GENERAL AGREEMENT ON

TARIFFS AND TRADE

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COUNCIL
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MINUTES OF MEETING

Held in the Centre William Rappard
on 16 May 1990

Chairman: Mr. Rubens Ricupero (Brazil)

1. Union of Soviet Socialist Republics
- Request for observer status (L/6654)

The Chairman recalled that at its meeting on 3 April the Council had taken note of the request by the Union of Soviet Socialist Republics in document L/6654 and had agreed that, as informal consultations on this subject were under way, this item remain on its agenda. He drew attention to the present situation as regards the norms for obtaining observer status in the GATT Council, and the rights and obligations of observers, and recalled that the Council had agreed at its first meeting in September 1960 that the following categories of governments should be invited to be represented by observers:

> "contracting parties and governments having acceded provisionally which were not members of the Council; governments associated with the work of the CONTRACTING PARTIES through special arrangements or which had been invited to participate in the work of the CONTRACTING PARTIES; and governments otherwise in the process of acceding or of being associated with the work of the CONTRACTING PARTIES".

The process relating to the accession of governments to GATT was subject to separate procedures.

At the Council meeting in July 1984, the then Chairman had undertaken to proceed with informal consultations concerning procedures and conditions for considering requests for observer status and the rôle of observers in GATT meetings. Such consultations had been held from 1984 to 1986, but had not led to concrete results. Against this background, he recalled the rules and practices presently applied in this area:

- Rules concerning the rights and obligations of observers were to be found in Rules 8 and 9 of the Rules of Procedure for Sessions of the CONTRACTING PARTIES (BISD 12S/11). These rules foresaw that observers may attend meetings and participate in discussions without vote. Following these guidelines, the Council had in practice invited observers to speak after Council members had spoken on a particular point.

- A government having been accepted as an observer in the Council had, under a long-standing practice, been invited to attend meetings of bodies subsidiary to the Council with the exception of the Budget Committee. Such invitations had also been extended to Sessions of the CONTRACTING PARTIES and meetings of the Committee on Trade and Development, although they were not subsidiary bodies of the Council. These other bodies had followed Council practice in respect of observers' right to speak.

- Observers received copies of the main GATT documents series (L/, C/, C/W/, etc.) and of documents relating to the other bodies which they attended as observers. It was to be noted that in 1988 the Council had approved a recommendation of the Budget Committee to the effect that observer governments be invited to contribute as from 1 January 1989 a minimum of SF 1,000 towards the cost of documentation services provided by the Secretariat.

He suggested that the Council agree that the whole issue of the status of observers and the rights and obligations of observers be reviewed at the end of 1992, and also that the understandings just referred to apply to the USSR if the Council approved its request for observer status.

He then proposed that the Council take note of his statement, agree to his suggestions and agree to grant the USSR observer status.

The Council so agreed.

The Chairman welcomed the USSR delegation to the Council and said that the Council appreciated the interest shown by the USSR Government in becoming acquainted with the methods of work of GATT, and its offer to keep GATT informed of its economic restructuring process as indicated in its letter of 7 March 1990 (L/6654). The Council looked forward to receiving from USSR representatives periodic reports on progress in the implementation of economic reforms.

The Chairman, speaking in his personal capacity, said that the action just taken by the Council, devoid of pomp and ceremony, contained nevertheless a far-reaching meaning. About forty-five years earlier, when statesmen had tried to replace the old structures shattered by the war with new and lasting ones, a minimum of consensus and cooperation had been achieved in the shaping of the United Nations, the corner-stone of the contemporary political order. Soon, however, it had been felt, rightly or wrongly, that differences in ideology and in socio-economic systems made it necessary to maintain two separate worlds in the economic sphere. Now that the sign of that division was crumbling everywhere, even in the political field, it was gratifying to see the first steps being taken towards the creation of a single system of multilateral economic institutions, taking into account differences in stages of development, national conditions and approach to economic organization -- one was finally getting closer to the goal of a truly unified economy on a

planetary scale. It was not by chance that this step was first taking place, not in the somewhat more rarefied atmosphere of monetary and financial circles, but in the more matter-of-fact domain of trade -- one of the bases for post-war prosperity -- and in an organization that had shown a continuous capacity to face up to new challenges. As the USSR prepared itself to observe how GATT strived to sail through a particularly demanding year, he again welcomed its delegation to the Council and wished it well in what he trusted would prove to be a mutually rewarding experience.

The representatives of Argentina, Australia, Austria, Bangladesh, Brazil, Canada, Chile, Colombia, Côte d'Ivoire, Cuba, the Czech and Slovak Federal Republic, the European Communities on behalf of the Community and the member States, Egypt, Finland on behalf of the Nordic countries, Ghana, Hong Kong, Hungary, India, Indonesia, Israel, Jamaica, Japan, Korea, Madagascar, Malaysia, Mexico, Morocco, Myanmar, New Zealand, Nigeria, Pakistan, Peru, Philippines, Poland, Romania, Senegal, Switzerland, Tanzania, Tunisia, Turkey, the United Sates, Uruguay and Yugoslavia, wished to be put on record as warmly welcoming the USSR delegation and that country as an observer to the Council.

The representative of the European Communities said that since the Havana Charter, which had not yet been adopted but was nevertheless still being implemented through the General Agreement, the multilateral trading system had witnessed ever-accelerating changes. The decision on the USSR's request for observer status brought further support to the universal vocation of the multilateral trading system. There were some signs announcing this because at the end of the Uruguay Round, a multilateral trade organization might be set up to crown the negotiations and to offer a home for the various segments of international trade in the beginning of the 21st century. In the vision of the future world, the USSR would find a place commensurate with its economic dimensions and ambitions. The Community had read with interest the USSR's letter and appreciated the difficulties involved in the very delicate and complex process of restructuring the latter's economy towards a market-based one. Political will was not sufficient in this process because it had to be recognized that in the USSR the memory of what was a market economy was lacking, even before the October revolution. The path to restructuring was a long and dangerous one, and the USSR would need assistance. In this respect, the Community could confirm to the Council its readiness, already taken up at a bilateral level, to offer technical support to the USSR. Throughout the process culminating in the decision just taken, the Community had played its rôle with patience and foresight. In fact, it was in Strasbourg that one of the Community's Heads of State had first called for the admission of the USSR as observer to the GATT. From now on a world of concord, peace and prosperity could be built by all, jointly, through the multilateral trading system. Trade had henceforth acquired the nobility it deserved.

The representative of the United States said that this was an important moment for all those who wanted to see fundamental and lasting economic reform throughout the world. Forty-five years earlier, the USSR

had decided not to participate in the economic integration and market-based trading system that was taking shape in the Western world, and all had since lived with a world economy divided by that decision. The tide of political and economic history was now changing. The economic and commercial principles at the very foundation of the GATT system had never been in greater ascendency, and the Uruguay Round was seeking to broaden and expand that system. With each passing day, more and more nations were seeking to bind their economies to the GATT system. The enormous prosperity of the Western economies in the past forty years had largely resulted from the trade liberalization brought about under GATT.

The USSR was now taking steps to part with its economic past. It was struggling with the process of both internal and external economic reform and, as part of that effort, had asked to observe the operation of the GATT -- a request that had just been granted. The United States' inclination had been to defer a decision on the USSR request until after the completion of the Uruguay Round, and until the course of economic and political change in that country had become clearer; but in recent weeks it had become obvious that nearly all other delegations had not shared this view; therefore, the United States had joined in the consensus at the present meeting.

Observership in the GATT was clearly a totally separate matter from that of a government's possible accession to the General Agreement, and he believed that it was clearly understood by all present that the decision in respect of observer status for the USSR in no way prejudged any action on a possible future request for accession. But observership did provide an important opportunity to understand better how to conform domestic economic policies to the requirements of the General Agreement. The USSR's economic and trade system was clearly not, at this time, compatible with the structure, provisions and principles of the General Agreement. Change, however, appeared to be forthcoming. It was the United States' sincere hope that current efforts underway aimed at reform and economic restructuring would move the USSR economy toward greater integration in the international trading system, and that that country would eventually embrace a market-based price and distribution system which could be compatible with GATT norms.

The United States would obviously welcome any efforts by the USSR to keep contracting parties informed of developments and progress in its economic and trade reform program during this period of dynamic change. The United States hoped that observer status in GATT would provide USSR officials with an improved perspective on the workings of the liberal international trading system and on the economic and commercial principles at its foundation.

