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TRADE POLICY REVIEW MECHANISM

THE UNITED STATES OF AMERICA

MINUTES OF MEETING

Chairman: Mr. Rubens Ricupero (Brazil)

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I. INTRODUCTORY REMARKS BY THE CHAIRMAN OF THE COUNCIL

1. Welcoming delegations to the review of the trade policies and practices of the United States of America, the Chairman reminded the Council of the objectives and the procedures of the meeting, as laid out in documents L/6490 and C/RM/1. The reports by the Government of the United States of America and by the Secretariat were circulated in documents C/RM/G/3 and C/RM/S/3, respectively.

2. Advance questions in writing had been passed on to the United States delegation. For the sake of an effective discussion, all parties were encouraged to limit their comments and questions to major observations. The Chairman invited the representative of the United States of America to indicate whenever he wished to intervene during the meeting. He thanked Mr. Witt for acting as the lead discussant in today's meeting and Ambassador Kartadjoemena for agreeing to make supplementary remarks. As usual, both discussants would act in their personal capacity.

II. INTRODUCTORY REMARKS BY REPRESENTATIVE OF THE UNITED STATES

Introduction

3. We are pleased to be one of three participants in the first cycle of meetings of the Trade Policy Review process in the GATT. As this TPRM is one of the first decisions to be implemented from the Montreal Ministerial, we want to ensure that it accomplishes its original intent.

4. The TPRM has several purposes. First, it should enhance transparency of all contracting parties' trade régimes. The GATT Secretariat's report for the TPRM plays a major rôle in fulfilling this purpose. In our view, it should be a stand-alone, detailed description of a country's trade policies and practices. It should also include an independent assessment of the trade policies and practices of the contracting party under review. If the report is objective and complete, it will be a useful document to contracting parties, as well as to the public. Second, the TPRM discussion should improve surveillance of contracting parties' trade practices.

5. We would like to praise the new TPRM office in the GATT Secretariat for its thorough attempt at describing the United States' trade policies and practices. They had very little time to organize a daunting amount of information and prepare a report that has never been done before. We know from our own experience the effort it represents, and extend our thanks to the entire Secretariat. We also appreciate the work of the Chairman and the discussants who read thousands of pages to prepare for the reviews.

6. Before I continue, I want to point out an omission in the Secretariat report that is a little sensitive for my office. The discussion of our institutional framework does not really explain the rôle of the United States Trade Representative's Office. As you know, the President sets United States' trade policy. USTR is responsible for negotiating and coordinating trade policy among other agencies, and sometimes for responding to criticism from our trading partners. I want to assure my colleagues that the USTR still exists and that it plays a key rôle in United States' trade policy. We would appreciate some mention of my office in your next report.

Overview of United States' Trade Régime

7. I have heard during the past several weeks a number of slightly annoyed references to the size of the United States submission and the United States report. The explanation is clear; we are a big country with a lot of trade. As the report indicates, we represent 30 per cent of global output and over 16 per cent of world trade. United States imports account for 16.5 per cent of world trade. I understand the unique position this places us in with respect to the GATT system. My Government fully recognizes that our trade régime has a greater impact on the system than that of any other country. We realize that it is our importance to the overall health of world trade that creates such intense scrutiny of every little bend and curve in our trade policy.

8. But I believe that the Secretariat's report helps to bear out the crucial contribution that an open United States economy has made to global economic growth in the past several decades. For example, during the period 1965 to 1988, United States GNP rose by an average of 2.9 per cent a year. At the same time, United States imports increased at a much faster pace, rising by 7.1 per cent a year. The United States import share of GNP (in constant US dollars) more than doubled during this period, from 4.6 per cent in 1965 to 11.6 per cent in 1988.

9. Even more impressive has been the contribution of the United States market to the growth in world trade during the 1980s. In volume terms, the United States accounted for 31 per cent of the growth in world trade from 1981-88. We are the largest export market for the majority of GATT's 30 top trading nations, in many cases by a substantial margin. We are the top export market for the EC (taken as a whole), Japan, and Canada, and also for a large number of other developed countries, newly industrialized nations and developing countries.

10. Let me also highlight that we absorb by far the greatest share of LDC exports. We take over 50 per cent of their manufactured exports, compared to the EC which takes less than 30 per cent and Japan which takes only 8 per cent. In fact, the report points out that close to half of the top twenty import or export partners of the United States are developing countries, and that the developing countries accounted for more than one-third of United States imports and exports. I emphasize this point because of all that was said this week, in reviewing the Director-General's report, about the fact that developing countries were not sharing in the benefits of world growth. While this is true for many countries, I think the United States is seeking to do, and is doing, a great deal for LDC growth through trade.

11. I would also like to emphasize the growing importance of trade to the United States' economy. Between 1965 and 1988, our ratio of merchandise trade to GDP more than doubled from 6.9 per cent to 15.9 per cent. While some contend this is low compared to other countries, let us remember that this excludes services trade, and services now comprise 67 per cent of our economy. When international services transactions are added, trade as a per cent of our GNP is 24 per cent and growing. This is a remarkable figure for a large, diversified economy with significant natural resources.

12. All of these figures help to underscore one important fact. The United States continues to be a strong factor in the growth of world trade. Indeed some would say we are still the major engine of world economic growth.

13. I would like to make some other important points about the macro-economic situation. I can almost hear some of my colleagues saying that our real problem is our budget deficit. It is too high, they say, and that is the real source of our trade imbalance. In fact, the report shows how much it is declining as a percentage of GNP. For the four year period, from 1983 through 1986, the federal budget deficit averaged 5.4 per cent of GNP. But by 1987, that figure had fallen to 3.6 per cent; in 1988, it

fell further to 3 per cent; and in the first three quarters of 1989, it was only 2.8 per cent. It is the stated policy of the Bush Administration to reduce this ratio even further. In fact, we intend to fulfil the mandate of the Gramm-Rudman Act, and we will continue to work towards a balanced budget. Of course, it is clear that our savings rate is still unacceptably low, and that we need to work hard to increase private savings. The report does, however, cite an increase in gross savings by the United States of 15 per cent in 1988.

14. The United States is also the largest single market for foreign direct investment. Foreign direct investment in the United States is more than US\$329 billion, higher than ever before. United States direct investment abroad was somewhat less - US\$327 billion. But there is more to this investment story than the gross figures. The fact that we have a very open investment climate, with an absolute right of establishment for foreign manufacturers, gives foreign firms a chance to easily establish distribution systems in the world's largest market. This should be kept in mind when analysing the issue of access.

Specific Trade Policies

15. The Director-General's annual report on developments in the trading system discussed at Monday's session states that tariffs and anti-dumping investigations are the most frequently invoked trade policy instruments. Some background information on these two trade practices in the United States would therefore be useful.

Tariffs

16. United States tariff rates rank among the lowest of the world's major trading nations. Using comparative data from the GATT Tariff Study (1986 basis), United States weighted average tariffs on industrial products (excluding petroleum) are at a level of 5 per cent, and rates on agricultural products are at 3.3 per cent, for an overall average level of below 4 per cent.

17. Figures for other participants in the Tariff Study reveal that the United States tariff structure is among the most liberal in the world. While other developed countries have similarly low tariffs on industrial products, they maintain high tariffs on many agricultural products. Weighted average agricultural tariff levels for most other developed countries range between 6.5 per cent and 10 per cent.

18. When compared to some less-developed contracting parties, the United States tariff structure is even lower. A number of major LDCs, even those who enjoy healthy exports in the United States, have average tariff rates above 20 per cent. Everyone knows the importance we attach to bringing about greater harmonization of tariff rates at low levels in order to spur growth and expand trade.

19. United States tariffs are almost all fully bound. As the Secretariat noted in the report, nearly 100 per cent of industrial goods and

90 per cent of agricultural products are bound. This share of bindings is above the average level of 80 to 90 per cent for most developed countries. Very few developing countries have more than 20 per cent of their tariffs bound - the majority have no bindings at all.

Anti-dumping

20. There has been much talk about the extensive use of anti-dumping and countervailing duties by the United States. We are aware of the concerns raised, and I believe the report accurately summarizes the number and incidence of such measures by the United States. But I think some further analysis is called for here to assess the macro effect of such policies on United States imports. The fact is that the volume of United States imports affected by anti-dumping and countervailing duty investigations as a share of total imports amounted to only two-tenths of one per cent in 1987, four-tenths of one per cent in 1988, and two-tenths of one per cent during the first half of 1989. Furthermore the average level of anti-dumping duties assessed in 1987 on dumped or subsidized goods was only 1.20 per cent. The average was 3.70 per cent in 1988, and 1.84 per cent during the first half of 1989.

21. Even more striking is to look at the ad valorem effect of anti-dumping duties and countervailing duties on overall United States imports. Total anti-dumping and countervailing duties have an ad valorem effect of less than one one-hundredth of one per cent on overall United States imports. This is an important fact to keep in mind when discussing these measures.

Sectoral Trade Policies

22. Let me now turn to some discussion of how United States' trade policy affects various sectors of our own economy and the economies of others. In this discussion, I hope to be candid about both our openness and our restrictions. Let me begin by discussing some of the most-often cited trade restrictions maintained by the United States. We do maintain relatively high tariff levels in certain sectors. As the Secretariat report notes, these include textiles and apparel, footwear, glass products, machine tools, certain chemicals, and some agricultural products. These are sectors of our economy which have been found very sensitive in past trade rounds. Imports in these areas are high, and I must concede that reducing these tariffs will cause us great domestic difficulty.

23. Another area is agriculture. Although we are the world's largest single importer of agricultural products, agricultural trade in the United States - as in the world - is restricted. We maintain fees or quantitative restrictions under our Section 22 waiver on four product categories; dairy, cotton, peanuts and sugar. In addition, our meat import law has the potential to affect the volume of trade. Overall, our level of import protection and support for agriculture is low compared to other major developed countries. However, we are fully prepared for a multilateral exercise of substantial progressive reduction in everyone's level of protection.

24. We also have voluntary restraint agreements for steel and machine tools. United States imports of steel products subject to VRAs as a share of total United States steel imports amounted to 69 per cent in 1987 and 71 per cent in 1988. United States imports of machine tools subject to VRAs as a percentage of total United States machine tool imports reached 56 per cent in 1987 and dropped to 46 per cent in 1988.

25. I would like to emphasize the new steel VRAs are different from previous VRAs. They are in place for two and a half years and will not be renewed. In addition, yearly quota increases are tied to other countries' commitments to eliminate trade-distorting practices, a feature we consider to be an incentive to liberalize. We also expect to build an international consensus to eliminate the world's enormous steel subsidies, which are the real source of steel restraint policies. When you pour \$60 billion into State aids for steel production, I am afraid trade restraints are inevitable.

