings. In Austria's view, the method of payment was a matter of administrative practicability, and it could not simply be stated that the payment of producer subsidies via processors was a violation of Article III:8(b) per se. This had to be proved. The Panel had noted (paragraph 137) that Article III:8(b) applied only to payments made exclusively to domestic producers and had considered that it could reasonably be assumed that a payment not made directly to producers was not made "exclusively" to them. That meant that the Panel had made an assumption, as the Panel itself had stated. Assumption, however, was not evidence. Austria was concerned that the Panel had not followed the general rule of procedure whereby the burden of proof rests with the complainant, and had worked on assumptions rather than on the basis of clear evidence.

Another concern to Austria was the Panel's finding in paragraph 152 that benefits accruing to the United States under Article II in respect of the zero-tariff bindings for oilseeds in the Community Schedule of Concessions were impaired as a result of subsidy schemes which operated to protect Community producers of oilseeds. Austria did not find any justification, either in Article XVI or in other GATT provisions, for the view that certain kinds of subsidies per se impaired or nullified earlier tariff concessions. Finally, Austria believed that in the present phase of the Uruguay Round trade negotiations, panels should be very careful not to create the impression of interfering in matters that were the subject of negotiations. The task of panels was to deal with the correct application of existing rules of the General Agreement but not to interfere with negotiations underway on future rules.

The representative of Finland, speaking on behalf of the Nordic countries, said that they had noted with appreciation the very thorough manner in which the Panel had examined the case as well as its practical approach in respect of recommendations to the CONTRACTING PARTIES. They had also noted that the Community was in a position to go along with the adoption of the report and that steps to implement the relevant recommendations were also foreseen. However, the substantive contents of the report raised certain questions and concerns that the Nordic countries wished to put on record.

This Panel had not been the first, and would not be the last, to weigh such complicated issues as practicability versus strict legal interpretation as the source of guidance for its conclusions, the allocation of the burden of proof among parties to the dispute, the related question of the weight that presumption, rather than material evidence,

should carry in the analysis, and the hierarchy of the various provisions of the General Agreement and those of the Codes negotiated under its auspices. The Panel had faced a virtual cobweb of arguments on these issues. The Community had reiterated at the present meeting its own views on these issues, which were different from those adopted by the Panel. The view of the Nordic countries was that these counterarguments also merited serious consideration by the CONTRACTING PARTIES, particularly in the current situation where some of the problems at hand were under active consideration in the Uruguay Round and where the dispute settlement machinery should not be allowed to overtake or disturb orderly negotiations.

At this stage, the Nordic countries would point only to two areas of the report with which they had misgivings. Firstly, in examining the US complaint in the light of Article III, the Panel had ruled against the practice of subsidization through processors rather than by payments made directly to basic producers, and had thus found that the mere risk of discrimination which the current mechanisms involved brought the Community's system into inconsistency with Article III:4. The Nordic countries considered that in relying on the existence of a certain risk, the Panel had shifted the burden of proof in a questionable manner. Secondly, in examining nullification and impairment, the Panel had concluded that the Community subsidy scheme, due to its character, impaired benefits accruing to the United States under Article II. This ruling had been made without testing the scheme against the specific subsidy provisions of GATT Article XVI or those of the Subsidies Code. By adopting this particular view of the hierarchy of the provisions of the General Agreement, the Panel might have created a precedent for the view that any domestic subsidy was inconsistent with a tariff concession granted on the product concerned. In the view of the Nordic countries, this kind of reasoning was far-fetched and should not be encouraged as long as negotiations on the future disciplines pertaining to agricultural and other subsidies were underway in the Uruguay Round.

Notwithstanding these remarks, the Nordic countries were ready to support the adoption of the report. They reserved the right, however, to revert to the issues raised by the report at a future Council meeting.

The representative of Australia said that as a third party to this complaint, Australia had a keen interest in the matter. Australia had studied the Panel report and found it to be thorough and well argued. It supported the Panel's findings and considered them to be useful interpretations of the GATT principles involved. Australia also welcomed the Community's preparedness to see the report adopted by the Council at the present meeting.

