GENERAL AGREEMENT ON

TARIFFS AND TRADE

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MINUTES OF MEETING

Held in the Centre William Rappard
on 3 October 1990

Chairman: Mr. Rubens Ricupero (Brazil)

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The present Council meeting coincided with the date of German unification, and the Chairman, speaking prior to the adoption of the Agenda, said that while the Council was not the appropriate forum for a debate on this event, one could not let it pass without mention.

He said that the present date was one of far-reaching significance both in its real and symbolic content, the most concrete and striking manifestation of the end of the Cold War, bringing to an end its most regrettable symbol -- the division of Berlin, of Germany, of Europe, and of the world. It was also the strongest encouragement so far for an era in which multilateral cooperation would finally lead to the lasting solution of the backlog of political problems inherited from the past. One hoped that it would be a positive omen for the achievement of the same spirit of constructive, multilateral cooperation in the sphere of economic problems, starting with the conclusion of the Uruguay Round and the reinforcement of the world trading system. On behalf of Council members, he expressed their warmest congratulations and the sincere wish that German unification would bring peace, prosperity and well-being to the German people, to the people of Europe and of the world.

The representative of Germany said that while it was rare that a member of the European Economic Community took the floor as a contracting party in the Council, the present occasion was special and warranted an exception to the customary practice. The establishment of German unity and the agreements connected thereto were indeed historic events. In his speech during the general debate at the UN General Assembly, Germany's Foreign Minister had said that in its present hour, Germany was conscious

of its European and global responsibilities, and that it would render its contribution to peace and freedom in Europe and in the world. Germany was happy to have achieved the goal of unity and free self-determination, and was grateful.

He said that German unity was the result of a peaceful, democratic process in which the entire German nation had exercised its right of free self-determination; at the same time, the unified nation was firmly integrated into the Community, continuing the tradition of close cooperation and solidarity that had characterized the development of Western Europe during the last 40 years.

The principles of market economy and free competition that had guided the recovery of the Federal Republic of Germany (FRG) after the Second World War, now applied also to the 16 million Germans on the territory of the former German Democratic Republic (GDR). As all were aware, the FRG had traditionally depended to a large degree on exports and imports, and had for a long time ranked among the top nations in world trade. This interconnection in world trade would increase in the future, bringing about a new dynamic element therein. He was therefore convinced that German unification would have positive effects on Germany's trade partners. Germany's domestic market would also be enlarged, thus creating enhanced export possibilities for third countries. Indeed, German unification would contribute to an improved performance of the world economy.

As a developed country, the FRG was conscious of its responsibility towards developing countries, and he recalled that the German Chancellor, in his message on the occasion of German unity, had emphasized that investment in German unity would not be made at the expense of the third world. Germany would, on the contrary, step up its efforts to combat poverty and underdevelopment, and to protect the environment. For Germans, 3 October was a day of joy, of deep emotion and of reflection. They thanked all those who had supported their legitimate rights and had placed trust in them.

As reflected under Agenda item 1, a number of representatives spoke in response to the above statements.

Before adoption of the Agenda, the Chairman, on behalf of the Council, also welcomed Tunisia, Venezuela and Bolivia as the 97th, 98th and 99th contracting parties respectively, and welcomed Venezuela and Bolivia as members of the Council.

1. German unification: Transitional measures adopted by the European Communities
   - Communication from the European Communities (L/6730)

The representative of the European Communities, referring to the communication from his delegation in L/6730, said that German unification had been completed and unity was now achieved. At the June Council meeting, the Community and its member States had welcomed the treaty of

economic and monetary union between the two parts of Germany and the creation of a de facto customs union between the Community and the eastern part of Germany. Coincidentally, the present Council meeting was on the same historic day of German unification, thus providing the opportunity for all to share their joy and satisfaction and to celebrate the unity of a people artificially separated by the vicissitudes of history, as well as an historical stage in the unification of Europe and in the strengthening of the multilateral system towards its universalization. Perhaps still more important, all this had taken place in a democratic and peaceful process by mutual agreement among all the parties concerned, on the basis of respect for individual freedoms and of collective solidarity. This was a unique event, and as the first peaceful, democratically chosen unification, it was a precedent for other unifications to come.