26. I am the first to concede that these restraints deserve examination and critique just as we have done with the restraints of others. I also expect that your critique will focus on certain other policies; Section 337; our MFA quotas; our sugar quotas; our Article XIX tariffs and quotas on specialty steel. I look forward to discussing these measures with you today. We acknowledge that others want to see these measures reduced or changed. Obviously, these items will be raised by our trading partners throughout the Uruguay Round.

27. But sometimes the United States is criticized for protection even in areas where it does not exist. Let me give you a few examples.

28. On page 140, the Secretariat's report characterizes the semi-conductor and automobile sectors as enjoying "relatively high levels of protection". In our view, we do not think this statement is correct. The 11 million unit annual United States retail sales market for cars is the world's largest. In recent years, imported passenger cars have accounted for about 30 per cent of the United States retail sales market. In fact, the report notes that auto imports are "currently the most important product group in United States imports". This means that auto imports are the single biggest category of imports in the market of the world's largest importer. If this does not sound to you like the consequence of a relatively high level of protection, here is why: United States tariffs on auto imports are 2.5 per cent. Compare this with the duty rates applied in other countries. In Canada, the EC and Switzerland, duties average around 9 or 10 per cent. In Mexico they are 20 per cent (not bad for an LDC). We have talked about Australia's move to reduce its tariff to 35 per cent. In India, the applied rates usually exceed 100 per cent. In Brazil, the so-called "Law of Similars" prevents imported automobiles for the most part.

29. Nor does the United States have non-tariff barriers on autos. We have no local content requirements or even local content "incentives". Some questions have been raised about a voluntary restraint agreement with Japan on automobiles. In 1981, as a result of a worsening situation in the

United States auto industry, Japan announced a voluntary restraint of automobile exports to the United States of 1.68 million units. This was later increased to 1.85 million units in 1984 and 2.3 million in 1985. In 1985, the United States announced that it would not ask Japan to continue the restraints. However, Japan indicated that it would continue to limit automobile exports to 2.3 million units annually. From the United States point of view there are no restraint policies now in place which in any way restrict auto imports.

30. Other countries, however, do limit imports of automobiles from certain sources, and these limits are far more restrictive than the voluntary restraints mentioned earlier. For example, in Italy, imports of Japanese autos are limited by informal agreement to only 3,000 units, and in France to about 3 per cent of domestic sales. Portugal and Spain restrict imports from most major auto-producing countries to 1,000 units per country.

31. From our perspective, then, the United States automobile sector does not enjoy a "relatively high level of protection". We think the report's observation might be a more appropriate description of other CP's markets.

32. With respect to semi-conductors, we also differ with the report's conclusions. The United States rate of duty on semi-conductors is zero. That explains why the United States is one of the world's largest markets, and why imports accounted for at least 40 per cent of our \$20 billion market in 1988. Further, the United States-Japan semi-conductor arrangement does not justify the Secretariat report's conclusion. Under this agreement, Japan agreed to take steps to further open its market to foreign semi-conductor manufacturers, which is a liberalizing feature. In the United States market, there were anti-dumping cases where injury was found, and in conjunction with the Arrangement the parties agreed to certain price undertakings. Finally, in third country markets, Japan agreed to take action to prevent semi-conductors from being sold below cost. This feature of the agreement was later challenged in a GATT panel finding. Japan accepted the ruling, and agreed to implement the panel's recommendations.

33. Even in those sectors I cited earlier as subject to relatively high levels of tariff or non-tariff protection, I think it should be pointed out that the United States absorbs a high percentage of imports, either absolutely or relative to other developed countries. Apparel imports enjoy 50 per cent of our market. Footwear imports take almost 80 per cent of the market. In fact, in the four areas often cited as "protected sectors" of the United States' economy - textiles, steel, sugar and footwear - the United States is by far a larger per capita importer than either Japan or the EC.

34. Finally, Mr. Chairman, let me point out some restrictions that we do not have, because sometimes it's relevant to ask what restrictive policies are absent. The United States has few restrictive import licensing provisions or local content requirements, no variable border charges, no price controls and no requirement for prior authorization to import.

Trade Policy Régime

35. Mr. Chairman, I do not want to make extensive remarks about the Secretariat's report on the structure and framework of our trade policy régime. I think that on balance it is a very good effort at explaining a very elaborate system. However, I should point out that our unique system, in which foreign commerce is regulated by the Congress, often leads to confusion about the relationship of our internal legal régime to our international obligations. I can assure you this confusion knows no national boundaries. It even happens in the United States. The important point is that there is a delicate and carefully crafted system for enabling our two branches of government to agree upon, and to implement, our GATT obligations and other international trade agreements. This system has been tested and found to be highly successful in bringing about the fulfilment of negotiated trade concessions.

Preferential Trade Arrangements

36. Before concluding, let me say a word about the various preferential trade arrangements described on pages 28-31 of the report. I am referring to our GSP programme, the Caribbean Basin Economic Recovery Act, and the United States-Mexico Framework agreement. In our view these programmes are fully consistent with both the spirit and the letter of the GATT system. They provide an important component of trade liberalization, particularly for some of the world's poorest developing countries. They are important programmes and enjoy the full support of the United States Administration.

Conclusion

37. I think it is relevant to draw some initial conclusions at this stage of our review process, although I will obviously be happy to respond to the interventions of my colleagues later in the deliberations.

38. During the course of the week, a pattern has emerged with respect to the collective assessment of Australia and Morocco. It has become very important to ask "what is the trend in the trade policies of the countries under review? Are they moving in the direction of trade liberalization or are they turning inward? I think this is the key question, because it helps to answer the next question, "are the members of GATT moving in the direction of fulfilling the GATT's original purpose"?

39. Let me state very clearly the position of the Bush Administration on this question. We are totally committed to the maintenance of an open and fair trade policy. Those who believe the United States can solve its trade or economic problems by erecting high trade barriers and retreating from the world economy are living in the age of dinosaurs. We now live in an integrated world economy, and it's a better world than it used to be. The United States wants to see an expansion of world trade and an opening of markets by others. If we hope to achieve greater openness abroad we dare not retreat into a protectionist shell ourselves. This would be devastating for the United States and devastating for the world economy. Some trading partners have clearly misunderstood our push to obtain greater

openness in foreign markets. They have instead seen it as a desire on our part to build new barriers around the United States' economy. I can assure you that this latter objective will never form the policy of the Bush Administration. And those Americans who think the solution to trade problem is to restrict, rather than expand trade, will find President Bush and his Administration strongly opposed. Bad economic policy does not make for good trade policy. And protectionism is bad economic policy. We recognize this fact, and we intend to work in a spirit of cooperation with our trading partners to bring about, on a global scale, the fulfilment of the GATT's original objectives.

III. STATEMENT BY THE LEAD DISCUSSANT

40. In today's TPRM, the two discussants have changed order. but the task remains the same. Yet our task seems to be even more difficult than before. The size of the United States economy and the volume of trade are considerably greater. The problems and the direct and possible implications for the multilateral system seem to be even more complex 'although some aspects have already been debated by the Council on various occasions, notably in February and June this year and have also been touched upon by the Council of 11 December).

41. In an introductory statement - short or long - a discussant cannot possibly do justice to two excellent and comprehensive reports which for the most part do not duplicate but supplement each other, and to their respective authors; nor to all those who have been involved in the evolution and the discussion of the United States trade policies over the years.

42. The only thing I can do here is to point to some basic aspects of United States trade policies and practices, relate them to the most important ideas behind GATT, and to formulate some initial questions. It is then again, as in the previous TPRMs, for the Council to achieve greater transparency in, and understanding of, the policies and practices and thus examine their impact on the multilateral trading system. And let me once again stress that this TPRM is neither negotiation nor dispute settlement.

43. The United States Administration should be commended for their clear, detailed and open description of how they view the world, the multilateral system and the United States rôle in it. This transparency will help us all in our analysis and evaluation.

44. The United States is the world's largest single economy in terms of total output, the world's largest import market, and, as we have learned on Monday, again the largest exporter. Thus, their trade policies inevitably influence our trading system.

45. Their primary economic objective is sustained, non-inflationary growth, including growth in employment, both in the United States and globally. And trade policy is to contribute by insuring free flow of goods and services across borders, permitting and encouraging market-oriented adjustment to economic change, and restraining Government action to gain commercial advantage by unfairly manipulating the conditions of competition (C/RM/G/3 p.iii and vii).

46. Trade policies are part of the wider spectrum of economic and general, even foreign policies. In recent years macro-economic developments, in particular the federal budget deficit and the trade and current account deficits linked trade policy with the formulation of other national policy objectives. But the question remains, whether certain aspects of recent United States' trade policies and practices do not primarily attempt to cure symptoms rather than the underlying causes and whether the causes would not have to be addressed in the wider context.

(Or to phrase it differently: it may not necessarily be the "unfairly manipulating of the conditions of competition" by another Government which reduces the competitiveness of the United States economy).

47. In addition to the positive and less positive elements in the United States' economic development listed by the Secretariat (paras. 8 to 17), the recent OECD report gives a favourable assessment of United States trade performance and presents a relatively optimistic view on the continued reduction of the huge deficits in merchandise trade and current account, but only if the United States does not fail to reduce its budget deficit. Each dollar cut off the Federal deficit, the study says, could lead to a 50 cent improvement in the current account, and by lowering the cost of capital, could also help to put United States industry on a more equal footing with foreign competitors. Not only fiscal, but also tax and investment policies were said to be of relevance.

48. In the Government report, however, I found only a rather brief description which seems to suggest that the principal factors for the trade deficit are to be found outside the United States and that the persistence of the deficit alone can explain the increased pressures for protectionist trade measures. I know, of course, that the TPRM cannot and should not be a forum for macro-economic debate and analysis. But as remedies depend on diagnosis: could the United States delegation elaborate a bit more their view of the wider context?

49. The United States is not only the largest single economy. Although there are notable exceptions, it is also one of the most open markets. We should not only lament the deviations, but also applaud the rule.

50. The United States has traditionally been a strong supporter of the m.f.n. principle and opposed to discriminatory trade policies. And the United States has always stressed their readiness to further multilateral ("reciprocal") trade liberalization. Their active rôle in the Uruguay Round is ample proof.

51. As the purpose of the TPRM is to "contribute to improved adherence by all contracting parties to GATT ... and hence to a smoother functioning of the multilateral trading system", it will come as no surprise to you that I suggest that we follow the same approach that I applied the past two days and look at the United States trade policies against the benchmark of the basic GATT law.

52. Under the heading transparency, I would like first to mention an institutional aspect. The formulation of trade policies is on the surface a very transparent process: the descriptions in the Government (pages 32 seq.) as well as the Secretariat (paras. 52 seq.) reports give a good overview over how the system works, how Congress, the various agencies of the Administration and the private sector interact. On the other hand, the complexity of the very same system with innumerable public hearings in many agencies and committees, with private advisory groups engaged on different levels and with many legally more or less independent agencies could also obscure the process. The United States Ambassador in this room

knows probably better than any one of us how difficult it is to give a firm forecast of what the result of a certain legislative process will be. Thus, in policy formulation transparency and predictability can be an issue. And the question is: how could it be improved?