The representative of Canada said that Canada considered, like others, that the decision just taken should be looked at in a broader historical perspective. This was an important step in the development of cooperation, and hopefully partnership, between the USSR and the CONTRACTING PARTIES. Canada was mindful of the prospects that could be hoped for and imagined from this point in time. It welcomed the USSR offer to keep contracting parties informed of its economic restructuring

process, and hoped that the process of becoming acquainted with the GATT, which the USSR would be undertaking through its observership, would help and facilitate the reform process in that country.

The representative of Egypt said that, like previous speakers, he welcomed this historical event. The spirit of compromise, cooperation and understanding which had led to this important decision indicated that whenever political will was present, any difficulties could be surmounted. He hoped this spirit would guide the work in the ongoing Uruguay Round negotiations, and would enable all the controversial issues to be tackled.

The representative of Argentina expressed his delegation's satisfaction at the Council's confirmation of observer status for the USSR, which was based on two reasons: the traditional relations of cooperation and friendship between their two countries and the strengthening of the multilateral trading system which resulted from this decision. Argentina believed that it would be a positive thing for the USSR to be able to have direct information on the efforts made to strengthen the multilateral system, especially in this complex stage in international economic relations. Furthermore, the multilateral trading system based on GATT would itself find this a positive contribution, leading towards the universalization of the whole system.

The representative of Brazil said that the Council should rejoice at its decision to grant the USSR its requested status, which Brazil had supported from the very beginning. In other instances, his Government had had the opportunity to express its sympathy both for this request as well as for a favourable response to it from contracting parties. The USSR interest in becoming an observer in GATT bore a special meaning. It translated first and foremost into the growing importance of the General Agreement for world trade, and the recognition of its relevance in all quarters of the world. It also confirmed the trend towards further universalization of GATT which had intensified lately. Brazil's sincere hope was that the USSR, through its observership, would soon develop its own knowledge of the multilateral trading system, its advantages and its problems, and the threats and challenges that it had experienced. He hoped the USSR would also find the system worth joining after internal efforts to restructure its economy had made this possible.

The USSR was not the only party that would learn from its observer rôle. All might well profit from the USSR presence in their midst, and had a lot to learn from its experience and contributions in international, economic and trade affairs. In the last few months, the world had changed at a quicker pace than ever before since the end of the Second World-War. The presence of a USSR delegation at the present Council meeting was undoubtedly a significant indication of these formidable changes. Brazil looked forward to a relationship based on genuine cooperation, which would be particularly relevant if all in GATT were together able to contribute toward a fair and truly universal economic order. After the Second World-War, an international set of organizations under the United Nations system had been established, where different systems and ideologies were in permanent and dialectical interaction. But this had not included trade; therefore, the arrival of an observer delegation from a country with the economic dimension and political weight of the USSR to this body

had a truly historical dimension and signaled a reunion. It was as if one was witnessing in trade the starting point in global reconstruction after the war, certainly with a renewed hope to cooperate and develop a better and fair economic environment. While welcoming the USSR delegation, Brazil was willing to work together with it for the expansion of trade and the benefit of all.

The representative of Bangladesh said that his country fully shared the Chairman's observation that the present occasion commemorated the beginning of a process towards a single multilateral economic system, and a truly unified economy on a planetary scale, into which all, irrespective of their stage of development, aspired to integrate and belong.

The representative of India said that, as had been echoed by others before him, it was a historic moment for the international trading system that the USSR had taken its first step toward joining that system. India joined others in welcoming the USSR and was particularly gratified to do so as it had had, and continued to have, close trade and other links with that country.

The representative of Japan said that the GATT, as all knew, was an international body guided by the principles of market economics, and the rights and obligations of contracting parties were clearly laid down in its provisions. The rule of law embodied in GATT provisions established that all contracting parties -- large or small -- were equally placed under the same agreed rules. Contracting parties were also required to conform their border, as well as domestic, measures and systems to the principles embodied in these provisions. Welcoming the USSR's new status he noted that this was separate from accession as a contracting party, and he joined in the USSR's hope, as expressed in the latter's letter, that being an observer would provide it with ample opportunity to become acquainted with the GATT and the mechanism of the market economy. The USSR's efforts to carry out its domestic economic reform in accordance with the market mechanism was indeed a welcome step. Japan noted and welcomed the USSR's intention, as stated in the said letter, that it would keep contracting parties regularly informed of the process of restructuring its domestic economy, and looked forward to receiving relevant information on a regular basis. Finally, and as the Chairman had suggested in this connection in his opening remarks, the Japanese delegation also considered it necessary for the Council to conduct a review of the whole issue of the status of observers, at the end of 1992, and considered it desirable that rules on conditions, rights and obligations and status of observers be clarified in that exercise.

The representative of Colombia said that the step just taken by the USSR in becoming an observer in the GATT Council was an important one, which would render the multilateral trading system as represented by GATT even more universal. Colombia was convinced that the USSR's contribution would be positive.

The representative of Morocco said that in welcoming the USSR, the GATT would further enrich its activities with the presence of a major nation, its contribution to the expansion of international trade and with the strengthening of the universal vocation of the institution. For more

than the thirty years since its independence, Morocco had had very fruitful economic cooperation with the USSR, which had represented a non-negligible trading partner. Of all the Maghreb region countries Morocco had, indeed, the largest volume of trade with the USSR.

The representative of Chile welcomed the participation of the Soviet Union in the very important goal of trying to articulate a universal and fair system of trade and economic cooperation. From the beginning of history, trade had contributed decisively to expanding civilization and to making it possible for many countries to reap its benefits. Today, it was the main tool for development and peace. While greeting the decision that granted GATT observer status to the USSR, Chile hoped it would not debilitate but, to the contrary, would accentuate the need for a new international economic order, overcoming the recent decades of antagonism between East and West, and helping to close the gap between North and South. Chile firmly believed that the active participation of the Soviet Union would strongly contribute to this historical process.

The representative of Hungary said that the important step taken by the USSR and the Council's decision had come at a time when historic changes were taking place all over the Central and Eastern European region. The intention of achieving basic transformations in their economies was manifested practically in all countries. Hungary was convinced that the experience gained by the USSR through its observer status would contribute to the realization of the objectives of its economic restructuring program. At the same time, the USSR's presence in this capacity in the GATT might also facilitate that country's deeper integration into the world economy, inter alia, by relying on the strengthened rules and disciplines of the GATT that would result from the expected successful conclusion of the Uruguay Round at the year's end.

The representative of Finland, speaking on behalf of the Nordic countries, said that these countries had a strong faith in the system of multilateral cooperation, and had generally supported the aim of making it more representative and more functional also in the economic field. Conditions now permitted taking a crucial step in that direction. The decision just taken was historic and symbolic; it reflected the thorough re-evaluation that was taking place in the USSR and the favourable response to it by the international community. What would follow would be a mutual learning process. On the one hand, the new observer would become acquainted with the workings of the multilateral trade system as embodied in the GATT; on the other, contracting parties would obtain valuable information from that country. The Nordic countries welcomed the USSR's promise to provide descriptions and data regarding the reforms undertaken and planned. While congratulating the new observer the Nordic countries also pledged to it their full cooperation.

The representative of the Union of Soviet Socialist Republics, speaking as an observer, expressed his delegation's profound gratitude to all the contracting parties and also to the Director-General, for their efforts which had resulted in a positive decision on granting the USSR observer status in the GATT. This status offered his delegation an opportunity to become acquainted with the methods of work of various GATT bodies and for studying the conditions of a future accession to the GATT.

His delegation intended to keep contracting parties informed of the USSR's economic restructuring process. Recently, the USSR President had spoken in favour of accelerating the economic reform process in the country and, in this connection, a number of draft legislative acts were planned to be worked out.

The Council took note of the statements.

2. Accession of Bolivia
- Time-limit for signature of the Protocol of Accession (C/W/626)

The Chairman recalled that on 3 August 1989, the CONTRACTING PARTIES had adopted a decision (L/6561) authorizing Bolivia to accede to the General Agreement under the terms set out in its Protocol of Accession, the text of which had been circulated in document L/6562. On 4 August 1989, Bolivia had signed the Protocol subject to ratification. At the Forty-Fifth Session of the CONTRACTING PARTIES, the time-limit for Bolivia's signature, as set out in paragraph 5 of its Protocol of Accession, had been extended to 30 April 1990. He drew attention to the communication from Bolivia in document C/W/626, requesting that this time-limit be changed to 31 August 1990 and proposed that the draft decision annexed thereto be adopted.