Referring to the three points raised in the Community's communication (L/6636), he said that Australia disagreed with the analysis therein and, on the contrary, supported the Panel's findings based on its study of this

case. On the first point, Australia agreed with the Panel that a payment not made directly to producers was not made exclusively to them, and that it could therefore entice processors to purchase domestic product in certain circumstances. On the second point, the nature of the subsidy involved, Australia believed that the Community was exaggerating the implications of the finding. It was Australia's view that the Panel had made a legitimate distinction between a reasonable expectation of continuation of some forms of existing member State subsidies and an unforeseeable Community subsidy program which completely negated the binding involved. On the third point regarding Article XXIV:6, Australia disagreed with the basis of the Community's reservation (L/6636, pp.2-3), and had argued the opposite case in its own third-party submission to the Panel.

While the Community had every right to register its views, Australia wished to state clearly for the record its view that the Community's, and others', statements could only be seen -- as in similar cases in the past -- as ones of national position. Such statements could in no way detract from the findings in the Panel report or from the obligations to implement them.

In terms of the Community's reference to the timing of implementation, Australia recognized that the Panel's recommendations called for a reasonable opportunity for the Community to adjust its policies. However, as to the Community's linkages, made both in its communication (L/6636) and in its statement at the present meeting, Australia wished to add for the record that there was a distinction between a convenient time, e.g. for legislative reasons, for policy changes necessary to implement a Panel report and any suggestion that those policy changes be used as negotiating coin in the Uruguay Round. This applied not only to the Community in this case, but also to others who had made similar timing linkages in other cases. Australia believed that there was an obligation to remove GATT inconsistencies, which was unrelated to ongoing negotiations. Dispute settlement was judged against the rules as they existed, and not against rules as they might exist.

The representative of Argentina said that Argentina fully agreed with the Panel's findings and recommendations. He expressed satisfaction that in the course of the statements made so far, the different parties involved, in particular the Community, had not opposed the adoption of the report. The Community had also stated that the report's recommendations would be complied with in due course. His delegation agreed with the view expressed by Australia that there should be no link between this issue and negotiations being carried out in the Uruguay Round, and believed that the implementation of the recommendations should be carried out as rapidly as possible, consistent with the Community's internal rules and procedures.

The Panel's findings as well as Argentina's submissions to it, among others, made it unnecessary to go into detail with regard to some of the comments made so far at the present meeting. As Argentina understood it,

the doubts which had been voiced had no legal justification in so far as there was an obligation in the General Agreement with respect to the predictability and the maintenance of negotiated concessions, and there could be no nullification and impairment arising from the exercise of some of the exceptions provided for in the rules. This was the guiding principle which ensured the smooth operation of the General Agreement.

The representative of Japan said that Japan would not stand in the way of the adoption of the Panel report if there was a consensus to do so. However, the report was voluminous and very complex. Therefore it would take some more time for Japan to study in detail all its implications and reasonings. For this reason, Japan wished to state that the adoption of the report would neither prejudice similar cases which might be brought to GATT in the future, nor contracting parties' positions in the Uruguay Round negotiations.

The representative of Tanzania said that he would confine his remarks to the message which seemed to be loud and clear for several developing countries, particularly those which were in the throes of looking for answers in their search for options in carrying out structural adjustments. Whereas an industrialized economy was able to transfer real resources to farm producers from other sources -- obviously the industrial and manufacturing sectors which in turn priced their products accordingly -- no such opportunity was available to many developing countries which were dependent on export markets for their commodities in raw form and had to accept whatever price the market would bear. Concurrently -- and ironically -- these developing countries had to continue to pay prices fixed by those industrialized sectors of the industrial countries, which had adjusted their costs upwards in order to take care of the interests of their farm producers. That was the case for industrial products which were essential tools and inputs for transforming the economies of developing countries. If the participants in the Uruguay Round bore these implications in mind, some good might come out of this and similar panel reports in the future.

The representative of Hungary said that the Panel report was clearly structured and well reasoned. His delegation agreed with the view that the report had major implications for the multilateral trading system. Hungary shared the conclusions of the report and agreed with the Panel's view in paragraph 157 that both major issues under consideration could be addressed by a modification of the same Community regulations. It further agreed with the Panel's consideration that, taking into account the magnitude of the issues involved, a reasonable period of time should be provided to the Community to adjust these regulations to conform to its GATT obligations. On the basis of the above, and of Hungary's trade interests in some of the products under consideration, it welcomed the fact that the Community was not objecting to the adoption of the report at the present meeting.