53. The same assessment, that a single process is on the surface transparent but that by cumulation of measures transparency may vanish, could be found in the legal trade policy framework. The Administration's introduction into the intricacies of protective (not in all cases protectionist) measures (P. 8-31) is indeed fascinating. They include, for example, escape clauses, market disruption, countervail, dumping, unfair import practices, Agricultural Adjustment Act, General fact finding investigations, Section 301 of the 1974 Trade Act, Super 301, Special 301, Section 232 of the Trade Expansion Act, and trade adjustment measures.

54. The detailed description of these statutory provisions related to import relief is again an example of how transparent each process is. This list does on the other hand remind us of how many different and differing means of import relief there really are at the disposal of any United States applicant and of how difficult (and also expensive) a defence will be for a foreign respondent.

55. The Council should discuss this array of possible measures and their relation to the relevant GATT provisions. As Ambassador Yerxa said yesterday in the review of the Moroccan trade policies:

"GATT articles provide guidance on how to undertake such protection, including protection from dumped or subsidized trade. We suggest that Morocco use the opportunity of its ongoing modernization of the legal basis for its trade policies and administration to ensure that in the future the application of any such measures will be within the framework of protection provided for in GATT articles".

My question is: should the Council not agree with this statement and hold it true with regard to every contracting party under review?

56. Another conclusion forced upon the reader of those twenty pages is that Section 301, which the Council has already discussed on many occasions, is only one of the available instruments. Others could be almost as effective and at least some provide also for a certain discretion in their application.

57. The great number of voluntary restraint arrangements (64 excluding those based on MFA) seem contrary to the principle of "tariffs only" and they also lessen transparency. Are they an indication for further liberalization on a bilateral basis? Or are they an indication that instead of leaving market forces and price mechanisms effective, the trends at present seem to lead to quantitative restrictions, which do not only imply the danger of misallocation of resources, but also of creating vested interests in exporting countries (para. 318, Secretariat report)?

58. Having said this, we have already touched on the question of trade liberalization. As stated before the United States is certainly one of the most open markets. For most products, tariffs are the principal instrument of protection. That and the high degree of binding provide security and predictability for many sectors.

59. However, certain sectors (such as agriculture by the 1955 waiver) were excluded already in early days of the GATT, and others enjoy relatively high levels of protection by special arrangements (textiles, clothing, steel, machine-tools, automobiles and semi-conductors). What does the decline in recourse to escape-clause actions and the increase in the number of anti-dumping and countervailing-duty orders as well as the increasing number of VRAs indicate?

60. Successive trade laws have, as the Secretariat points out in para. 311, extended the scope of discretion and interpretation by the Administration, expressed in statutory language by words such as: "unfair", "unreasonable", "discretionary", "adequate", "effective", to name a few. So one might ask: How does the Administration use this power of discretion?

61. The Administration has repeatedly clearly stated that they want to fight protectionism. But action has to follow intention. The new steel agreements, which are said to be the last, may well become a litmus test: While their renewal as such goes into the direction of less liberal trade, certain features could be interpreted in favour of liberalization. Will the limitation to 2½ years be a clear signal to turn the tide back to the multilateral system?

62. What Ambassador Yerxa repeated last week in the CONTRACTING PARTIES' Session seems very encouraging: that protectionism is a failure, that the United States Government will continue to resist protectionist pressures at home and abroad and that they want to expand and strengthen the GATT system. I think the Council should applaud that intention and express the hope that it is shared by all who are involved in the formulation of United States trade policies.

63. Let me finish by asking what might be one of the most important questions in this review. In the very first paragraph of the United States Government report it is said:

"United States trade policy, in common with overall United States policy, is grounded in the belief in the rule of law and the efficacy of market-oriented economies."

Many of the differences of opinion between the United States and their trading partners seem to stem from a differing interpretation given to the "rule of law". Therefore the Council, in my mind, should address the question: What is this "rule of law"? How and by whom is the content to be determined?

64. These, Mr. Chairman were my initial remarks and questions on the reports in front of us, again arranged around the six basic ideas of the GATT, which - until we negotiate something better in the Uruguay Round - is the legal backbone of the multilateral trading system.

65. There are many other aspects which could be discussed with regard to transparency, non-discrimination, tariffs-only, liberalization, stability/predictability and dispute settlement.

66. I have not even touched upon the principle of non-discrimination. New developments in dispute settlement have been alluded to in last week's Session of the CONTRACTING PARTIES. There are also many facets of trade policy administration, e.g. customs procedures. But my time is up. My colleague and co-discussant has prepared his remarks.

67. The aim of my observations and questions was to suggest that in assessing and evaluating the United States trade policies and practices in the Council should not limit itself to the problem of unilateralism in Section 301, important as it is.

68. Both reports raise a host of other points which equally merit discussion so that at the end of the day there is both greater transparency in, and understanding of, the United States position and at the same time a clear assessment of their contribution to the multilateral system by the Council.

IV. SUPPLEMENTARY REMARKS BY THE SECOND DISCUSSANT

69. Before I go into the details of the United States policy, allow me to make some preliminary remarks which I hope would place the United States trade policy in perspective. Permit me to say a few words about the experience of the country review in the TPRM in the last two days.

70. From the point of view of substantive content, GATT has become that much richer by virtue of a healthy and detailed interchange between the reporting countries under review and the contracting parties in the last two days. This healthy interchange, I am sure, will continue today as well.

71. Virtually all contracting parties to the GATT have trade relations with the United States. For many countries, the United States is a principal market. Therefore market access to the United States is a key preoccupation for most trading nations.

72. To Ambassador Yerxa of the United States, may I say that in the nature of things as they are, there is no question of the enormous degree of interest that United States trade policy generates in other countries. Accordingly, because of the impact of United States policy by virtue the size of its economy and the rôle the United States plays in international trade, you will hear criticism, and probably sharp ones, of some aspects of United States trade policy.

73. What is different about this meeting is that we have the opportunity to have an extensive interchange about United States trade policy in an open, transparent and professional atmosphere, in order for other contracting parties to have a greater understanding about the trade policy. For the United States, it also provides the opportunities to have a better understanding of the concerns of other contracting parties across the whole spectrum of the GATT family, in one sitting.

74. In this exercise, each of us will have the opportunity to transmit to our capitals the concerns of other contracting parties, to gain a picture of the aspects of our trade policy which are appreciated abroad, and to convey the contribution each of us makes to the functioning of the multilateral trade system. It is this spirit, I believe, which needs to be captured, so that, while the TPRM is not intended as dispute settlement procedure or means to test consistency with specific GATT articles or to change specific policy, nevertheless, countries will have greater sensitivity about the impact of their trade policy on others. In so doing, it could have the impact of voluntary modifications of policies.

75. That is the tone of my commentary as discussant, in the hope that it could contribute to make the discussions of the TPRM moving in the direction desired. It is also in that spirit that I shall make some specific points as discussant.

76. On the whole, the United States economy is among the most transparent in the world. However, the decision-making process in American trade policy, as befits a sophisticated and complex society, is by its very nature quite complex. Since the TPRM exercise is intended also to ensure greater transparency, contracting parties may wish to discuss further the complexity of decision-making in trade policy in the United States.

77. Trade policy in the United States involves many parties. Perhaps this may be an area which the delegations may wish to discuss. The myriad of special interest groups, which have access in modifying trade policy affecting other contracting parties, merits some elaboration.

78. Further points on transparency could also be pointed out. Quantitative restrictions are less transparent than tariffs. So are VRAs and VERs. To the extent that the United States uses these measures extensively, transparency is undermined. Discretionary criteria under Section 301 also undermine transparency.

79. United States trade policies have been conveniently classified by the Secretariat report so as to facilitate our concentration. First, the United States trade policies could be looked at in terms of types of measures. The GATT Secretariat has listed 17 different types of measures. Delegations may wish to concentrate on several of them for the purpose of the TPRM discussion. These measures are non-tariff measures. Their increase is contradictory to the GATT preferred mode of protection through tariffs. Of course, to the extent that they are presently affecting the trade interest of a whole array of countries, they present major difficulties to others.

80. Secondly, United States trade policies could be seen from the perspective of the sectors affected by the measure. There are six principal sectors which have been highlighted, namely (a) agriculture; (b) wood products and paper; (c) textiles and clothing; (d) chemicals and related products; (e) non-metallic minerals and products; (f) metal and metal products. At least three of the six principal sectors affected by some form of restrictive measures, are of interest to developing countries: textiles, wood products, agriculture and some metal and metal products. Delegations may wish to ask further elaboration on their justification and possible removal in the near future.

81. On the types of measures which have been taken by the United States, delegations may wish to focus on a number of key questions. For example, delegations may wish to deal with the increasing use of anti-dumping actions and countervailing actions and to examine whether in fact these measures were used to inhibit trade flows.

82. On the sectoral impact, delegations may wish to concentrate their review on the use of sector specific trade measures. Delegations may wish to ask for elaboration on the trade measures directed to such sectors as those areas I have cited, and enquire about the future direction of those sector-specific measures.

83. In the United States case, it is recognized that the overall level of tariffs and non-tariff measures is low. However, certain sectors are subject to high level protection, often quantitative restrictions, which are often applied longer than intended. These measures have been applied to sugar, textiles and clothing, steel, machine tools, and, dairy and several dairy products, which have been in place for decades. Delegations may wish to point out what United States future intentions would be.

84. With regard to the GATT principle of most-favoured nation, many delegations may wish to discuss further those areas of market access which at present do not enjoy m.f.n. treatment. Furthermore, delegations may wish to ask for further elaboration of United States policy of selective regional agreements, such as those with Canada, and special agreement with Israel and the Caribbean countries. How does the United States see such arrangements in the future?

85. In the reports, both by the United States Government and the supplementary report by the Secretariat, descriptions of Section 301 have been made extensively. This is a new element in the development of international trade practices which has raised many questions because of the possible impact on the multilateral trading system. On different occasions, many delegations have made comments on the issues. In this TPRM exercise, delegations may wish to address the broader implications of the question as well as to deal with some more specific points concerning this matter.

86. While it may be repetitive to point out, nevertheless, because of its implications on multilateralism, delegations may wish to deal further with the danger of unilateralism arising from the use of Section 301.

87. On the aspect related to the contribution to the stability of international trade, delegations may wish to note the degree of discretionary power of interpretation and action by the administration which could undermine stable trading practices because it would arouse uncertainties especially under Section 301. Stability is also undermined by the simultaneous use of numerous trade remedy laws, abrupt changes in the application of trade measures such as GSP, and certain threats used in the exercise of bilateral and multilateral trade negotiations. Delegations may enquire the extent that this has on the commitment of the United States to the multilateral system. How does the United States intend to reconcile this basic incompatibility?