The Council so agreed.[1]

3. Trade Policy Review Mechanism
- Outline format for least-developed countries (C/W/625)

The Chairman recalled that at its meeting in July 1989, the Council, acting pursuant to the CONTRACTING PARTIES' Decision of 12 April 1989 (L/6490, Part I, para. B(i)), had decided on the outline format for country reports to be submitted under the Trade Policy Review Mechanism (L/6552). In this Decision it was recognized that it might be burdensome for least-developed countries to adhere to the agreed outline format and that "[a] simplified reporting format for reviews of trade policies and practices of the least-developed countries should therefore be considered." He drew attention to document C/W/625 containing a proposal received from the Director-General regarding an Outline Format for Country Reports for Least-Developed Countries and proposed that it be adopted.

The Council so agreed.[2]

4. Korea - Restrictions on imports of beef
- Follow-up on the Panel reports (L/6504, L/6505, L/6641)

The Chairman recalled that the Council had considered this matter at its meeting on 3 April and had agreed to revert to it at the present meeting.

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[1]The Decision was subsequently issued as L/6677.

[2]The Decision was subsequently issued as L/6691.

The representative of Australia said that at its last round of bilateral discussions Australia had reached an understanding with Korea relating to the liberalization of that country's beef régime. Australia saw the understanding on the minimum beef import levels in each of the years 1990, 1991 and 1992 as the first part of the liberalization program being discussed under the auspices of the Panel's recommendations (L/6504). The understanding also provided that the next tranche of the liberalization program would be agreed before July 1992. His delegation noted that the administration of the first three years of the liberalization program was by quantitative restrictions. It was Australia's expectation that if the objective of complete liberalization was to be achieved by July 1997 (as provided in the understanding), the next tranche -- 1993 and beyond -- would require movement towards a tariff-only régime. Australia had reached an understanding that provided for minimum imports of 58,000 tonnes in 1990, with full confidence that actual imports would considerably exceed this figure if demand, even at present high prices, were to be met. Australia's own submissions to Korea had suggested a 1990 import target of between 65,000 and 70,000 tonnes. His delegation noted with satisfaction that, in subsequently announcing an import target of 68,000 tonnes in 1990, Korea shared Australia's assessment of the capacity of Korea's market to absorb increasing quantities of beef without disruption. The next few years were a period of confidence building. To assist this process, Korea and Australia, with others, would engage in market studies aimed at removing impediments and improving the commercial distribution of beef.

The representative of New Zealand said that his delegation had noted Australia's communication, and that his country and Korea had agreed to hold a further round of bilateral consultations in Wellington later in May. He expected to be able to report on the outcome thereof at the June Council meeting.

The representative of Korea recalled that his delegation had informed the Council at its April meeting that Korea and the United States had reached an agreement on beef at their consultation held in March. The necessary procedures to finalize the agreement had been completed and the two Governments had signed it on 27 April. Since the April Council meeting, Korea had held a third round of consultations with Australia on 24-25 April. As a result, the two Governments had also reached an agreement which they were taking steps to sign. This agreement was also based on the principle of non-discrimination and was almost identical to that between the United States and Korea. A consultation with New Zealand was scheduled to be held in Wellington on 24-25 May, and his delegation hoped that this consultation would also prove successful. When an agreement with New Zealand was reached, his delegation would duly report the details of the three agreements to the Council.

The representative of Canada recalled that at the April Council meeting, Korea had said that it intended to provide specific details of its agreement with the United States. Canada inquired as to when Korea would provide such details, and as to the details of the understanding reached with Australia. Canada was concerned that Korea appeared not to be prepared to agree to a timetable for full liberalization. Korea was under an obligation to eliminate restrictions by 1997. While Korea's

authorities had met with Canadian Embassy representatives in Seoul on this issue, these meetings had not, in Canada's view, constituted a substantive response to its request for consultations. As Korea had confirmed both that it recognised direct Canadian interest and also its intention to consult with Canada on this matter, his delegation wished to express its concern at the fact that no formal consultations had actually taken place yet. Canada was interested in participating in any proposed joint study group to examine the restructuring of Korea's livestock sector, with a view to establishing a timetable for elimination of import restrictions in this sector. After his delegation had had an opportunity to study the details of these agreements, it might revert to this matter in the Council.

The representative of Korea recalled his previous statement and said that Korea would report the details of the three agreements to the Council after they had all been signed. With regard to Canada's other points, he would duly report them to his authorities.

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

5. United States - Restrictions on imports of sugar
- Follow-up on the Panel report (L/6514)

The Chairman said that this item was on the Agenda of the present meeting at the request of Australia.

The representative of Australia said that his delegation had requested the inclusion of this item on the Agenda given that it was now 11 months since the Panel report on US sugar had been adopted. As Australia had reported previously, the US Government had agreed to consult with it in regard to the options being considered by the United States to bring its sugar-import régime into GATT-consistency. On 2 April, the US Government had indicated at Ministerial level that it was proposing the introduction of a tariff-quota régime to replace the present system of control by quantitative restrictions. Australia's response had been that any comment on this proposal could not be meaningful until the practical operation of such a régime was known, for example with regard to the size of quotas for imports at the lower rates of duty, and the nature and flexibility of imports at the higher rate of duty. To date, the US Government had not provided this confirmation but Australia understood that the introduction of a tariff-quota system was imminent. In the context of the Farm Bill debate there had been a number of proposals which would lead to high target-prices, some even higher than those existing under the present restrictions, including underwriting of subsidies for the disposal of surpluses or, indeed, even of re-exports. A tariff-quota system which maintained market conditions on the same, or even more restrictive basis than the current restrictions which had been found to be illegal, and which had inflicted significant damage on global sugar markets for eight years, could hardly be termed conciliatory in the circumstances of 1990. Against this background, it was Australia's hope -- indeed firm belief --

that whatever measures the United States introduced to legitimize its present restrictions should aim at making the US industry responsive to competitive world prices.

The representative of Canada supported Australia's request. He noted that the Panel report on this matter had confirmed that the current quota restrictions on imports of sugar were inconsistent with the United States' GATT obligations. Canada, too, was interested in receiving information on the steps being taken by the United States to implement the Panel's recommendations.

The representative of the United States said that his authorities had been reviewing the options available to bring US sugar-import policy into GATT conformity. They had identified options that could be implemented by the President to achieve this result and in recent weeks had consulted with the US Congress and industry, and also with Australia's Government, on these options. The United States intended to bring its policy into GATT conformity as soon as possible and he emphasized that it was not his Government's policy to delay compliance until the conclusion of the Uruguay Round. His delegation anticipated notifying contracting parties of the United States' decision on this matter in the near future. He made it clear that, in the United States' view, a number of options were at its disposal to alter the current program in a manner that would make it conform to its GATT obligations. He mentioned replacing the absolute quota with a tariff-rate quota as an option which would permit the United States to implement its domestic law and maintain a GATT-consistent import policy. The Panel report concerned the United States' import policy, not its domestic policy. Substantial changes in agricultural programs, both domestic and market-access oriented, were being negotiated in the Uruguay Round which would have an impact on sugar as well as on other products. He pointed out that a number of other countries maintained onerous restrictions on importation of such products as sugar and that a true degree of equal rights and obligations within the GATT would not be achieved until the Uruguay Round negotiations had been fully dealt with.

With regard to Australia's reference to the 1990 Farm Bill, his authorities were very mindful of the proposals that had been submitted to Congress. This debate was in its preliminary stages. The Administration had a number of serious concerns with the proposals aired to date, and was making its position known to the members of Congress who had submitted those proposals.

In conclusion, he said that once the United States had implemented the recommendation in the Panel report, it would immediately notify this to contracting parties.

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

6. United States - Restrictions on the importation of sugar and sugar-containing products applied under the 1955 Waiver and under the Headnote to the Schedule of tariff concessions
- Panel report (L/6631)

The Chairman recalled that in June 1989 the Council had established a panel to examine the complaint by the European Economic Community. At its meetings on 20 February and 3 April, the Council had considered the Panel's report (L/6631), and in April had agreed to revert to this item at the present meeting.

The representative of the European Communities said that since the April Council meeting, the Community had further reflected on the implications of this issue for the multilateral trading system, the Uruguay Round negotiations and the Community's own policy. This reflection had confirmed, regretfully, the preliminary explanations he had given at that meeting. The Community could not agree to the conclusion in paragraph 6.1 of the Panel report. As to paragraphs 6.2 and 6.3, the Community could not avail itself of the invitation therein. The Panel's conclusions seemed to confirm a state of malaise and even, for at least some contracting parties, a bad conscience as to the situation created by a waiver that had been granted too easily to the United States. GATT pragmatism had shown its limits, beyond which a state of inconsistency and incapacity prevailed. Consequently, the Community asked the Secretariat to inform the Council with regard to precedents of panel reports that had merely been noted and not adopted, since he would tend to favour a similar approach in the present case.