The representative of the United States said that having listened to the previous statements, and having also examined the Community's communication (L/6636), his delegation would submit written comments with respect to these observations which could be circulated subsequently for

the benefit of all contracting parties (L/6638). He appreciated the Community's earlier statement and said that its representative had done more than was realized to ensure that there was strong support for a viable multilateral system which served as an appropriate means to ensure a careful balance of rights and obligations between contracting parties. As difficult as it was, the GATT's dispute settlement process was a workable system which deserved everyone's support. GATT's contracting parties were trying to make a system of rules and obligations work effectively in a way that would encourage and expand world trade to the benefit of all. It was in this spirit that his Government was now asking its citizens to accept GATT rulings and to recognize the importance of a system of neutral arbitration of disputes. The United States recognized the concern that the system gave rise to in all capitals, but wished to express once again its commitment to this process, and in this context urged the adoption of the Panel report.

The Council took note of the statements, adopted the Panel report in L/6627, and agreed that in accordance with the procedure adopted by the Council in May 1988 (BISD 35S/331), the report was thereby derestricted.

3. Protocol for the accession of Poland
- Communication from Poland (L/6634)

The Chairman recalled that at the CONTRACTING PARTIES' Forty-Fifth session, the representative of Poland had referred in his general statement (SR.45/ST/11) to the possibility that Poland might wish to renegotiate its Protocol for accession to the General Agreement (BISD 15S/46). This item was on the Council's agenda at the request of Poland, which had circulated a communication on this matter in L/6634.

The representative of Poland said that in the second half of 1989, Poland had embarked upon a process of radical changes in its political and economic system. At the end of 1989, economic changes had gained further momentum when the Polish Parliament had adopted a set of laws introducing a market economy system based on the concept of an open economy, exposed to international competition and aimed at promoting structural adjustment, increasing efficiency and overcoming monopolistic behaviour of economic operators. The new legislation also provided the basis for the economic stabilization programme which had been agreed upon with the International Monetary Fund and which had entered into force on 1 January 1990. This date constituted a threshold marking the transition from a centrally-commanded system to an open-market economy in Poland.

The main characteristics of the Polish market and its regulatory framework were as follows: the fundamental principle was that any private or legal person, including foreign investors, was free to undertake and to conduct business activities on an equal footing. The system of central economic planning had been abolished. The foreign trade sector had been demonopolized and every economic entity had a right to engage directly in export and import operations. A legal framework had been established in order to induce changes in the ownership structure, including the privatization of State-owned enterprises. He pointed out that for years

Poland's agricultural sector had consisted predominantly of private farms. A scheme of preferences to encourage the inflow of foreign investment was stipulated in -- and guaranteed by -- the law.

The convertibility of Poland's currency had been introduced, and the exchange rate of the zloty to convertible currencies was now determined at market level. All importers, firms and individuals alike, had equal and unlimited access to convertible foreign exchange. More than 90 per cent of domestic prices were based on market supply and demand. Although prices for a few energy products still remained subject to administrative pricing, the Government set them at levels which were close to world market prices.

A customs tariff applied to all imports in a uniform manner and was the effective trade policy instrument in Poland. The customs tariff presently in force had been notified to all contracting parties a year earlier. A supplementary notification was being sent on changes in rates of customs duty which had been introduced on 1 January 1990. Concerning non-tariff measures, the requirement of an import licence had been limited to a very small number of products.

The current economic policy and the transparent, market-oriented trade régime had a bearing on Poland's terms of accession to GATT. A number of the unique, and now obsolete, provisions in Parts I and II of the Protocol, negotiated more than twenty years earlier, no longer reflected the present legal and economic realities of the Polish market. Moreover, Poland hoped that the positive decisions taken by its trading partners in recent months regarding their trade with Poland would allow reconsideration of the necessity to maintain some provisions of the Protocol. It was his Government's firm view that changes in the internal economic system and the external trading environment justified the elaboration of a new Protocol that would be conducive to the operation of a market-based trade régime in Poland and to the acceleration of the integration of the Polish economy into the multilateral trading system.

Poland sought to insure that its rights and obligations were in line with those normally applied to GATT contracting parties. As had been stated in L/6634, the Polish Government requested the establishment of a working party to allow for the renegotiation of the terms of Poland's accession to the General Agreement. Poland did not expect the Council to take a decision at the present meeting, as it was aware that more time might be needed for consultations among contracting parties. For this reason, Poland requested the Council to revert to this matter at its next meeting with a view to deciding on a further process.

The representative of United States said that the United States supported Poland's request for renegotiation of its Protocol of accession. Recent statements and actions by the Government of Poland indicated that Poland had begun to move away from a non-market, centrally-planned economy, towards an economic and trade régime based on market-based prices and private economic decision-making. Moreover, it had been evident for years that the terms of Poland's current Protocol were unworkable. The United States had no preconceived ideas about the proposed renegotiation and looked forward to receiving further evidence of Poland's intentions and actions concerning its economic reforms.