88. On the positive side, the United States Administration has acted firmly to limit the extension of the voluntary restraint agreement in steel for 2½ years, and to negotiate an international consensus to remove trade-distorting practices in global steel trade. This is a positive sign to be welcomed. If this trend continues in other fields, then the drift towards protectionism in various segments of the United States industry could be reversed. The urgency for such a reversal is clearly evident. The international community should encourage those in the United States who wish to push further in the process of trade liberalization in the context of the Uruguay Round and beyond.

89. The United States' commitment to make the Uruguay Round successful is an important contribution to the cause of multilateralism. Delegations from developing countries may wish to enquire further on the United States' intentions in the areas of market access of interest to them. An appeal for movement in this area might wish to be conveyed to the United States so that domestic policy makers could be made more receptive to the needs of developing countries.

V. STATEMENTS AND QUESTIONS BY MEMBERS OF THE COUNCIL

90. The representative of Chile said that since 1980, protectionist pressures had increased and Congress had a tendency to reduce the President's discretionary power. There had also been trend towards bilateralism and the signing of regional preferential agreements (for example with Israel, Canada, Mexico, and the Caribbean), perhaps owing to disappointment with multilateralism and the belief that reciprocity might be obtained more easily on a bilateral basis. The United States had also tended to use its own legal procedures in preference to multilateral ones, as evident in Section 301 of the Trade Act of 1974, and subsequent Trade Acts of 1979, 1984 and 1988.

91. He noted that whilst both the General Agreement and the Tokyo Round Codes (except for the Import Licensing Code) were valid international agreements in the United States, as "non-self executing agreements", they required additional legislation to become operational. Thus the text agreed in Geneva might not match the text in force in the United States, giving rise to potential conflicts between United States law and international law. In Chile's view, the United States recognized two mutually independent legal systems, its own and that of GATT. Neither system recognized the primacy of the other. This reduced the degree of protection of the interests of other contracting parties. The discretionary powers available to the President of the United States were insufficient to curb protectionist impulses within the country and ensure compliance with GATT rules. This created instability in the multilateral environment and traders were left in an unpredictable situation. This was particularly serious for traders from developing countries, who could not reliably predict the course of events in the United States.

92. The representative of Chile noted that the United States' budget and trade and current account deficits had affected developing countries by pushing up dollar interest rates, thus raising the cost of those countries' foreign debt service, and by fanning the flames of protectionism in the United States. In 1984 the President of the United States had refused to grant Section 201 import relief to the copper industry, but he wondered what guarantee the international community had that there would always be a President with the courage and political power to resist such pressure. The answer to trade deficits did not lie in protectionism but rather in improving the productivity and competitiveness of the United States economy.

93. The representative of Chile noted the variety of trade restrictive measures in the United States, ranging from sanitary regulations to quotas, subsidies, voluntary restraint arrangements, and widely varying tariffs. He was glad to note that the United States had stated its firm resolve to continue in the right direction - a resolve borne out by the submissions it made in the Uruguay Round negotiating groups.

94. Finally, the representative of Chile suggested that in future, before a country review, other contracting parties should be consulted about any points they would particularly like to have studied. Chile would have

liked to see analyses of the so-called "marketing orders" of the United States and the legal aspects of United States trade policy. In Chile's opinion, the 1937 Agricultural Marketing Agreement Act, which established the marketing order, was a typical non-tariff measure aimed at protecting domestic agricultural producers against foreign producers by requiring imports to fulfil quality standards only when United States products appeared on the market.

95. The representative of Canada noted that the United States had one of the most open markets in the world and applauded its commitment to the concept of trade liberalization.

96. Canada had two major concerns over the recent evolution of United States trade policy. The first was the negative effect of United States' unilateral actions on the multilateral trading system. Unilateral actions encompassed not only actions taken outside the scope of GATT or other international agreements (e.g. Super and Special 301), but also unilateral interpretations of international agreements (e.g. certain elements of the Omnibus Trade and Competitiveness Act relating to dumping and countervail). Unilateral actions led to increased trade tensions and an unwillingness to seek mutually agreeable solutions, as economic strength, used as a negotiating lever, created instability in the multilateral system. They also tended to encourage discriminatory bilateral agreements which violated the m.f.n. principle, eroded the stability and predictability of the system and increased costs in the United States and world markets. A by-product of unilateral actions was an increased number of GATT disputes and intense pressure put on the dispute settlement system.

97. The second was related to the negative effects of United States' domestic policies on the competitiveness of its economy and on international trade. The United States had made reference to domestic trade-distortive measures in other countries, but had not discussed or assessed the impact of its own policies such as the Jones Act, domestic farm policies, and certain government procurement practices. The increasingly protectionist government procurement policy used means such as small business set-asides, "Buy America" provisions and national security provisions to reserve purchasing for domestic suppliers. The United States authorities had also considerable administrative discretion in rule-making and the application of regulations at the port of entry. These created additional barriers by their complexity, inconsistency of interpretation at different border points (e.g. on origin marking) and more rigorous application of domestic law at the frontier than in the domestic market (e.g. on patent laws, health/agricultural regulations). United States domestic farm policies, along with the Export Enhancement Program, destabilized agricultural markets and trade relations. The domestic costs of protectionism were borne by society in the form of higher prices, slower growth, less flexibility and less competition which would adversely affect the export capacity of the United States. Canada wondered if the United States had considered ways in which information generated by institutions examining the domestic costs of protection (e.g. Congressional Budget Office, International Trade Commission) could be more effectively used to counteract protectionist pressures.

98. The representative of the European Communities said that the United States was one of the largest and most open economies. The Communities also recognized the major rôle played by the United States in GATT in advancing initiatives for the liberalization and expansion of world trade. The United States had bound virtually all its tariffs and signed the MTN Codes, thus accepting a very high level of participation in GATT commitments. He welcomed the statement by the United States Government that successful completion of the Uruguay Round was the number one trade policy objective of the United States.

99. The problems which the United States had encountered in recent years in managing its domestic economy were reflected in its trade policies. Only more appropriate macro-economic policies could solve the problem of the United States external deficit. As a percentage of GNP, the deficit was not particularly large, but in absolute terms it was considerable. The root cause of the deficit lay in the national savings-investment balance. He accepted that there had been substantial progress in recent years in reducing both the federal budget deficit and the current account gap. The danger in not correcting underlying macro-economic imbalances was that perception of the causes could become distorted and direct action against the exports of trading partners could become more attractive. There was a risk of protectionism taking a firm hold with the threat of undermining the open trade system as a whole.

100. Participants in the multilateral system could not accept that one participant had the right to take the law into its own hands by unilateral action. Where multilateral disciplines were weak, they must be strengthened in a way which reflected the interests of all contracting parties. The General Agreement made no provision for discriminatory unilateral action. Section 301 undermined the status of the GATT as an organization, generated tension and confrontation, and could result in trade actions in violation of the General Agreement. It was essential that the opportunity be taken in the Uruguay Round for introducing legislative changes to correct this situation and reaffirm the urgent need to abide by multilateral disciplines and procedures for dispute settlement. This Council must send a clear signal that it expected that the central responsibility of the United States Congress in trade policy would be exercised in an even-handed way. To seek to expose and eliminate the unfair trade practices of others must be matched in vigour and commitment by a will on the part of the United States to meet its obligations. To take retaliatory action against the practices of others before any multilateral examination took place, while refusing to act at home after multilateral findings and recommendations were accepted, lacked credibility. The 1988 Act, by reducing the discretion available to the Administration, and by imposing systematic review procedures with deadlines, turned the protectionist screw in a much more subtle, but equally effective manner and created an atmosphere of threat which cast a shadow on normal GATT business and on the Uruguay Round negotiations. In this regard, the April 1990 deadline for the conclusion of "Super 301" investigations involving a number of contracting parties, would be a major challenge for GATT. Contracting parties should meet that challenge by strong reaffirmation of multilateralist principles.

101. The representative of the European Communities observed that the term "liberalization" was taking on a new and more doubtful meaning when applied to the steel sector. The United States, already a conspicuous absentee from the Director-General's recent list of liberalization measures taken since Punta del Este, now apparently sought to "correct" that by presenting the renewal of the voluntary restraint agreements on steel as liberalization. Contracting parties would have their own views on this.

102. United States domestic procurement policy was characterized by a large number of "Buy America" restrictions, spread over a number of laws and regulations intended to secure procurement for domestic suppliers and to maintain a United States industrial strategic base. There were also preferences in procurement at the level of individual States, which accounted for the vast bulk of public purchasing. These preferences were supplemented by preferential procurement arrangements for American small businesses. They created trade distortions and harmed the interests of contracting parties. New provisions had been adopted in the "Buy America" Act 1988, due to come into effect in 1990, which specifically introduced the capacity for unilateral retaliatory action into procurement. Contracting parties would also wish to consider the way in which the United States invoked the "national security" provisions to impose restrictions, when there was evidence that the real motivation behind their invocation had been economic.

103. A further characteristic of United States legislation was the use of extra-territorial powers. In order to secure compliance with certain policy objectives the United States sought to influence the conduct of trade not only directly between itself and others but also trade in which the United States was not directly involved. Use of these powers could stifle the process of trade liberalization, quite apart from the serious questions of principle which extra-territorial application of any country's legislation clearly implied.

104. In the area of technical barriers to trade, standards making in the United States was essentially in the private sector; many technical regulations were also adopted and enforced by the individual State authorities. These were areas where greater transparency and strengthened GATT disciplines were necessary in order to ensure a balanced application of the TBT Code as between different parties.

105. The representative of the European Communities did not comment on the United States waiver from GATT obligations for agriculture as the matter was currently the subject of GATT dispute settlement procedures. The United States continued to invoke other long-standing exceptions from GATT obligations under the "grandfather clause" of the Protocol of Provisional Application. These provisions, inconsistent with GATT, were still United States law over 40 years after the GATT entered into force. Surely, the time had now come for these provisions to be eliminated, as part of a wider demonstration of renewed commitment by the United States to the GATT system.

106. The representative of Australia said that although the United States legislative process and the workings of the Administration were very open, they were complex and difficult to follow in many respects. In assessing the impact of the United States trade policies and practices on the functioning of the multilateral system, the most critical element was the very size of the United States economy. Its measures could often have a far greater impact on industries in other countries than on United States' industries which might have been the target or the source of the measures.