Mr. Lindén, Special Adviser to the Director-General, said that to his knowledge there had been only one such precedent where the Council had taken note of a panel report, and that this had involved a dispute between the United States and Spain regarding certain Spanish regulations concerning vegetable oil.[3] The United States had not agreed to adoption of the report and its opinion had been shared by many other contracting parties.

The representative of the European Communities said that the information just provided by Mr. Lindén had confirmed what the Community knew already. Mr. Lindén had confirmed one particular case as the only precedent. He quoted the US representative's statement at the time: "In the view of his authorities, adoption of the Report could contribute nothing more to the settlement of that particular dispute, but would only establish damaging precedents for the interpretation of GATT provisions. The United States believed that the Council should take note of the Panel Report and of the comments made, including the written comments previously submitted" (C/M/152, p. 10). The Community could now make the very same remarks, as in this case it was not creating any damaging precedent for

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[3] Spain - Measures concerning domestic sale of soyabean oil (L/5142 + Corr.1). For Council discussion and action on this report, see C/M/149, 151 and 152.

the interpretation of the provisions of the General Agreement, because in the Uruguay Round negotiations the United States had put the Waiver on the negotiating table. He suggested, therefore, that on that basis the Council take note of the Panel report, including its conclusions.

The representative of the United States said that this report was before the Council for adoption for the third time. He quoted the Community representative at the May 1989 Council meeting, when the Section 337 Panel report[4] was being considered for the third time, as saying: "If the recently-adopted Decision on dispute settlement procedures meant anything, this report should be adopted at the present meeting" (C/M/231/, p. 3). He considered it important to point out the significant difference between the present situation and that of 10 years earlier. The GATT dispute settlement process had since been improved and strengthened, and had greater credibility than ever before. It was clear that in a situation where other contracting parties were not in a position to accept the Community's view, considerable harm was done to this process if this Panel report remained unadopted. In the United States' view, as stated at the two previous meetings, the report was sound and well-reasoned. The United States disagreed with the Community's statement that sought to find fault with the Panel's conclusions. The United States recognized that there was no great love for its Waiver, but believed that the matter had been studied at length and that there was strong support for the adoption of the report. If the Community would not comply with its own statement on the need for prompt adoption of panel reports, the further delay would only bring discredit on the dispute settlement process, a consequence which the Community representative would want to avoid.

The United States could not agree with the Community's suggestion that the Council merely take note of the report. He confirmed Mr. Lindén's analysis of the only precedent in this regard. His own delegation's research had shown that 24 contracting parties in that case had expressed fundamental disagreement with the Panel's reasoning and had therefore urged that the Council do no more than note the report. In the present dispute, it was clear that 23 other contracting parties had not joined the Community in questioning the report and arguing that it not be adopted; nor had ten, or even five -- in fact, none had done so. To accept the Community's suggestion would do a disservice to the GATT dispute settlement process. He called once again for adoption of the report.

The representative of Canada recalled that Canada had intervened before the Panel in support of the Community's complaint. However, in the interest of maintaining the integrity of the dispute settlement system, Canada supported the adoption of this Panel report. At the February Council meeting, Canada had expressed its views with respect to the Panel's interpretation of "prohibition" and "restriction" in the context of the validity of implementing a zero-quota under Section 22. It had noted that in the period preceding the implementation of the zero-quota,

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[4]United States - Section 337 of the Tariff Act of 1930 (L/6439).

the United States had imported the products in question from other sources, primarily Canada. The Section 22 Waiver was not intended to enable the United States to cut off trade by choosing the most advantageous representative period from which to take action -- for example, a period when there appeared to have been no trade. Paragraph 5.16 of the Panel report brought into contrast the expectations of the contracting parties at the time of the granting of the Waiver -- particularly with respect to the assurances provided by the United States -- with the current policy the latter had pursued on sugar imports. Canada expected to see results in the Uruguay Round that would lead to the elimination of the United States' reliance on the Waiver. Canada saw no basis for the Community's suggestion that the Panel report simply be noted, and remained to be persuaded by the Community that such deficiencies existed in the report as would call for such action.

The representative of the European Communities said that, like the US representative, he too hoped that this debate would contribute to a strengthening of the dispute settlement system. For that reason he hoped that other contracting parties would take into account his remarks at the previous meeting. He would repeat them now to emphasize that the Community's concerns went well beyond bilateral interests. The Panel had not, indeed, made recommendations, but had merely offered a number of reasonings and conclusions. He asked, therefore, what the adoption of the report would mean. Would the Council be adopting and approving the Panel's conclusions, since there was no recommendation? If that were done, then a practical consequence would be that the ongoing Uruguay Round negotiations could be hampered, since it would henceforth be possible to nullify a concession by a mere unilateral modification of national legislation, as in the United States' case. This would have considerable importance for the negotiations and was the real reason for his difficulty in adopting this report. He recalled, in this respect, that this was the first instance in which a panel had examined a waiver, something quite different from an exception granted under accession protocols for example. He noted the similarity in the United States' current position and that of Spain in the earlier-mentioned dispute. Spain's representative, in justifying Spain's request for adoption of the report at that time, had offered the following arguments: "(1) the report was the final result of a procedure which had complied fully with the Understanding; (2) the adoption of this report constituted proof of the guarantees granted to all contracting parties by the dispute settlement procedure, and of the protection it provided to the legitimate interests of contracting parties; (3) in the light of the possible convening of the CONTRACTING PARTIES at ministerial level in 1982 with the purpose of promoting and strengthening the multilateral system of world trade, not to take action on this report would, in his view, undermine the existing system." (C/M/152, page 11).

As could be seen, the times and protagonists had changed, but the situation was identical. He, therefore, proposed that the Council take note of the report at hand. In doing so he was not escaping from his stated moral obligation to strengthen the dispute settlement system, but simply allowing the negotiations to assume their full and significant potential, without prejudging on their outcome nor privileging one partner, in this case the United States, to the detriment of others.

The representative of the United States said that as this matter would obviously not be resolved at the present meeting, the Community's representative should further reflect and show the same fundamental respect for the dispute settlement process which he had himself pressed upon others. The basic flaw in the proposal to merely take note of the Panel report on the ground that it contained no recommendation was that, should this approach be followed, it would imply that every time a complainant lost a case, the relevant report would not be adopted. In analyzing the report, it was clear that none of the panelists had shown, in their national capacity, a great love for the US Waiver; however, they had carried out their mandate as independent panelists and had scrutinized the applicable GATT rules and the language of the Waiver. Nothing in the United States' comments on the report could give the indication that its adoption would change the United States' basic negotiating position in the Uruguay Round, which was to eliminate all waivers, derogations and other measures that were contrary to GATT rules in the area of agriculture. The United States would continue to adhere to that position in the Uruguay Round and would not be affected one way or another by adoption of this report.

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

The Director-General, in thanking Mr. Lindén for his prompt reply to the Community representative's earlier question, suggested that, in future, delegations wishing to obtain legal opinions or advice from the Secretariat might be well-advised to provide advance notice of their intention.

The Council took note of the statement.

7. United States Agricultural Adjustment Act

(a) Report of the Working Party appointed to study the twenty-ninth and thirtieth annual reports by the United States (L/6643)

(b) Thirty-first and thirty-second annual reports by the United States under the Decision of 5 March 1955 (L/6442, L/6633)

The Chairman suggested that the two sub-items be considered separately.

(a) Report of the Working Party appointed to study the twenty-ninth and thirtieth annual reports by the United States (L/6643)

The Chairman recalled that at its meeting on 3 April, the Council had considered the Working Party's report on the 29th and 30th annual reports by the United States (L/6643) and agreed to revert to it at the present meeting.

The representative of the European Communities said that unless the United States' position had changed, he would reiterate the proposal he had made at the previous Council meeting that, for lack of consensus, the Council agree that it could not adopt the Working Party's report in L/6643.

The representative of New Zealand said that his country's position on the US Waiver was well-known; New Zealand had been one of the few countries that had voted against the granting thereof in 1955. New Zealand had consistently maintained a critical focus on it through successive working party examinations over the years. As mentioned in the latest report itself, the US Waiver was on the table in the Uruguay Round negotiations. In the meantime, New Zealand supported adoption of this report.