The representative of Hungary agreed with the view that certain provisions of Poland's Protocol of accession could be considered obsolete. In Hungary's view, one of the basic problems arose from the fact that Poland had not been able to accede to the General Agreement under the usual terms, i.e., by negotiating tariff concessions, but had done so by undertaking specific yearly increases of its overall imports from the contracting parties. Time had proved that such a commitment was neither equitable nor operational. In view of the substantial changes that had taken place in the Polish economy, as outlined in Poland's statement, his delegation supported the request to establish a working party with a view to adapting Poland's Protocol of accession to the new conditions.

The representative of Austria said that his delegation had noted with understanding Poland's statement and the request to establish a working party to examine the necessity to change Poland's Protocol of accession. To this end, it was necessary to examine carefully Poland's economic situation and policy and the conditions for a change of the Protocol. His delegation favoured the establishment of a working party for this purpose.

The representative of Japan said that Japan welcomed the ongoing moves toward reform in Poland and was deeply interested in the smooth attainment of the objectives of the reform. It was with this recognition that Japan's Prime Minister had visited Poland ten days earlier and had expressed, among other things, Japan's intention to provide support to the Polish Stabilization Fund by making available the equivalent of US\$ 150 million, and to provide emergency food aid of US\$ 25 million to Poland. He had made it clear as well that Japan's Export Import Bank was planning to provide both Poland and Hungary with financing facilities of roughly US\$ 500 million over a period of three years. The Prime Minister had stressed in a recent speech in Berlin that it would be extremely important for Poland, in this context, to press on with economic rehabilitation and development by shifting smoothly from a centrally-planned system to one based on market forces. From this point of view, Japan was prepared to examine Poland's request in a positive manner. Japan considered it appropriate, in accordance with normal procedures, to have informal consultations prior to the formal decision by the Council on this question and was willing to participate in such informal consultations.

The representative of the European Communities said that the Community welcomed the political and economic changes which had taken place in Poland. Council members would be aware of the great efforts undertaken by the Community, jointly with its partners, to assist that process as much as possible as a result of the decisions taken at the recent Paris Summit. The Community was also aware of the difficulties Poland encountered in meeting some of the specific obligations built into its Protocol of accession. The Community would therefore examine in detail Poland's request with a very open mind and in a positive spirit. It could not, of course, prejudge the outcome of the work that would soon start, but welcomed this initiative.

The representative of Canada said that Canada welcomed the ongoing changes in Poland and was supportive of this process. He hoped that at the next meeting it would be possible for the Council to consider favourably Poland's request.

The representative of Czechoslovakia said that his delegation welcomed Poland's communication and its statement at the present meeting. Both were very opportune, given that Poland's economic situation required a modification of its Protocol of accession. His delegation would consider positively this communication at the Council meeting which would examine the question of the establishment of a working party.

The representative of Turkey said that Turkey considered favourably the developments in Poland and supported the Polish Government's efforts to build a liberal, efficient and open economy, and eventually to integrate it into the multilateral trading system. In this context, Turkey believed in the merit of establishing a working party which would examine the recent developments in Poland by comparing the newly-introduced economic legislation with that of the provisions of the Protocol of accession, and which would enable contracting parties to understand better and to assess whether there were any legitimate grounds, as suggested, for the renegotiation of the terms of Poland's accession. Turkey further believed that as the number of contracting parties opting for a free-market economy increased, there would be considerable progress towards resolving the problem of adherence to GATT rules and disciplines on a global scale. He informed the Council that in view of the recent developments in the Eastern European countries, Turkey had recently made certain adjustments in its own régime for imports from these countries by lifting existing restrictions -- these imports had been confined so far only to companies able to export above certain levels. This had been done in order to give support to these countries' endeavours to improve and expand their foreign trade.

The representatives of Australia, Brazil, Chile, Egypt, Hong Kong, India, Indonesia, Israel, Morocco, Nigeria, Norway on behalf of the Nordic countries, Peru, Switzerland, Thailand and Yugoslavia supported Poland's request.

The Council took note of the statements, asked the Chairman to hold, in the interval before the next Council meeting, informal consultations with interested delegations with a view to deciding on the terms of reference and chairmanship of a working party which would examine Poland's request, and agreed to revert to this item at its next meeting.