107. He noted that the United States claimed that its policies, criticized by others for their unilateral nature, were motivated by the concept of the level playing field. He acknowledged that the thrust of United States policy, such as its proposals on agriculture in the Uruguay Round, was aimed at trade liberalization and that much of the actual and potential opening of markets of interest to Australia resulted from United States pressure. However, if this "vigilante" approach eventually supplanted the rule of law, the innocent would suffer. Australian exports were subject to quantitative restrictions judged to be inconsistent with the GATT, and many tariff bindings were negated by a waiver. Competitive agricultural and non-agricultural exports were also subject to grey-area measures, and Australia was told that Australian television should screen "Gridiron" rather than its own variety of football. While the United States could take Section 301 action, Australia could do very little other than use the provisions of the GATT. Australia was therefore concerned that the GATT system could eventually be damaged if the major trading nations took unilateral or bilateral measures to force trade policy changes on other countries.

108. Referring to specific questions which Australia had posed to the United States in writing, the representative of Australia asked how the Administration reconciled its use of unilateral actions under United States law with its obligations under the GATT and the Tokyo Round Codes, and whether the United States accepted that the use of unilateral and bilateral pressure could inhibit, rather than encourage, improvements to the multilateral system. Second, he asked whether the United States agreed that trade actions to facilitate domestic adjustment of an industry should be taken in consistency with GATT provisions and preferably in the form of tariffs. In this connection, how did the United States reconcile its statement that such trade actions should be temporary with its long-standing and recently extended restrictions on steel trade? Third, he asked whether the United States accepted that import fees and quotas as well as export subsidies for agricultural products adversely affected fair trading nations, and how the United States reconciled this with its trade policy objectives and belief in the efficacy of market-oriented economies. Lastly, noting a view that the United States' administration of dumping cases had the effect of a non-tariff barrier and could cause harassment of exporters, he asked whether the United States would agree that a practice which required extensive litigation prior to establishment of a prima facie case exceeded the provisions of the Anti-Dumping Code.

109. The representative of Japan noted that the United States had made large contributions to the formation of the post-war multilateral trading

system and continued to be a major force in support of the GATT system. The United States was the world's largest import market and Japan had high regard for its commitment to free trade.

110. However, the introduction of domestic legislation such as Section 301 of the 1974 Trade Act, "Super 301" and "Special 301", and unilateral measures based on these provisions appeared to be a departure from the GATT which could endanger its very basis. The United States claimed that these actions provided means of protecting its interests where the multilateral system proved inadequate. Japan found these claims unjustified and dangerous. To base retaliatory measures on unilateral judgement of the actions of the United States' trading partners as "unjustifiable", "unreasonable", or "discriminatory" showed total disregard of established dispute settlement procedures which prohibit any retaliatory action without prior consent of the CONTRACTING PARTIES. If the current GATT rules proved inadequate, they should be amended. There was a great risk that these unilateral actions would undermine the Uruguay Round negotiations.

111. The representative of Japan referred to the following specific issues:

- (i) Section 22 quantitative import restrictions on agricultural products under the GATT waiver were no different from other trade-restrictive measures not justified under the GATT. The maintenance of such an exception to the GATT over more than thirty years without review could not be accepted and prompt correction by the United States was called for.
- (ii) Under the Export Administration Act, the President could impose export restrictions on goods and technology for reasons including shortages in domestic supply. This had been done in the case of export restrictions on soya beans in 1973. Such a measure increased the vulnerability of food-importing countries like Japan.
- (iii) Article 232 of the Trade Expansion Act contained a danger that measures introduced might exceed what was strictly necessary, because of the ambiguity of the concept of "impairment of national security".
- (iv) In order to ensure the reliability of the GATT dispute settlement procedure, remedial measures should be taken speedily with respect to customs user fees and Article 337 of the Tariff Act, which were ruled GATT-inconsistent by Panels.
- (v) Simultaneous use of different measures on one transaction imposed large burdens on the enterprise concerned, and resulted in trade-prohibiting effects much greater than the trade-distorting effects that they were intended to remove.
- (vi) The "Buy America" restrictions imposed by certain laws, both at federal and State level, were trade-distortive.

112. Japan was encouraged to see that the United States Administration had acknowledged in its report that the principal cause of its trade imbalance lay in macro-economic factors, and hoped that the United States would maintain this recognition in further developing its trade policies.

113. The representative of Colombia noted the importance of the United States as the biggest economy, the first importer and the most important trade partner in the world. Its influence on various aspects of trade, both in policy and in practice, was no less important.

114. While the United States firmly supported multilateralism, the compatibility of its domestic legislation with the General Agreement were questionable. The United States Constitution conferred exclusive powers on the Congress to regulate foreign trade and impose and tariffs. It was argued that Congress had not yet ratified the General Agreement, thus it did not have full force at the domestic level. The Trade Act of 1979, incorporating the Tokyo Round Codes, established the supremacy of domestic legislation over the Codes. The fact that the United States had signed the Codes did not establish any right to invoke them in the United States Courts. This was a kind of permanent, reverse "grandfather clause". The consistency of GATT rules with the domestic law of the United States was by no means clear. Colombia hoped that every effort would be made to incorporate them in domestic legislation.

115. There was no more discriminatory measure than the refusal to grant the injury test to contracting parties that were not signatories to the Agreement on Subsidies and Countervailing Measures. The definition of "a country under the Agreement" was used by the United States to oblige developing countries to undertake bilateral commitments to eliminate their export policies and incentives over time. The United States provisionally granted the injury test to those countries in exchange for the dismantling of their export incentives, regardless of whether or not this was consistent with their competitive and developmental needs. The domestic law of the United States prevailed over GATT rights and obligations and over the Codes.

116. The representative of Colombia expressed concern about provisions of Section 301 relating to the protection of intellectual property rights. There was perhaps no more coercive measure than the black-list of countries which allegedly, regardless of their level of development, did not have domestic legislation that enforced intellectual property rights for patents, registered trade marks and so forth of United States transnationals. Such intimidation highlighted the way in which the pre-eminence of domestic law was maintained, and implied that the multilateral system could be adjusted to the needs of the biggest trade partner. These practices went against the spirit of the Uruguay Round, and for that very reason Colombia trusted that they would be phased out, rather than being strengthened or amalgamated in the GATT.

117. The representative of the Republic of Korea said that the United States, by the size of its economy and its leadership, played an outstanding rôle in the enhancement of free trade and the expansion of

world trade. In the early 1980's the United States import market had assisted the recovery of the world economy from years of recession. His country greatly appreciated the continued commitment of the United States Government to free trade and to the multilateral trading system in spite of its huge trade deficit and persistent protectionist pressures.

118. The representative of the Republic of Korea raised a number of questions about United States trade policy. First, he asked how the United States viewed the prospect of reducing the trade imbalance in the next few years.

119. Second, referring to the threat of Section 301, "Super" and "Special" 301 to the GATT system, he asked whether the United States had any intention to initiate changes in Section 301 in the context of the domestic legislation to implement the agreement that would be reached in the Uruguay Round.

120. Third, he pointed out that several elements in Title VII of the 1988 United States Trade Act were inconsistent with the Anti-dumping and Subsidy Codes. These included the discretion of United States authorities to order countervailing or anti-dumping duties on newly developed products without injury test, the method of comparison between export prices and domestic (normal) prices, and the application of import cumulation in applying the injury test. He asked whether the United States was ready to examine these issues in the Uruguay Round and to envisage any possible revision of the relevant regulations and practices.

121. Fourth, noting with great concern the extension of the voluntary restraint arrangements (VRAs) on steel products by a further two and a half years, he asked for the United States' view regarding the use of VRAs as a trade remedy. Noting that the elimination of the VRAs was conditional upon improved international disciplines in pricing behaviour and subsidies in the steel sector, he asked under what circumstances the United States authorities would determine that the condition was satisfied.

122. Lastly, he asked what were the GATT grounds for the import control of meat through the mechanism of trigger level, and how this was justified, given the highly competitive United States beef industry.

123. The representative of Nicaragua said that her delegation was struck by the expansion of the discretionary power of the United States Administration, including its application of bilateral or unilateral measures as a complement or substitute for GATT procedures. The granting or withdrawal of m.f.n. treatment or of preferential access under the GSP linked to issues outside trade, and the high degree of protection in sectors of export interests to developing countries were reflected in a higher share of United States imports subject to quantitative restrictions and higher average tariffs.

124. Nicaragua had, since 1981, been a victim of unilateral and discriminatory measures by the United States, including a reduction of sugar quotas in 1983, the non-inclusion of Nicaragua in the beneficiaries

of the Caribbean Basin Economic Recovery Act, a trade embargo in 1985, and the exclusion of her country from the GSP in 1987. None of these measures were directly related to trade problems between the two countries.

125. The representative of Nicaragua explained in some detail the economic stabilization programme introduced in her country in 1988 under conditions of austerity, and the monetary and fiscal reforms undertaken at high social cost. Such efforts deserved support from the international community. Nicaragua believed that the completion of the electoral process and the ending of the civil war could open a new phase in its relations with the United States, based upon mutual respect and international law. Contracting parties, like the Central American Presidents, could play a rôle in bringing about the normalization of economic relations between Nicaragua and the United States. The rule of law in trade had to be applied by all contracting parties. The goal of the Punta del Este Declaration would not be achieved as long as a trade embargo was applied against the trade of a contracting party.

126. The representative of Czechoslovakia said that in his country's case not only m.f.n. treatment, but the application of the whole General Agreement between the United States and Czechoslovakia had been suspended in 1951. This situation continued until today. The factors which had led the United States, in 1951, to this suspension no longer existed. The latest developments fully justified the restoration of the application of GATT in relations between the two countries. His authorities welcomed the results of preliminary discussions recently held in Washington between United States authorities and Czechoslovakia's Deputy Foreign Trade Minister and expressed their readiness to continue consultations at any level and in any forum.

127. The representative of Sweden, speaking on behalf of the Nordic countries, observed that United States trade policy measures could be divided into at least four major approaches: a multilateral approach based on the m.f.n. principle; a sectoral approach, involving measures taken within the grey area, where GATT-consistency was questionable; a more bilateral or unilateral approach in response to so-called "unfair trade practices"; and an even more recent bilateral free-trade approach, most notably embodied in the free-trade agreement with Canada. In pursuing United States economic objectives, measures taken under different approaches might have different, sometimes contradictory, results. The Nordic countries shared with the United States the objective of concluding the Uruguay Round successfully. This objective should be achieved multilaterally. Implementation of unilateral actions outside the GATT were likely to make the successful conclusion of the Uruguay Round more difficult, and to weaken the multilateral system. He sought the view of the United States on the relationship between the "first priority" of its trade policy in multilateralism, and the possibilities of unilateral actions outside the scope of the GATT. He asked how the United States would ensure that the Omnibus Trade and Competitiveness Act of 1988 was not implemented outside the rules of the GATT.

128. Turning to specific questions, he first asked whether general rules of origin for non-preferential trade applied to all such trade, or if there were different rules for different purposes. He also asked whether, with the exception of cases where a recipient country imposed special conditions, there were any differences between the rules of origin for imports and exports.