The representative of the United States said that his delegation continued to believe that this report should be adopted. He recognized that the Community was unhappy with the absence of recommendations therein. In the past, however, the Council had often adopted working party reports the conclusions of which had essentially reflected a disagreement among the participants, including the reports on the Community's creation and enlargement, which latter included the working parties on the accession to the European Communities of Portugal and Spain, of Greece, and of Denmark, Ireland and the United Kingdom. In all the latter cases, conclusions had not been unanimous. For this reason, he hoped that the Community would allow adoption of the report at hand.

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

(b) Thirty-first and thirty-second annual reports by the United States under the Decision of 5 March 1955 (L/6442, L/6633)

The Chairman recalled that in 1989 the Council had postponed its review of the United States' 31st annual report in L/6442 until the Working Party established to examine the 29th and 30th reports had completed its work. At its meeting on 3 April, the Council had deferred discussion on the 32nd annual report, circulated in L/6633, and on the 31st annual report, until the present meeting. He invited the representative of the United States to introduce the annual report in L/6633.

The representative of the United States said that the report was fully self-explanatory and conformed to the requirements set out in the Waiver Decision. He would merely recommend it to contracting parties' attention.

The representative of the European Communities said that it was not for the Council to adopt the two reports. Over so many years it had never been possible to reach an agreement in the numerous working parties and it was no different now. It was, of course, true that the absence of a request for another working party to examine these reports reflected a certain lassitude, but what would be the purpose of wasting time in setting up a working party, if there would be no recommendations from that working party? Not having a working party established this time simply meant that the CONTRACTING PARTIES were incapable of dealing adequately with the US Waiver.

The representative of Canada said that the discussion so far under the two sub-items suggested that Council members did not see much utility

in discussing these issues at this point in time. Recalling the Chairman's conclusion under sub-item (a) that the Council revert to that matter at a future meeting, he suggested that "future" be interpreted as meaning "after the Uruguay Round was over". Perhaps delegations were of the view that their time over the next few months could be better spent in concentrating on efforts in the Uruguay Round towards elimination of the Waiver rather than to conducting an examination of how the United States had been applying this Waiver. He would therefore suggest that the Council revert to this matter also after the Uruguay Round was over.

The representative of Australia said that Canada's views coincided closely with the remarks that he had made himself at the previous Council meeting and which were reflected on page 14 of C/M/240. He did not, therefore, intend to go into detail. However, given the sad and tiring history of the examination of the US Waiver in working parties on the one hand and, on the other, the prospects over the next few months of achieving a result which would render such working parties unnecessary in future, he considered it better to direct efforts elsewhere than in a working party. He was assuming a best-case scenario, and not one where slightly different terms of reference would have to be considered for a working party to be set up in the event that the Uruguay Round did not lead to satisfactory results in this area.

The Chairman proposed that the Council take note of the statements and of the reports submitted by the United States in L/6442 and L/6633, and agree to revert to this item at a future meeting.

The representative of the European Communities said that he did not have difficulty with this proposal. While it was true that the Uruguay Round negotiations held many promises, and that the United States had put its Waiver on the negotiating table as part of the overall solution for agriculture, all endeavours to date on this issue were aimed at making it clear that, should the United States renounce its Waiver, this would be without compensation. If not, it would be only too easy to seek to negotiate on something which had been granted on a temporary basis and to seek compensation for it. There was no question in the framework of an overall solution in agriculture of the United States obtaining any compensation whatsoever from the Community for its removal of the Waiver. With regard to the case at hand, he proposed that the Council register the lack of consensus to adopt the Working Party's report on the 29th and 30th US reports. There was deadlock arising from the fact the United States was both judge and party. The Council should further register the lack of consensus for the establishment of a working party to examine the 31st and 32nd reports submitted by the United States. With these provisos, he could wait until the end of the Uruguay Round. If, however, the Waiver still existed at that time, he would request a vote on whether the exceptional circumstances which had been invoked to justify granting the Waiver still existed and justified its maintenance. Having said that, the Community would negotiate -- there was no other choice -- with a view to withdrawing the waiver issue forever from the Council's agenda.

The Council agreed to the Chairman's proposal and took note of the Community's statement.

8. European Economic Community - Regulation on imports of parts and components
- Panel report (L/6657, L/6676)

The Chairman recalled that in October 1988, the Council had established a panel to examine Japan's complaint concerning this matter. At its meeting on 3 April the Council had considered the Panel's report (L/6657) and had agreed to revert to it at the present meeting.

The representative of Japan said that Japan once again urged the adoption of the report, the findings and conclusions of which were, in its view, sound and well-reasoned. He recalled that the Community had on many occasions emphasized the importance of a credible GATT dispute settlement mechanism and, in this respect, a need for early adoption of panel reports; he hoped that the Community would find much to commend itself in its own wise counsel. For its own part, as it had stated at the April Council meeting, Japan had always abided by the GATT dispute settlement mechanism by agreeing to the adoption of all panel reports on disputes to which it was party, and by implementing their recommendations even when its own views were different from the panel's findings.

The Panel's findings in the present case were very clear. Briefly, its conclusions were that: first, the duties imposed by the Community under the so-called anti-circumvention provision were inconsistent with Article III:2 and were not justified by Article XX(d) of the General Agreement; second, the Community's decisions to suspend proceedings under the so-called anti-circumvention provision on undertakings by enterprises were not consistent with Article III:4, nor justified by Article XX(d). The Panel had recommended that the Community bring its application of its co-called anti-circumvention provision into conformity with its GATT obligations.

The Community had raised some questions with respect to the Panel's findings. In Japan's view, the same points had been raised, discussed at length and fully considered in the course of the Panel's proceedings and were reflected in its findings. In addition, at the April Council meeting, Mr. Groser, on behalf of the Panel Chairman, had commented on and addressed each of the points raised, in a manner that Japan considered convincing. The Community had also circulated a further communication in this regard, with the date of the present meeting.[5] A quick reading showed that while the communication was new, its contents were not. In this respect, he recalled that the CONTRACTING PARTIES' April 1989 Decision on improvements to the GATT dispute settlement rules and procedures (L/6489) provided that contracting parties having objections to panel reports should give written reason to explain their objections for circulation at least ten days prior to the Council meeting at which the panel report would be considered. Japan was aware that, given the timing of its complaint, it could be argued that the new rules were not applicable

[5] EEC Comments on the Panel Report on EEC - Regulation on Imports of Parts and Components (L/6676).

in the present case; he would only note in passing that observance of the newly-agreed procedures would have been desirable in this dispute.

With regard to a point raised by the Community that the Panel had not provided any guidance as to how contracting parties could deal with the problem of circumvention of anti-dumping duties, he asked whether the Panel was required to provide such guidance. His inclination would be to answer in the negative, it being recalled that the terms of reference of the Panel were, inter alia, to examine in the light of the relevant provisions of the General Agreement, the GATT-consistency of the so-called anti-circumvention duties imposed by the Community. A further question in this connection was whether the Panel had said in its findings that one could not take any measure against "genuine" cases of circumvention. In his judgement, no reading of the report could lead to the conclusion that all anti-circumvention measures were inconsistent with the General Agreement. The Panel had concluded, and in Japan's judgement rightly so, that certain measures called anti-circumvention duties were being implemented by the Community in a manner inconsistent with GATT provisions.

He expressed the hope again that the Community would find its way to accepting the report, and to taking appropriate steps in accordance with its recommendations. He referred, in this respect, to the undertakings entered into by the companies investigated as a part of the process following the Community's procedures which had been found to be inconsistent with the General Agreement. In view of the fact that such undertakings had economic implications and costs, Japan urged that the companies concerned no longer be required to maintain the undertakings that had been accepted by the Commission of the European Communities in the context of proceedings under the so-called anti-circumvention provision, which latter had been found inconsistent with GATT provisions.

The representative of the European Communities recalled that the Community had given its first comments on this report orally at the previous Council meeting. It had since then carefully studied the initial reactions of other contracting parties, as well as the observations of a member of the Panel. Unfortunately, this had in no way dispelled the Community's serious concerns with the findings and conclusions of this report. On the contrary, an even more careful analysis had only confirmed its conviction that this report was fundamentally flawed. It was flawed not only because the main findings were wrong and visibly arrived at on the basis of an argumentation which flew in the face of a legally sound interpretation of the provisions of an international agreement, but also because the Panel gave no indication whatsoever as to what in its view would be the proper legal basis for a GATT-consistent solution to a recognized, very serious and very real problem. Japan had just questioned whether that was the Panel's task; but he wondered how the Council, or the Panel, could expect a contracting party to implement any of the conclusions and recommendations if there was absolute legal insecurity as to which direction such a party should go, and as to what the proper legal basis was.