4. Korea - Restrictions on imports of beef
- Follow-up on the Panel reports (L/6503, L/6504, L/6505)

The representative of the United States, speaking under "Other Business", informed the Council of a matter that he referred to as relating to the Council's surveillance of implementation of adopted panel reports. He recalled that at its meeting on 7 November 1989, the Council had agreed to adopt the three panel reports concerning Korea's restrictions on imports of beef (L/6503, L/6504, L/6505). The Panels had recommended that: "a) Korea eliminate or otherwise bring into conformity with the provisions of the General Agreement the import measures on beef introduced in 1984-85 and amended in 1988; b) Korea hold consultations with the United States and other interested contracting parties to work out a timetable for the

removal of import restrictions on beef justified since 1967 by Korea for balance-of-payments reasons; and c) Korea report on the result of such consultations within a period of three months following the adoption of the Panel report by the Council". During recent consultations, Korean representatives had indicated to the United States that they were not prepared to discuss a timetable for liberalization of the Korean beef market at this time, or to indicate even when they would be in a position to do so. This position conflicted with the Panels' recommendations and with the obligations Korea had undertaken when accepting adoption of the Panel reports. The United States believed that Korea had now failed to meet its obligation to report to the Council within three months of the adoption of the reports as the present Council meeting was the last that fell within that timetable. The United States disagreed with the Korean representatives who had said that the timetable was not firm and who considered the February Council sufficient time to meet their obligations. His Government expressed its serious concern at the lack of progress to date in implementing the Panels' recommendations. The United States urged Korea's Government promptly to develop a proposal that fully addressed all the issues covered in the Panels' findings and recommendations. In the absence of a satisfactory resolution to this dispute, the United States reserved its GATT rights.

The representative of New Zealand said that the Panel on the dispute between New Zealand and Korea on restrictions on beef (L/6505) had recommended that Korea consult with New Zealand to work out a timetable for the removal of import restrictions on beef and report to Council on the results of its consultations three months following the adoption of the report by the Council. She said that the three-month period had not yet expired -- it would do so early the following month. However, the one round of consultations that had been held with Korean officials to date had been inconclusive and much work was still needed to establish a timetable for the removal of the restrictions. New Zealand looked forward to an intensified dialogue with Korea to enable Korea to make its report to the next Council meeting, as required by paragraph 125(b) of the Panel report.

The representative of Australia said that Australia and Korea had held their first round of bilateral consultations. While Australia had been disappointed that these discussions had not produced a commitment by Korea to any timetable for liberalisation, Australia was proposing to hold a further round of more substantial discussions in mid-February. In the GATT context, he noted that Korea was required to report to the Council by early February. He would propose to comment on that report, in the light of any subsequent developments, at the February Council meeting. If insufficient progress had been made by that time, then Australia would be prepared to comment on this at that meeting.

The representative of Canada said that he merely wished to register again Canada's interest in this matter, in line with the statements his delegation had made at earlier Council meetings.

The representative of Korea said that in accordance with the Panels' recommendations, his Government had held a first round of consultations with all three parties to the disputes. Unfortunately, these consultations

had been inconclusive, and his Government was now preparing for a second round. In this regard, his delegation reiterated the point it had made at the November 1989 Council meeting when the Panel reports had been adopted, that the beef issue entailed tremendous political, social and economic problems in Korea, originating from the fragile and unfavourable conditions prevailing in his country's livestock sector. Under these circumstances, it inevitably took time to arrive at a solution acceptable to all the parties. Despite these difficulties, however, his Government would continue the consultations and hoped that a mutually acceptable solution would be found. As recommended by the Panels, the results of the consultations would be reported to the CONTRACTING PARTIES by 6 February 1990.

The Council took note of the statements.

5. Communication from the United States concerning the relationship of internationally-recognized labour standards to international trade

The representative of the United States, speaking under "Other Business", strongly urged the Council to agree to his Government's request for the establishment of a working party to examine this matter² and asked for the circulation of a text setting out the US arguments for such action. He said that his informal contacts with some delegations before the meeting indicated that there would still not be a consensus to establish a working party at the present meeting. He asked, however, that delegations examine carefully the persuasive and compelling arguments in the US communication and said that he would definitely revert to this matter at subsequent meetings. With this in mind, he suggested that the Chairman might ask whether any delegation was prepared to change its position. Should this not be the case, the United States would persevere and would continue trying to persuade other delegations of the validity of its request.

The representative of India said that despite the US representative's strong statement, he was not convinced that there was a case for establishing a working party to examine the issue in question, and doubted that there would be one for a very long time.