129. In regard to new provisions of the Omnibus Trade and Competitiveness Act of 1988, allowing the United States to make unilateral determinations on whether other signatories were "not in good standing" under MTN Codes, such as the Subsidies Code and the Government Procurement Code, the representative of Sweden asked the United States delegation to comment on the compatibility between those provisions and its own statement that its trade policy "is grounded in a belief in the rule of law". A fundamental question was who determined the rule of law and how it was done. If it was a rule of "domestic law", it would be meaningless.

130. Lastly, the representative of Sweden called attention to the Commercial Fishing Industry Anti-Reflagging Act of 1987. The Act prevented United States fishing-vessels, which were built, rebuilt or repaired outside the United States, from operating in United States territorial waters. This, in turn, effectively protected United States shipyards from international competition regarding repairs of fishing-vessels. He asked the United States delegation to explain the reasoning behind the provisions.

131. The representative of India recognized that the present multilateral trading system owed a great deal to the United States' contribution and support. The system served international trade well and contributed to the rapid expansion of world trade. The formulation and implementation of United States' trade policies were, by and large, transparent although somewhat complex. On a number of recent occasions the United States Administration had resisted protectionist measures. Of late, the United States had accepted all panel reports in GATT disputes, even though in some cases there had been some initial delay. This contributed to the strengthening of the multilateral trading system. The general level of tariffs had been reduced considerably. A large number of tropical products of interest to developing countries enjoyed duty-free entry. Further, for developing countries, many products were admitted duty-free under the GSP scheme.

132. On the other hand, an increasing reliance on grey-area measures, such as voluntary export restraint arrangements, had an adverse impact on the trading system. While tariffs had declined in importance generally for all products, they still remained significant for products of interest to developing countries such as textiles and clothing. One unfavourable feature of the operation of the GSP scheme was the tendency to seek reciprocal concessions for its maintenance, when the need was to expand the product coverage in order to make its concessions more meaningful for developing countries. After many years of protection, the textiles and clothing industry of the United States was now in healthy shape and could face competition from efficient producers. The time had therefore come for

the United States to move in the direction of meeting its commitment, recently reiterated, to a return of this sector to GATT by early phase-out of the MFA.

133. The representative of India said that countervailing and anti-dumping investigations had a tendency to become major non-tariff barriers. The limited or minuscule trade coverage of anti-dumping and countervailing duty actions was not a good measure of their disruptive effect; much harm was done by the mere initiation of investigations, which exporters from smaller countries found difficult to defend in view of the high legal cost. The 1988 Omnibus Trade and Competitiveness Act tightened anti-dumping and countervailing duty laws further, sometimes at the expense of consistency with GATT commitments. Particular attention needed to be drawn to the authority given to the USTR to revoke the injury test in countervailing duty investigations from countries which in its judgement were violating commitments under the Subsidies Code.

134. The fact that under Section 301 retaliatory action could be taken in certain circumstances without prior multilateral approval caused great anxiety. India was unable to subscribe to the United States' view that unilateral measures were justified by the weakness of the dispute settlement procedure or by the inadequacy of the scope of GATT. Discussions were at present underway in multilateral fora to address these very issues. In the light of the rejection of the unilateralism by the international community and the dangers pointed out for the world trading system in general, and current round of negotiations in particular, arising from the use of Section 301, the United States should re-examine the validity of the premise on which it introduced these provisions in its trade laws.

135. The representative of Brazil said that the United States had long been Brazil's main trading partner. They had maintained a mutually beneficial relationship. In the past few years, however, a negative trend towards protectionism had arisen in United States trade policy. In 1988, 37.7 per cent of Brazil's total exports to the United States had been subject to some form of restriction. More than 1,000 tariff items were subject to technical requirements, anti-dumping, countervailing measures, tariff surcharges, surveillance mechanisms, quantitative restrictions or other measures. Brazil's trade was also under constant threat of restrictions, such as those relating to Section 301, which had become the main instrument of pressure for the United States to enhance its position in traditional as well as in new areas. Concrete retaliatory measures or threats thereof had caused severe damage to Brazilian exporters of aircraft, pharmaceuticals, footwear and paper. The obligations established in the 1988 Omnibus Trade and Competitiveness Act seemed to have superseded those of the General Agreement by giving the USTR the authority to take unilateral actions to enforce United States rights under international agreements, or to retaliate against "unfair" or "unreasonable" practices as defined by the United States alone. No GATT provisions authorized one contracting party to apply trade restrictions without an explicit mandate from the CONTRACTING PARTIES. GATT had an appropriate dispute settlement mechanism which applied to areas directly related to trade. He asked why

the United States did not use the existing GATT mechanisms for applying retaliatory action. Out of 79 investigations carried out under Section 301, 63 related directly to traditional areas. The United States argued that unilateral action applied mainly to areas where international rules did not exist or were weak. There appeared to be a contradiction between this statement and the practice.

136. The representative of Brazil recognized that the GSP was a voluntary and unilateral concession which did not entail compensation or conditionality. The United States, however, had introduced conditions for access to the programme, including market access, the protection of intellectual property rights, reduction of barriers to trade in services, and the guarantee of workers' rights. He wondered what were the internationally accepted standards that justified the selection of these areas.

137. As soon as exports of individual textile or clothing items increased significantly, the United States applied Article 3 of the MFA and imposed a quota. This inhibited the growth of exports even in categories which were not subject to limitations. From August 1986 to June 1989 the United States had increased the number of restraint agreements, enlarged their coverage, and applied growth rates that were generally unchanged or lower than during MFA III, thus applying MFA IV more strictly than MFA III.

138. United States' imports of steel from non-restrained countries had increased considerably during the period 1985 to 1988. He asked why VRAs had been extended for an additional two and a half year period. He feared that under the "international consensus" proposed by the United States, an instrument similar to the MFA was likely to develop for steel. He asked why the United States did not apply normal GATT disciplines for this sector, when its steel industry had recovered and was now operating effectively again.

139. Brazil, like other exporters, experienced considerable losses due to subsidization and quantitative restrictions in United States agriculture. Competitive agricultural producers and exporters, like Brazil, had also lost access to third markets due to a subsidies war between other major exporters of soya bean oil. The Export Enhancement Programme was the basic cause of this. Further increases in subsidies under the EEP were envisaged if the Uruguay Round agricultural negotiations failed. He asked how the United States' alleged determination to eliminate export subsidization in agriculture could be reconciled with the increase in the amount allocated for the EEP even before the Uruguay Round negotiation had ended.

140. In the view of the Brazilian delegation, dumping investigations in the United States failed to comply with the procedures called for in the Anti-dumping Code. Some were carried out in a loose way so that their results tended to be negative, hampering other parties' exports. Such a practice reflected a tendency to use dumping not as a instrument of defence against unfair trade but rather as an unfair tool against fair traders. The United States could also deny the determination of material injury to a signatory of the Subsidies Code. He posed a question as to the legal basis

for such denial under Article VI:6 of the General Agreement and Article 1 of the Subsidies Code.

141. The representative of Cuba, recalling in detail a continuing series of embargoes and trade restrictions both in goods and services, the suspension of m.f.n. and preferential treatment taken by the United States since 1960 against Cuba and Cuban products and measures and pressures applied by the United States with extraterritorial effects on third countries' trade with Cuba, said that the embargo was in contradiction to the United States' commitments under the GATT, and inconsistent with the Ministerial Declaration of 1982 as well as the objectives of the Uruguay Round.¹ The unilateral suspension of m.f.n. treatment to any country was in breach of the principle of non-discrimination governing the multilateral trading system. The refusal by the United States under the Food Security Act of 1985, to grant import quotas for sugar to countries that might have purchased Cuban sugar had caused further injury to Cuba, and adversely affected third countries. The United States' restrictions on sugar imports had a negative effect for all developing countries. The measures were inconsistent with GATT rules and principles and contrary to standstill and rollback commitments. The reports did not reflect clearly enough the seriousness of the situation. In his view, the stated trade policy objectives of the United States would only be credible if the restrictions applied for more than twenty-seven years against Cuba in violation of multilaterally-agreed rules were eliminated.

142. The representative of Nigeria said that the United States had a responsibility to act with care because of the effect its economy had on the world economy and those of its trading partners. The United States should be the principal advocate of the multilateral system in words and in deeds. High levels of protection and restrictions were maintained in many sectors of its economy. The multilateral system should be more sympathetic to the small trading nations. The United States was one of Nigeria's leading trading partners. Nigeria hoped that more avenues would be opened for a better trading relationship. The Uruguay Round should provide a good opportunity to do this.

143. The representative of Mexico, noting that certain agricultural sectors of the United States were protected by high tariffs and that some tariffs in agriculture were not bound, asked for more detailed information on these areas. He also asked the United States to clarify deadlines for imposing Section 201 measures, particularly in relation to perishable agricultural products. He asked whether provisional measures could be applied even when there was no material injury. The unilateral introduction of "marketing orders" had had adverse effects on trade in agriculture; in this connection he asked about their impact on United States imports. He also sought information on the scope of the

¹The statement by Cuba is circulated in document Spec(90)4.

United States' export subsidy programme, and assistance in effect at Federal, State and local levels.

144. New forms of protection were administered through administrative measures, particularly in the areas of anti-dumping and countervailing measures. These involved complex, expensive and drawn-out procedures. Mexico was also concerned about the unilateral definition of criteria regarding the coverage and procedures of anti-dumping and countervailing legislations. In these fields, the United States had placed its own interests above the interests of the multilateral system. The representative of Mexico also referred to the trade restrictive effects of phytosanitary and health regulations.

145. While weighted tariff averages in the United States were relatively low, in many cases there was a wide range of tariffs. High levels of duty adversely affected the export interests of many developing countries. Mexico's own imports were growing rapidly as a result of trade liberalization. This should be matched by the expansion of export markets. Given the close trade relations between Mexico and the United States, elimination of import barriers in the United States would expand export opportunities for Mexico and other developing countries.

146. The representative of Hong Kong noted that the United States aimed for transparency in the formulation of policy and that information on trade laws and regulations was readily accessible, although it was not always easy to appreciate the full picture. It was inevitable that the United States' trade policies and practices would have a significant impact on the multilateral trading system.

147. While the United States had repeatedly avowed its commitment to the multilateral trading system, there had been a predisposition to resort to bilateral and unilateral initiatives outside the GATT framework. As the final year of the Uruguay Round approached, the continuing use of such action could only make the negotiations more difficult, and appeared incompatible with the United States' stated belief in the rule of law.

148. Hong Kong noted with concern the decline in the use of escape clause actions under Section 201 and Article XIX, as against the increase in anti-dumping and countervailing measures and voluntary export restraints. Hong Kong had on many occasions voiced its concern about the potential for anti-dumping action to be used, or misused, as selective safeguard measures. The Secretariat report indicated the existence of sixty-four VRAs, excluding MFA restrictions. It was difficult to reconcile this with the commitment to further liberalizing trade through the GATT.