As a consequence of these concerns, the Community had provided in writing the reasons for its objections to this report, in line with Section G.2 of the CONTRACTING PARTIES' April 1989 Decision on improvements

to the GATT dispute settlement rules and procedures (L/6489). Regrettably, this communication (L/6676) could only be circulated on the present day, largely for technical reasons. While it would be inappropriate for its text to be read out in full, he would recall the three main points in that communication. The first concerned the Panel's qualification of the anti-circumvention duties as internal taxes rather than duties within the meaning of Articles I and II. In so doing, the Panel had simply ignored the words "in connection with importation" in Articles I and II, and had not even attempted to give them any independent meaning. This alone, in the Community's view, should be sufficient to reject the Panel's findings. Secondly, and most importantly, the Panel had interpreted Article XX (d) not only narrowly but in a manner which meant that it could not be used at all as a legal basis to prevent clear cases of circumvention of GATT-consistent measures. This interpretation, in the Community's view, was simply inconsistent with the clear intention and very purpose of this fundamental provision and would, if accepted, seriously prejudge the negotiations on appropriate GATT procedures to deal with the circumvention of anti-dumping duties. Thirdly, as far as the acceptance of undertakings on parts was concerned, the Panel had opted for a broad interpretation of Article III:4. In so doing, it had extended the reasoning of the FIRA panel[6] by arguing that not only requirements which an enterprise was legally bound to carry out, but also those which an enterprise voluntarily accepted in order to obtain an advantage from the government, constituted "requirements" within the meaning of Article III:4. The consequences of this broad interpretation could be that any government incentive which resulted in a discrimination in favour of national products over foreign products on a contracting party's internal market, even where its purpose was to combat circumvention of anti-dumping duties or avoidance of a safeguard measure, could be prohibited in the future.

In the Community's view, the present case would certainly have been considered as appropriate for an appeal if the GATT had had an appeals procedure. The Community was convinced that any competent appeals body would have very much modified this report upon proper consideration. In the absence of such a body, the Community had no choice but to appeal to contracting parties and to the Council as a collective body, to study and reflect carefully upon its comments in taking a position on the question of whether this report should be adopted.

The representative of Canada recalled that at the previous Council meeting Canada had indicated that it had not had time to adequately and carefully consider this important report. Having since had such an opportunity, Canada supported its adoption. The Panel decision was confined to the ruling on the consistency of specific measures taken by the Community in light of the provisions of the General Agreement, and did not address the need for anti-circumvention measures. There was indeed a need for the CONTRACTING PARTIES to develop agreed rules relating to the issue of circumvention, and Canada considered the Uruguay Round to be the most appropriate forum for undertaking this task.

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[6] Canada - Administration of the Foreign Investment Review Act (BISD 30/140).

The representative of Hong Kong recalled that at the previous Council meeting Hong Kong had said that it was prepared to support the adoption of this report, and that it would carefully consider the additional points made by the Community and by Mr. Groser on behalf of the Panel Chairman. As a result of this re-examination, Hong Kong remained convinced by the Panel's arguments that Article XX(d) did not provide a sufficient legal basis for the Community's regulation on imported parts and components. Hong Kong shared the Panel's view that the general exceptions in Article XX should be interpreted narrowly and, in particular, it considered that this Article should not be used to justify action against companies pursuing an alternative, but legitimate, commercial strategy -- such as the relocation of an operation. In Hong Kong's view, it was important to differentiate between "evasion" and "avoidance". However, it understood the Community's concern, and accepted the need to deal with the problem of circumvention; but this should, of course, as Canada had just said, be by multilateral negotiation and not by unilateral decision. In conclusion, Hong Kong supported the adoption of this report at the present meeting.

The representative of Korea recalled that at the previous Council meeting his delegation had also supported adoption of this report, because Korea considered its findings and conclusions clear, sound and logical on the issue of the inconsistency of the measures concerned with the General Agreement. His delegation's view had not changed in spite of the arguments just put forward by the Community and those in document L/6676. Therefore, his delegation supported adoption of the report at the present meeting.

The representative of Mexico said that, for lack of sufficient time to examine this report prior to the previous Council meeting, his delegation had not commented on it then. Having listened carefully to both parties' statements, his delegation understood their views, and also that there could be a divergence of views between them -- the report was very complex, and dealt with a number of points in the General Agreement which were of interest to all. Mexico agreed with the Panel's general line of reasoning and, in particular, that the general exceptions covered by Article XX should be very carefully monitored, and used only when there was due justification in conformity with the provisions invoked. His delegation regretted, however, that the Panel had made some comments on the Uruguay Round negotiating process. In its view, the negotiations should be maintained as an entity separate from the contractual obligations in the General Agreement. Aside from this comment, his delegation supported adoption of this report.

The representative of the United States said that it was important from the outset to keep in mind the exact dimensions of the issue addressed by the Panel. Paragraph 5.28 of the report clearly stated that "the Panel would like to underline that its task was limited to an examination of the measures taken by the EEC in light of the existing provisions of the General Agreement invoked by the parties to the dispute." Through that recitation, the United States wanted there to be no doubt about what the Panel had done, and what it had not done. The Panel had not ruled on anti-circumvention measures in general or on measures expressly justified on a basis other than Article XX(d). The United States believed that

legitimate anti-circumvention measures were necessary to maintain the careful balance of rights and obligations envisioned under the General Agreement. Evasion or circumvention of legitimately-imposed anti-dumping duties contravened the purpose of GATT and Anti-Dumping Code[7] provisions, and undermined the effectiveness of the GATT and Code disciplines relating to dumping and anti-dumping practices.

The evolution of international production and commerce had led to circumstances in which firms could, and did, readily circumvent the purpose and effectiveness of anti-dumping duties imposed in conformity with Article VI of the General Agreement and the applicable Anti-dumping Code provisions. In the commercial environment of the 1990s, actual "importation" of a product, or of its parts and components, might occur in a variety of ways and stages. In certain situations, assembly operations might be a sham to avoid the payment of anti-dumping duties. It was, of course, a general principle of international customs practice that substance should prevail over the form of a transaction. Anti-circumvention actions that were taken consistent with the applicable provisions of the General Agreement should not be evaluated in isolation from the commercial context in which they were applied. Simply put, anti-circumvention measures were a direct response to the changes in methods of manufacture just described.

Contracting parties should be permitted sufficient flexibility to apply anti-circumvention measures effectively. To deny contracting parties the means by which to address practices that could arise out of these new methods of manufacture would be to undermine the remedies provided by Article VI of the GATT and the applicable provisions of the Anti-Dumping Code. It was equally important, however, that contracting parties applying such measures did so in a manner consistent with their GATT obligations. While the growing internationalization of manufacturing assembly operations and the ease of multinational sourcing of parts had contributed to difficulties in administering anti-dumping measures under current rules, it had also underscored the importance of applying anti-circumvention measures on a fair and equitable basis so that legitimate trade was not disrupted. Just as contracting parties should have the right to impose anti-circumvention measures to counteract unfair trading practices, so should they have the obligation to ensure that such measures were applied in a manner that was consistent with the principles embodied in Article VI of the GATT and the Anti-Dumping Code.

The United States had listened carefully to the debate over the course of the present and previous Council meetings and had read, in the admittedly limited time available, the Community's written comments in L/6676. While it recognized the complexities of the issues raised by the report, the United States was also mindful of the importance of ensuring that dispute settlement operate effectively: contracting parties should be confident that recourse to dispute settlement would lead to definitive

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[7]Agreement on the Implementation of Article VI (BISD 26S/171).

results on a timely basis -- the difficulties presented in terms of conforming domestic legislation notwithstanding. On this basis, the United States was prepared to join a consensus in support of adoption of the report.

The representative of Finland, speaking on behalf of the Nordic countries, said that the report raised two issues that were important to the entire trading community. First, the Panel had adopted a restrictive interpretation of Article XX(d); the Nordic countries supported this interpretation and regarded it as a significant matter of principle. Second, the Panel had reached a technical but nevertheless important conclusion regarding charges imposed, on nationally manufactured products, under Article III; in their view, this conclusion also seemed to be valid. The Nordic countries recognized, however, the complexities of some of the issues at hand, and had noted the Community's oral and written arguments. These points would undoubtedly need to be given due consideration since, as all knew, the issue of anti-circumvention was presently a matter under negotiation in the Uruguay Round. The Nordic countries were aiming at a balanced result in these negotiations; this required, in their view, improvements in the anti-dumping disciplines. At the same time, however, they had been, and remained, ready to study the issues concerning circumvention and anti-circumvention, and to improve and develop rules and disciplines on the latter. The conclusions of the present report should, in the Nordic countries' view, be reflected in an appropriate manner in a future improved Anti-Dumping Code, if anti-circumvention rules were to be included therein. Having said this, the Nordic countries were prepared to accept adoption of the report.