The representatives of Brazil, Cameroon, Chile, Côte d'Ivoire, Cuba, Indonesia, Korea, Mexico, Morocco, Myanmar, Nicaragua, Nigeria, Pakistan, Peru, Philippines, Singapore, Tanzania, Thailand, Turkey and Yugoslavia indicated that they had not changed their positions on this issue.

The representative of Chile suggested that in future, the United States not raise this matter under "Other Business" or otherwise unless there had been changes of position by delegations.

²L/6197, L/6243.

The representative of Nicaragua agreed with Chile's suggestion, which seemed a more appropriate way of including this matter on the Agenda. Noting the strong US statement, he wanted to register his delegation's strongly opposed view.

The Chairman informed the Council that the text to which the US representative had referred would be available from the Secretariat after the meeting.

The Council took note of the statements.

6. Hungary - Recently adopted legislative changes and economic measures

The representative of Hungary, speaking under "Other Business", informed the Council of certain new measures recently taken in Hungary. He recalled that at its seventh review in June 1989, the Working Party on Trade with Hungary³ had examined in detail the various aspects of changes that had taken place in his country's economic and trade policies. Since then, there had been some new developments which broadened the application of those policies, with a view to establishing the free play of market forces. The system governing imports in convertible currencies had been thoroughly overhauled as from 1 January 1989, and the licensing requirement had been eliminated for products representing about 40 per cent of the value of imports. Measures had since been taken, with effect from 1 January 1990, so that about 70 per cent of Hungary's imports in convertible currencies were no longer subject to licensing. Furthermore, the Council for Economic Deregulation had reviewed regulations and other legal instruments and had taken the necessary measures in order to repeal measures which were obsolete in terms of the operation of a market economy or which would hinder transparency.

The Council took note of this information.

7. United States - Restrictions on imports of sugar
- Follow-up on the Panel report

The representative of Australia, speaking under "Other Business", said that consistent with proper Council surveillance of this matter, Australia wished to report to the Council on bilateral discussions held with the United States on its implementation of the Panel report on US restrictions on imports of sugar⁴, which the Council had adopted in June 1989. At that time, the United States had indicated that it would review the implications of the report and review with the US industry and Congress the options for making the US programme GATT-consistent. It had further said that it would discuss implementation of the report with Australia. In subsequent discussions at Cabinet level, the United States had agreed to discuss its

³L/6535.

⁴L/6514.

preferred options for reform of its sugar policy with relevant Australian Ministers before initiating any particular course of action. These undertakings were very much in keeping with the spirit of the GATT conciliation process which -- he noted -- had marked the approach taken to this dispute. Bearing in mind that the same end could often be achieved in a number of ways, it was obviously preferable to adopt options which best served a mutuality of interests, and such interests could only be identified by full discussion. In October 1989, Australia had held discussions at senior official level in order to clarify US intentions as a preliminary step to the foreshadowed meeting of Ministers. At that time, however, the United States had advised that no position had been taken within the US Government and had declined to discuss options on the grounds that to do so could only be speculative. Three months had since passed without any indication of US intentions on sugar policy reform. Australia looked to the United States for an outline of its intentions. He noted that the US Trade Representative had recently commented that she was working hard to make the US sugar régime GATT-consistent before the end of the Uruguay Round. Australia hoped that the United States would be able to fulfil the requirements of the Panel report on sugar at an early date and amend its sugar régime to take fully into account the interests of its trading partners.

The representative of the United States said that as his delegation had stated at the time of adoption of the Panel report, his Government had been, and remained, committed to bringing the US practices with regard to the use of its "Headnote" authority for sugar imports into consistency with the General Agreement. As Australia had stated, the United States had engaged in consultations and these would continue in order to achieve a mutually satisfactory solution. He would merely underscore recent statements made by the US Trade Representative with respect to the resolution of this matter. He reassured Australia that his authorities were engaged in an active process of determining what measures should be taken to bring US practices into conformity. His delegation would report on those measures to the Council at an appropriate opportunity.

The Council took note of the statements.

8. Accession of Paraguay (L/6468)

The Chairman recalled that at its meeting on 6 March 1989, the Council had agreed to reactivate the Working Party established in 1974 to examine Paraguay's request for accession to the GATT (L/6468). The Council Chairman had been authorized, at that meeting, in consultation with the primarily interested contracting parties, to designate its Chairman. He informed the Council that Mr. Ceska (Austria) had agreed to serve as Chairman of the Working Party.

The Council took note of this information.