149. In the absence of any uniform international rules of origin, importing countries exercised discretion in the determination and application of rules of origin. In consequence, exporting countries could be arbitrarily deprived of market access. He was pleased that the United States was also conscious of the need to address rules of origin in the Uruguay Round.

150. Textiles and clothing stood out as the most protected sector in the United States; they were subject to the highest tariffs, decades of restrictions under the MFA and its predecessor arrangements, VRAs and so on. In addition, they had recently become targets for anti-dumping investigations. This amounted to triple jeopardy for textiles and clothing imports from developing countries. The Secretariat report also noted this simultaneous use of different trade remedy laws. Anti-dumping measures should not be used as a complement to the MFA when the reintegration of this sector into the GATT was being negotiated. Furthermore, while there seemed to be a clear desire by the United States to bring steel and agriculture under GATT disciplines, there was no such reference to textiles in the United States report. He wondered whether this omission indicated an underlying message from the United States Administration that this derogation might continue despite the Uruguay Round mandate.

151. The representative of Poland noted that United States trade policy and procedures were, despite the large number of regulations, transparent and easy to understand. From the point of view of Polish exports, the United States market was the most liberal, and the level of protection was very low compared with other trading partners. Poland found that only textiles and steel products were subject to relatively high levels of protection. It was paradoxical that in some cases Poland found more problems in buying in the United States market than in selling there. He pointed out that reference to the Joint US-Poland commission for Trade, an important forum for discussion of trade questions, had been omitted in the documents prepared by the United States Government and the Secretariat.

152. While United States anti-dumping and countervailing duty actions might cover a very small part of imports, they could affect the greater part of exports for a small trading partner. The Omnibus Trade and Competitiveness Act of 1988 gave too much scope for United States producers to start investigations. Poland hoped that the United States Administration would undertake necessary steps to change the Act, or would not apply its provisions restrictively.

153. The representative of Switzerland noted that United States trade policy was based on noble ideals and objectives, including faith in the supremacy of the rule of law, efficiency of markets, free movement of goods and services, and limitation of State intervention. He paid tribute to the United States for having protected the GATT as an institution and for having promoted international trade relations.

154. However, United States trade legislation provided for discretionary powers and considerable leeway in the conduct of trade policy. It even envisaged possible actions which were not provided for in the GATT and which could be contrary to GATT rules and disciplines. Although the United States Administration might do everything to avoid protectionist abuses of the legislation, the law allowed the United States to act bilaterally, or even unilaterally, when it considered that multilateral rules were not appropriate or too weak, or GATT dispute settlement mechanism worked too slowly. The important questions were: who determined

that one rule was better than another; on what criteria it was so done; and how one could claim to impose rules unilaterally.

155. Switzerland had sent written questions to the United States concerned with the need to reduce fundamental imbalances, the relationship between multilateral, bilateral and regional trade policy commitments, and the consistency with GATT rules of such specific trade instruments such as Section 301 and government procurement practices. Switzerland's was concerned that a major contracting party could turn, even if only temporarily, towards bilateralism or unilateralism. His delegation was carefully watching for a signal that the United States was prepared to limit obstacles to trade in its own interests and those of all the contracting parties. Switzerland paid tribute to the efforts which the United States had made so far in the Uruguay Round, which offered all countries a unique opportunity to consolidate mutual commitments and to replace inadequate rules by more appropriate ones.

156. The representative of Switzerland drew a distinction between the short-term defence of interests and the leadership rôle which should be assumed by a country of the importance of the United States. The former should not have repercussions for the latter, which was more generally important in a long-run. Leadership would be all the more effective if it were to pull all contracting parties towards a joint goal rather than to try to push them to it.

157. The representative of Jamaica noted that the United States, the world's largest producer and trader, was the world's largest importer, not only overall, but also for products from developing countries. This had not been achieved without a genuine commitment by the United States to opening its market and to trade expansion and growth. Jamaica saw the presence of this large neighbouring market as providing considerable opportunity and potential for its export expansion.

158. The representative of Jamaica pointed out the contrast between the United States and many developing countries, including his own country, in the matter of dependence on trade and vulnerability to trading conditions. Even though the United States' ratio of trade to GDP had increased from 6.9 per cent in 1965 to 15.9 per cent in 1988, it was still the lowest among the industrial countries. Jamaica's ratio, at 55 per cent, was similar to many other developing countries. Even when protectionist measures affected a relatively small proportion of the United States trade, they could take on overwhelming importance for developing trading partners. This was the case for anti-dumping and countervailing duty investigations, quantitative restrictions and unilateral changes in quotas. The absolute level of protectionism was, for many trading partners, a subsidiary consideration; the price the United States should pay for being one of the world's most open economies and the leading trading partner of many contracting partners, was a great sensitivity to the impact of its trade policies and practices on the trading system. This could best be assured by faster progress towards an international trading system based increasingly on multilateral rule-making and on the multilateral dispute settlement. This, in turn, would increase predictability, transparency and

security in the trading system. Resort to unilateral action, no matter how justified, was not a viable option for the majority of contracting parties.

159. Finally, the representative of Jamaica noted that the United States appeared to attribute its current account imbalances in part to external factors, including significant trade barriers which impeded United States exports to foreign markets. This closely resembled the argument that many developing countries advanced to explain their own balance of payments and other economic problems. An important difference, however, was that developing countries had no weapons with which to remove barriers to their exports.

160. The representative of Hungary said that although the incidence of tariff and non-tariff measures of the United States was low, there were some sectors in which Hungary had export interests where relatively high protection prevailed. Certain grey area measures had also important trade restrictive effects.

161. The United States had a responsibility to safeguard and further strengthen the international trading system. Hungary was encouraged by the recent declaration of leading United States politicians confirming its commitment to multilateral liberalization and the first priority attached to the Uruguay Round. However, recourse to unilateral actions inconsistent with the GATT would weaken the multilateral system. It was imperative that all contracting parties refrained from such unilateral measures to ensure an appropriate negotiating climate for the rest of the Uruguay Round. As United States trade policy in agriculture was not exempt from trade distorting elements, Hungary welcomed the willingness of the United States to negotiate the whole range of its agricultural policy.

162. The representative of Hungary appreciated the fact that the United States had recently put the m.f.n. treatment of Hungary on a permanent basis. He expressed hopes that, in the near future, export control measures on high-technology products be modified to eliminate their adverse effects on the development of the Hungarian economy.

163. The Chairman expressed his appreciation to the delegation of Yugoslavia, who had decided to put its questions directly to the United States as a gesture of cooperation with the efforts of the Council to conduct the trade policy review within the given time constraints.

164. The representative of Israel noted that the United States was the largest single market for his country, absorbing about 30 per cent of its exports in 1988. Israel maintained a free-trade area agreement with the United States which was, in its view, fully consistent with the GATT. The rôle of the United States in the GATT could not be questioned as one of its founders, and, later, as one of the main initiator of many of the GATT negotiations. A firm commitment of the United States to the GATT was evident. The multilateral system needed a strong and healthy United States economy, for, being the largest economy in the world, it affected most countries in the world. United States macro-economic policies were therefore very important to every country, and the United States needed to

show sensitivity and responsibility in its decision-making with respect to macro-economic policies and, in particular, to trade policies.

165. The representative of Israel noted that the coverage of United States anti-dumping and countervailing investigations and duties, while negligible in overall terms, became important in sectoral perspectives or for small suppliers. The issue was on the Uruguay Round agenda and Israel hoped that the United States would cooperate with other countries in order to limit unnecessary difficulties arising out of these measures.

166. The representative of Israel underlined the vital importance of the multilateral system, as a set of rules, to small countries. A big country like the United States must assume its responsibility and try to play according to the rules. If problems arose because disciplines were loose or non-existent, they must find their way to the negotiation table in the Uruguay Round. In any case, the weakness or non-existence of disciplines could not be a reason for taking unilateral action outside the system.

167. The representative of Pakistan expressed his country's appreciation for the transparency and openness of the United States trade régime. However, he noted the tendency in the United States to try unilaterally to interpret existing rules and seek modifications to suit particular interests.

168. He highlighted the high tariffs and non-tariff barriers existing in areas of particular export interest to developing countries, particularly in textiles and clothing. The Uruguay Round should provide the opportunity to change the prevailing situation. Clear demonstration and practical expression of the commitment towards open trading system based on multilateralism were required. Respect for multilateral disciplines in trade would facilitate the application of these disciplines to new areas.

169. The representative of Argentina suggested that, given the time constraints, the Council should review the schedule of future meetings so as to provide for greater flexibility for all representatives who wanted to take the floor. Turning to trade policy issues, he said that solutions to structural problems affecting the international trading system, particularly those facing developing countries, could, if they were accompanied by macro-economic considerations, also make a contribution to the efforts of the United States to solve its financial and balance-of-payments problems. The United States had made a series of dynamic proposals in the Uruguay Round.

170. He emphasized the importance of the United States market for imports, and the Administration's resistance against significant protectionist pressures. However, trade measures with adverse effects on Argentina's exports were in place, including restrictions on textiles, anti-dumping actions, quantitative restrictions, export subsidies, and sanitary and phytosanitary measures. These issues were under negotiation in the Uruguay Round. Argentina hoped that solutions would be found through the strengthening of GATT rules, rather than through unilateral actions. No

unilateral interpretation of rules should be allowed in the application of anti-dumping and countervailing duty actions or safeguard measures.

171. The representative of Morocco noted that the United States economy was the largest import market in the world. Morocco wished to reinforce its already close economic relations with the United States. It had no doubt of the commitment of the United States to the opening of markets and the important rôle it played in the GATT through active participation in negotiating rounds. This was evident from its low applied rates of tariffs, the binding of almost all tariffs, and the participation in all Tokyo Round Codes. Given the United States' great responsibility for the creation of a more open and predictable international trading system, it would be highly desirable for the United States to do more for the system.

172. The representative of New Zealand noted that, unlike many countries, the United States had an open and transparent trade policy. However, it operated through complex constitutional, legal and political processes. The United States deserved compliments for the generally low tariff structure, the high level of bindings, and the degree of general transparency in policy making that was part of the United States' democratic tradition. Some difficulties with United States trade practices which New Zealand shared with other countries included a perceived trend towards increased protection, especially the use of non-tariff barriers including agricultural export subsidy programmes, and resorting to unilateral or bilateral trade remedies. New Zealand valued highly the United States' long-term commitment to the multilateral trading system and the top priority which the United States had given to a successful conclusion of the Uruguay Round. New Zealand would continue to work with the United States and others to achieve results which would improve not only the United States trading position but also the global trading system to the benefit of all.

173. One of the discussants suggested that, in future TPRM meetings of the Council, discussions might be so structured as to follow some points of substance rather than the numerical order of intervention. The other discussant, noting the enormous task for developing countries to prepare documents for the review, suggested that possibilities of technical assistance should be investigated.