The representative of India recalled that his delegation had made some preliminary comments on this subject at the April Council meeting. His authorities had since examined this report carefully, along with the Community's preliminary statement made at that meeting. His delegation considered that the Panel had given a reasoned argument of its finding that the duties imposed by the Community on products assembled or produced within its frontiers were inconsistent with Article III:2 and were not justified by Article XX(d). His delegation therefore supported adoption of this report. It, however, recognized that anti-circumvention issues were under negotiation in the Uruguay Round, and hoped that therein, the problems in administering anti-dumping laws, arising out of the increased internationalization of production processes, would be addressed satisfactorily and in a manner that would take into account the interests of both the exporting and importing countries.

The representative of the Malaysia, speaking on behalf of the ASEAN contracting parties, recalled that they had expressed their view on this issue at the previous Council meeting. He reiterated their support for the Panel's findings, and urged the report's early adoption and implementation.

The representative of Switzerland said that his authorities had carefully considered this report and had, like others, noted the complexity and number of issues it raised. His authorities could, in general terms, support the Panel's analysis and conclusions and were ready to support

adoption of its report and its recommendations. However, one needed to be conscious of the fact that the Panel had worked on the basis of the present provisions of the General Agreement, and it was up to negotiators in the Uruguay Round to address the problems left unsolved, in particular the issue of circumvention of anti-dumping duties. It was in the framework of these negotiations that a clear, legal multilateral basis should be set for the implementation of anti-dumping measures.

The representative of the European Communities said that having heard the statements and comments made thus far, he would state the Community's position on this issue. First, however, he wished to know from the Secretariat if the report still carried a restricted status.

The Director-General said that while the report itself had not been published, its contents, like most things that were discussed in the Council, were widely known and reported in various publications.

The representative of the European Communities said that he was not so much concerned that press agencies, such as Reuters for example, should talk about this report, as that the GATT newsletter "Focus", in its issue number 70, had chosen to give a full account of the report. He had posed this question in order to flag the as-yet confidential nature of the report. Whether one liked it or not, "Focus" was seen as an official Secretariat publication, and was in this sense different from the other sources of information on GATT matters, such as the press-agencies. At one time or another, one would have to deal with this question of confidentiality of panel reports which could otherwise lead to difficulties.

This having been said, he would state the Community's position on the present report. If he was not mistaken, it appeared that all had recognized that there was indeed a problem which had not been resolved in the report because of the complexity and sensitivity of the issue. The fact remained, however, that this complex subject had to be dealt with through the Uruguay Round negotiations. He noted that reference had been made in the report to the views of a number of participants in the negotiations who had stated that the internationalization of production processes did raise a problem in terms of the implementation of anti-dumping legislation, and that this was being examined in those negotiations. In the Council's discussion on the present report, most delegations appeared to have given priority to the "mechanical" implementation of the dispute settlement procedure, without giving it too much thought. It was true, too, that a number of delegations had found the Panel's conclusions and recommendations satisfactory in terms of their respective national policies. He had been struck, however, by one delegation's reference to the Community's legislation as unilateral. He made clear that the Community's legislation was not unilateral, but, in fact, based on its international obligations. While it might be that the Community's interpretation was different from that of a majority of the contracting parties, to say that its legislation was unilateral was unacceptable.

Recalling that it was human to err, he said that panels could not be considered to be infallible either. However, it was true that a majority of contracting parties appeared to wish the expeditious adoption of the present report. In this regard, he underlined that the Community did not, and could not, in any way share the Panel's reasoning as summed up in paragraphs 6.1 and 6.2 of its report. It was, furthermore, examining carefully paragraph 6.3 which contained the Panel's recommendation, and which the Council would endorse by adopting the report. The Community did not intend to implement this recommendation mechanically and to the letter. The result of the Panel's work implied that circumvention would, in future, become a crucial problem in the Uruguay Round -- this was unavoidable. Therefore, all should take this problem into consideration and negotiate ways and means to offer to contracting parties the possibility of combating circumvention of anti-dumping legislation. Only when these negotiations had led to results that would be satisfactory from a contractual point of view, and which would deal in fact with this problem, would the Community examine the changes which might be brought to its present regulations. In light of these comments, the Community would not stand in the way of the adoption of this report.

The representative of Japan expressed his delegation's appreciation to the many contracting parties that had supported adoption of this report both at this and previous meetings. He also welcomed the Community's latest statement -- the key words of which seemed to be that it would not object to the adoption of the Panel report -- and commended its representative for it. If, however, there was an implication therein, and if he had not misunderstood it, that the Community would not, or might not be in a position to, implement fully the Panel's recommendations, then he would voice his concern, although he would recognize it as a statement of national position -- one which in itself could neither take away from or add to the Panel's finding, nor detract from the obligation to implement the Panel's report. This having been said, Japan might wish in future to come back to the Council on this issue, when it knew in greater detail how the Panel's recommendations were being implemented by the Community.

The representative of the United States said that he shared the Community's concerns on the question of how panel reports should be treated once they had been submitted to contracting parties. He proposed that the Council adopt a policy of derestricting panel reports when they had been circulated to contracting parties. He considered that, in fairness, all would be better served by such a policy.

The Council took note of the statements, adopted the Panel report in L/6657 and agreed that, in accordance with the procedure adopted by the Council in May 1988 (BISD 35S/331), the report was thereby derestricted.

The Director-General, referring to the points raised by the representatives of the Community and the United States concerning the confidentiality of panel reports, suggested that the Council might, at a future meeting, revise the procedure it had adopted in May 1988 and provide for automatic derestriction of a panel report from the moment it had been distributed to contracting parties. Experience had shown it to be practically impossible to ensure strict confidentiality from the moment a report had been distributed to all contracting parties.

The representative of the European Communities said that it would probably be too hasty to publish panel reports as soon as they had been circulated to contracting parties. A better solution would probably be to wait until a report had been discussed in the Council. Only then could the balance of opinions be publicly reflected. This point, however, deserved further reflection.

The Council took note of the statements.

9. Canada/EEC - Article XXVIII rights
- Recourse to Article XXIII:2 by Canada (DS12/2)

The Chairman recalled that at its meeting on 3 April the Council had considered this matter under the title "EEC - Exports of Canadian Grains", and had agreed to revert to it at the present meeting.

The representative of Canada said that his country's bilateral consultations with the European Economic Community appeared to be leading to agreement on an approach to this issue, and that Canada therefore would not request the establishment of a panel at the present meeting. Canada intended to advise the Council on developments on this matter.

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

10. Thailand - Restrictions on importation of and internal taxes on cigarettes
- Panel terms of reference and composition

The Chairman recalled that at its meeting on 3 April the Council had established a panel to examine the United States' complaint. This item was on the agenda of the present meeting for the purpose of informing contracting parties on three points: (1) the Panel's terms of reference; (2) its composition, and (3) the terms of an Understanding reached by the parties to the dispute. He informed the Council that, following informal consultations, the Panel would have standard terms of reference as follows:

> "To examine, in the light of the relevant GATT provisions, the matter referred to the CONTRACTING PARTIES by the United States in document DS10/2 and to make such findings as will assist the CONTRACTING PARTIES in making the recommendations or in giving the rulings provided for in Article XXIII:2."

With respect to the Panel's composition, and following consultations, Mr. Rudolf Ramsauer had been designated to serve as the Panel Chairman, and Mr. Pekka Huhtaniemi and Mr. Adrian Macey to serve as members. He called on the representative of Thailand to speak in respect of the third point.

The representative of Thailand said that his Government could accept the standard terms of reference on the bas..s of the following understanding agreed between the two parties:

"(1) The United States agrees to present its first submission in advance of Thailand's first submission and to allow the Thai authorities a reasonable period to prepare their own first submission.

(2) The two parties understand that Thailand will make a request for the Panel to consult with competent international organizations on technical aspects such as the health effects of cigarette use and consumption. It is further understood that if Thailand makes such a request, the Panel may so consult.