VI. RESPONSES BY THE REPRESENTATIVE OF THE UNITED STATES

174. The representative of the United States said that his delegation appreciated the attention and sense of detail shown by a vast majority of participants. He saw this trade policy review as a useful exercise in sorting out trading partners' priority concerns about United States trade policies and practices.

175. In a pluralistic society like the United States, and given the constitutional mandate for separation of powers between the executive and legislative branches, a certain amount of complexity in policy formulation was unavoidable. The more complex the system was, the greater the need was for transparency. In the United States, transparency was demonstrated by the openness of proceedings. In the 1980s, there had also been a trend towards deregulation of various aspects of the United States economy. The best way to deal with the question would be for the United States to provide its trading partners on a regular basis with information not only on its policies and administration but also on its interpretation of laws and mandates set forth by the Congress.

176. He had intentionally not referred to Section 301 in his introductory remarks because there had already been a full review of Section 301 in June 1989 in a special Council meeting. The statement made by the United States in that meeting still stood in its entirety in terms of both its assessment of the situation and its commitment to cooperate in a multilateral framework, rather than to seek solutions outside the GATT. The extent to which the current United States Administration placed emphasis on bringing matters to the GATT was reflected in the number of GATT Panels which the United States had sought recently. It had made serious efforts to deal with the very difficult mandate set forth by the Congress in "Super 301" and "Special 301" provisions by essentially seeking to roll actions and decisions into the multilateral system, the Uruguay Round, and the GATT dispute settlement process. The United States had acted upon Panel findings, as evident in the cases concerning the DISC, the manufacturing clause, and the Superfund tax.

177. The representative of the United States underscored the importance of negotiations in the Uruguay Round to deal with safeguard measures. The United States was prepared to negotiate in good faith on the very difficult question of grey-area measures and the use of quantitative restrictions as a means of addressing the concerns of domestic industries. Responding to an observation made by the representative of Chile about the uncertainty created by a possible future safeguard action of the United States under GATT Article XIX on copper, the representative of the United States said that all countries had the right to take recourse to article XIX, and the United States had taken Section 201 remedies within the framework of the GATT Article.

178. Responding to remarks about the instability created by the "non-self-executing" nature of the GATT text in United States law, the representative of the United States said that on balance, the United States

had demonstrated its ability and willingness to fully implement all of its GATT obligations. This was reflected in previous trade rounds, tariff concessions and its participation in Tokyo Round Codes. The United States was a signatory to the Government Procurement Code. It was interested in expanding its coverage on a multilateral basis in the Uruguay Round as well as in greater participation by other countries in the Code. The United States was fully prepared to abide by, and implement, the obligations set forth in agreements such as the Government Procurement Code, but on a reciprocal basis and as broadly as possible.

179. The representative of the United States said that his country was prepared to discuss substantial progressive reduction in barriers in agriculture, including those covered by its GATT waiver.

180. Replying to a remark concerning the use of information on the domestic costs of protection to counteract protectionist pressures, the representative of the United States agreed with Canada's view that there should be a better way of communicating to consumers and policy-making bodies the enormous costs of protection for consumers. He was interested in discussing how the GATT might be more effectively used in that regard.

181. The United States' approach to trade relations was not, and should not be, a "vigilante" approach. He appreciated the comments about the relative power of small and large trading nations in the trading system. As regards the broadcasting issue between Australia and the United States, which the Australian representative had referred to in his statement, the representative of the United States said that his country was simply asking to let consumers make their own choice of which programmes they wanted to watch.

182. The representative of the United States recognized that the major theme of discussions at this meeting was related to the direction of United States trade policies, in particular whether the United States was moving towards greater liberalization or protectionism. It was the policy of the United States Government to seek greater liberalization of trade, and to remain fully committed to the open multilateral trading system. Some restrictions reflected the great sensitivity of sectors concerned to import competition. The best way to achieve greater liberalization in the United States market as well as in other countries was through multilateral trade liberalization.

183. Most member countries of the GATT had bilateral arrangements, bilateral relationships and sectoral trade policies. They also saw an important rôle to be played by the multilateral system. The United States also shared this view. The United States, on balance, maintained a strong tradition of adherence to principles of law in its trade relations with other countries, and the United States wanted to expand and strengthen trade rules through the Uruguay Round. Each country had its own interpretation and priorities with respect to where such rules were needed. The United States was prepared to negotiate in all areas which had been mentioned by participants at this meeting, including anti-dumping and countervailing measures, safeguards, and rules of origin. From the

United States' point of view, a comprehensive rule of law would also cover such areas as balance-of-payments measures, disciplines on subsidies, better rules in agriculture, and new rules to cover expanding areas of trade such as services, intellectual property rights and investment.

184. The representative of the United States said that it would be difficult to make an overall assessment of any country's trade policy until full assessments of the trade policies of all other countries were made. In the second round of reviews, therefore, a better evaluation could be made of the relative degrees of openness or restraints in trade policies of any given country.

VII. CONCLUDING REMARKS BY THE CHAIRMAN

185. The aim of the reviews undertaken in the framework of the Trade Policy Review Mechanism is a collective evaluation of the full range of individual contracting parties' trade policies and practices and their impact on the functioning of the multilateral trading system. In these closing remarks, I do not wish to substitute for the appreciation made in the Council of the United States' trade policies and practices, but rather, on my own responsibility, to bring out salient points that have been made.

186. Members of the Council emphasized that the trade policies of the United States, as the world's largest single economy and largest single importer and exporter, had a major influence on the trading system. The discussion showed that there were many facets to United States trade policy.

187. Members recognized that the United States' market was, in many respects, open and that it was the largest market for exports from many areas, including developing countries. Tariffs were generally low and almost completely bound. Outside agriculture, textiles and clothing, there were relatively few quantitative import restrictions, and outside agriculture relatively few subsidies, or other sectoral domestic support policies. The United States was a signatory to virtually all the Tokyo Round Codes. The active rôle of the United States in the Uruguay Round was welcomed.

188. Members appreciated the recognition by the representative of the United States that the current account deficit must be largely dealt with through a reduction in the budget deficit and increased private savings. This should help to increase United States' competitiveness and reduce protectionist pressures. It was recognized that the absolute deficit was still high, but that its share in GNP had fallen considerably.

189. While appreciating these features, members of the Council voiced concerns in a number of areas:

- Several participants noted that the United States' trade system was based on a structure of laws, agencies and public hearings which permitted open discussion of all elements of concern to trading partners. However, its very complexity reduced the transparency of trade policy formulation and administration.
- Some members referred to the "non-self-executing" nature of the General Agreement under United States law. It was noted that this increased ambiguity and uncertainty as to the conduct of United States trade policies within the multilateral trading system. Some participants also considered that the transparency and "legal process" nature of United States trade policy formulation had been weakened by recent trade laws.

- A number of members noted that tariff peaks and import restrictions were in existence in several sectors, in particular some areas of export interest to developing countries.
- In relation to agriculture, some members stated that import restrictions under the GATT waiver, which had lasted for over thirty years, should be phased out. In addition, it was stated that subsidies under United States' farm legislation were both costly for the United States' economy and affected third countries' export markets.
- Questions were raised as to whether recent regional arrangements could be taken as indicating a new direction of United States trade policies, departing from strict adherence to the most-favoured-nation (m.f.n.) principle.
- Members expressed strong concerns about the use of unilateral measures under Section 301 of the United States' Trade Act, as amended. It was pointed out that there was no justification for unilateral interpretation of the rights and obligations of contracting parties under the General Agreement nor for unilateral action aimed at inducing another contracting party to bring its trade policies into conformity with the General Agreement.
- Several members observed that the use of specific legal escape clause provisions such as Section 201 of the United States' Trade Act had declined, but that the use of anti-dumping and countervailing actions had grown. In this context, concerns were raised on unilateral interpretation by the United States of anti-dumping and countervailing provisions.
- Reference was also made to recourse to multiple remedies under United States' trade law.
- A number of members referred to the increase over time in the use of non-tariff measures, and in particular in the use of export restraint arrangements such as VRAs. Some participants questioned whether the recent announcement regarding the termination in 1992 of VRAs on steel could be seen as a measure of liberalization.
- Several members called attention to preferential government procurement policies which led to discrimination against foreign suppliers, including the policies of State and local governments.
- The point was made that, in some areas, criteria not related to trade have been used in making decisions related to trade policies, for example, in granting GSP or even m.f.n. treatment. Reference was also made to discriminatory trade measures taken against certain countries.

190. In reply, the representative of the United States thanked participants for the attention and spirit of cooperation shown during the review. He saw the review as a useful exercise in clarifying trading partners' priorities in respect of United States trade policies and practices.

191. He said that the complexity of United States trade laws derived from the size of the economy on the one hand, and from the democratic system of separation of powers on the other. To some extent, increasing complexity had gone together with greater transparency.

192. The United States stood by its statement on action under Section 301 made in the June Special Council meeting (C/M/233). Cooperative solutions to problems would be sought in a multilateral framework. The United States administration placed great importance on bringing questions to the GATT for solution and on using Section 301 within the multilateral system. Panel findings were being acted on by the Administration, which also recognized the importance of negotiations in the Uruguay Round.

193. The "non-self-executing" nature of the General Agreement in United States law was not a source of instability. Overall, the United States willingly implemented all its GATT obligations, as well as those of the Tokyo Round Codes. On agriculture, the United States was prepared to negotiate substantively on all products including those covered by its GATT waiver.

194. The United States representative said that he would be interested in exploring ways in which the potential costs of domestic policies could be better communicated to consumers, and how GATT procedures and provisions could be used in this connection. While he did not accept that the United States took a "vigilante" approach to trade policies, he appreciated the difficulty of achieving a balance between the interests of the larger and smaller trading nations in any process of negotiations.

195. The United States representative recognized that concerns had been expressed by participants about the directions of United States trade policies. The United States remained fully committed to the multilateral trading system. To seek greater liberalization of trade through a multilateral process was the United States' dominant objective. In sectors which were still sensitive to import competition there was no doubt that the best way of ensuring trade liberalization was through the multilateral process, which should also contribute to strengthening the rule of international law in all areas of trade.

196. The Council appreciated the readiness of the United States to be one of the first contracting parties reviewed under the TPRM. Members recognized the historical outward orientation of the United States, the particular rôle played by the United States in promoting the evolution of the multilateral trading system, and the expression of its continuing strong commitment to the system.

197. However, members expressed their concerns regarding certain recent trends in United States trade policies as seen by them, in particular the growth of bilateral or unilateral measures, or of unilateral interpretations of multilateral rules, as well as the use of trade remedies not provided for in the General Agreement. Many participants emphasized that such policies should not undermine the multilateral trading system and, in this connection, stressed the need for all contracting parties to abide by multilateral rules and procedures in their trade policies, and to seek solutions for current problems through existing GATT procedures and the multilateral process of negotiations in the Uruguay Round.