(3) The two parties agree that the "relevant GATT provisions" referred to in the terms of reference include the Protocol of Accession of Thailand (BISD, 29S/3) and the CONTRACTING PARTIES decision of 17 June 1987 (BISD 34S/28)."

Both parties had also agreed that the above understanding would be communicated in writing to the Panel. He requested the United States delegation to confirm its agreement on the mutual understanding he had just outlined.

In order to put the cigarette issue between the United States and Thailand into its proper perspective, he wished to register the following points of great concern to his Government. First, the United States administration was concurrently carrying out an investigation of the cigarette issue under Section 301 of the Omnibus Trade and Competitiveness Act of 1988. His delegation had its own opinion as to whether such a bilateral process was consistent with the spirit of multilateralism which all upheld as the guiding principle of the General Agreement; while his delegation would keep its opinion to itself at this stage, it nevertheless felt that it was of utmost importance to stress that any use or attempt to use bilateral pressure while the multilateral dispute settlement process was underway could only result in the undermining of the multilateral process itself. Therefore, it was imperative that the bilateral pressure be terminated forthwith.

Secondly, there should be an assurance that once rulings and/or recommendations were made by the CONTRACTING PARTIES, there would be no further recourse to bilateral pressure, through national legislation or otherwise, to seek additional concessions or redress apart from what was covered in the CONTRACTING PARTIES' rulings or recommendations. Finally, his delegation's understanding of the scope of the terms of reference and the Panel process was that the examination of, and the findings in, the present case by the Panel would not be limited exclusively to the question of what was included in the scope of Thailand's specific obligations under the General Agreement. The examination and the findings, his delegation trusted, would also cover the twin question of what was not in the scope of such obligations. He raised this point because there were certain issues the relevance of which to Thailand's obligations under the General Agreement was unclear and therefore should be addressed to complete the findings.

The representative of the United States confirmed that the Thai representative's statement as to the three-point understanding agreed to

by the two parties indeed reflected their mutual understanding, and that it would be communicated to the Panel. The United States did not, however, share the additional views expressed by the Thai representative in the remainder of his statement, which were ones of national position and did not reflect agreed views. The United States was willing to be as flexible as possible in accommodating procedural requests from Thailand, recognizing both countries' interest in reaching a timely resolution of this dispute consistent with the intent of the dispute settlement procedures approved in April 1989.[8] It was confident that the Panel would consider all relevant issues in making its findings and recommendations on the matters raised in the complaint by the United States.

The Council took note of the statements, of the Panel terms of reference and composition, and of the Understanding between the parties.

11. Federal Republic of Germany - Restriction on the circulation of Austrian lorries
- Recourse to Article XXII:1 by Austria (DS14/1)

The representative of Austria, speaking under "Other Business", recalled that Austria had requested, on 21 February 1990, consultations on the decision by the Federal Republic of Germany to ban by 1 January 1990 the circulation of some 212,000 Austrian lorries during night hours in the whole area of the Federal Republic of Germany (DS14/1). Consultations had since taken place in accordance with paragraph C.3 of the CONTRACTING PARTIES' 1989 Decision on improvements to the GATT dispute settlement rules and procedures (L/6489). Some progress had been made, but serious discrimination still existed and the consultations had therefore not yet led to satisfying results. The economic effects of the results so far achieved were under examination. Austria reserved its full rights under the General Agreement to request, if needed, the establishment of a panel by the Council at its next regular meeting on 14 June.

The Council took note of the statement.

12. EEC - Agreements on Trade and Commercial and Economic Cooperation with the Czech and Slovak Federal Republic, Bulgaria and the German Democratic Republic

The representative of the European Communities, speaking under "Other Business", said that on 7 May 1990, the Community had signed an Agreement on trade and commercial and economic cooperation with the Czech and Slovak Federal Republic which set their respective commercial and economic relations on a new basis. On 8 May 1990, similar Agreements had also been signed with Bulgaria, an observer to the GATT, and the German Democratic

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[8] Improvements to the GATT Dispute Settlement Rules and Procedures - Decision of 12 April 1989 (L/6489).

Republic, which was not in the GATT system. All these agreements were similar to the ones previously signed with Hungary and Poland. The Community intended to make copies of these agreements available shortly to contracting parties. These agreements would come into effect two months after ratification, which was expected to take place in July or August 1990. The agreements were based on the most-favoured-nation principle and were expected to lead to substantial trade liberalization between the countries concerned.

The representative of Bulgaria, speaking as observer, said the Agreement between his country and the Community was not of a preferential character and provided for most-favoured-nation treatment. The Agreement set out, inter alia, a timetable for the elimination of specific quantitative restrictions applied at present by the Community on some Bulgarian products. It also contained sections on commercial and economic cooperation aimed at facilitating and diversifying economic links. The Agreement envisaged possible modification by mutual consent in order to take account of new developments, notably the situation that would arise from Bulgaria's accession to GATT. The Agreement was important for the normalization of trade and economic links between Bulgaria and the Community and provided a basis for future expansion and diversification thereof. Bulgaria was ready to provide more details on the Agreement in the framework of its accession Working Party.

The representative of the Czech and Slovak Federal Republic confirmed the signature of a bilateral Agreement with the Community which would help to strengthen and extend the traditional links between the latter and his country. The Agreement would create favourable conditions for the further development of trade, and the promotion of commercial and economic cooperation in areas of mutual interest on the basis of equity, non-discrimination and reciprocity. Both parties had reaffirmed their commitment to GATT. His country was pleased with the provision concerning the elimination of quantitative restrictions applied by the Community on certain products from the Czech and Slovak Federal Republic and for which a timetable had been set.

The Council took note of the statements.

13. Japan - Trade in semi-conductors
- Follow-up on the Panel report (L/6309)

The representative of the United States, speaking under "Other Business", said that his Government had read recently of a number of anti-dumping undertakings and associated agreements negotiated between the European Economic Community and both the Government of Japan and Japanese semiconductor manufacturers. As was well known, the United States had a significant interest in matters affecting trade in these products. It therefore requested the representative of the Community to notify and make available to contracting parties the complete text of any such undertakings and arrangements pertaining to semiconductors. The United States believed that such a notification would also be of interest to a number of other delegations, and would be in keeping with mutual efforts to improve surveillance over trade policy measures taken by contracting parties.

The representative of the European Communities recalled that at the end of the semiconductors Panel, the Community had made a clear statement[9] on the arrangements that allowed implementation of the semiconductors Panel report (L/6309), and that this information had been made available. He considered that it was more incumbent upon Japan than on the Community, at this point in time, to provide any further information on this. As far as the Community was considered, it would be willing to look favourably into the question of any further information it ought to make available.

The Council took note of the statements.

14. Application of Article XXXV

The representative of the United States, speaking under "Other Business", recalled that at the 3 April Council meeting his delegation had announced its intention to initiate an effort to definitively interpret Article XXXV, and that it would bring its proposal before the Council at a later time. The United States had also requested the assistance of the Secretariat in determining the intent and meaning of the provision. The Secretariat had supplied a record of statements and rulings relevant to Article XXXV but, in the United States' view, a definite interpretation could not be drawn from that material. It wished now to state more completely its views concerning Article XXXV.

The United States had examined Article XXXV and had concluded that past interpretations of that Article, while useful and possibly necessary at the time, were not accurate and were no longer necessary. Article XXXV:1 had been interpreted to mean that a contracting party was denied its rights under Article XXXV if it chose to enter into discussions with an acceding country concerning that country's future GATT schedule of concessions. The United States believed this interpretation to be incorrect. Article XXXV referred exclusively to "contracting parties" and to the application of the General Agreement between contracting parties. However, an acceding country did not become a contracting party until after the accession discussions had concluded.

In the United States' view, a contracting party should be able to request concessions of an acceding country, conduct bilateral discussions with that country, and, if the two countries could not reach agreement on acceptable bilateral concessions, that contracting party should be able to invoke non-application on the basis of non-agreement at the time the acceding country became a contracting party, as was provided for in Article XXXV.

The United States requested Council members to reflect on what it had said, on the wording of Article XXXV, and on the intent of the Article in light of the historical record dating back to its inclusion in the General

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[9] C/M/234, p. 81. See also C/M/230, pp. 11-12 for Japan's statement.

Agreement at the March 1948 meeting in Havana. At the following Council meeting, the United States wished to engage in a dialogue with other contracting parties concerning these issues, with a view to clarifying their intent.

The representative of the European Communities said that the Community considered the issue of the interpretation of Article XXXV as one deserving attention, and that it would look at the implications of the statement just made.

The Council took note of the statements.