Not only was Germany now united but the Community and the GATT were also enlarged and strengthened. This was a reinforcement -- but also at the same time a greater collective responsibility -- for the multilateral system. In the present-day world, a State-trading economy was moving inexorably towards integration into the market economy, with its blessings and with its evils. For the Community's part, this event called for transitional arrangements to smooth the way for that integration and to honour the trust that it would live up to existing international obligations. In this process, Germany and the Community would exercise their internal and external solidarity, but would need at the same time multilateral support and understanding. Economic solidarity was, and would remain, the cement holding the whole process together.

Clearly, the agreements between the former German Democratic Republic (GDR) and the Council for Mutual Economic Assistance (CMEA) countries and Yugoslavia were not compatible with Article I of the General Agreement. Equally clearly, the Community could not ignore the legitimate trust of the central and eastern European countries which had allowed and facilitated the unification process; the Community needed to ensure that the undertakings made were honoured and that these countries' legitimate trade interests were taken into account. In this context, the Community's attitude was very important, and it intended to act in a manner that was above reproach. By acting as a beacon and a symbol for the market economy, it would be able to help and speed up the irreversible progression of the central and eastern European countries towards a market economy; this was why the Community had adopted the transitional measures described in L/6730.

Accordingly, the process of integration of the other part of Germany into the Community should be transparent and should take place within the discipline and rules of the General Agreement. For this reason the Community was now formally requesting a waiver under Article XXV:5 to cover the transitional measures for the years 1990 and 1991. Furthermore, and independently of this issue, the Community was prepared to accept, if contracting parties so wished, the establishment of a GATT mechanism to examine the consequences of the integration of the other part of Germany into the Community, and to enter into bilateral consultations with contracting parties which considered that their trade interests might be adversely affected. The Community nevertheless firmly believed that the

integration of the other part of Germany into the Community and into GATT could have only positive effects on international trade and on the multilateral system in the medium and long term. That integration was, more than a profession of faith, an act of faith in the multilateral system.

The representatives of the United States, Canada, Sweden on behalf of the Nordic countries, Japan, Tanzania, Hungary, Australia, Switzerland, Poland, Austria, New Zealand, Morocco, India, Egypt, Cameroon, Bangladesh, Korea, Uruguay, Romania, Hong Kong, Argentina, Bolivia, Tunisia, Chile, Mexico and Colombia, and the observers from Costa Rica, Honduras and the USSR congratulated the German Government and its people on the occasion of what many termed a truly historic event, which, according to some, had outstanding importance in political and economic terms for the future of Germany, Europe and of the world.

The representative of the United States said that while the United States would continue to be fully supportive of the unification of Germany as the process of integrating two economies into one was carried out, it could not be insensitive to the GATT implications of such unification. It would expect the German Government and the Community officials to take full account of the legitimate interests of third countries in the implementation of the unification programme. The Community had indeed indicated that this would be the case, and that it would circulate to contracting parties more precise information regarding tariff preferences and other GATT-related aspects of the unification. In this regard, the United States had advised the Community of the types of information it would find useful, and had given a copy of its communication to the Secretariat so that it could be made available to interested delegations. The United States would review carefully the information to be supplied by the Community in order to evaluate fully the impact of the unification measures. Pending that review, the United States reserved its GATT rights in this matter, including the right to request the establishment of a working party to examine the issue and to obtain a mechanism for monitoring the application of the measures.

The representative of Canada said that while his country welcomed the Community's willingness to provide all the details of the measures to contracting parties, and its assurances with respect to consultation with contracting parties, Canada wished nevertheless to study the specific measures as proposed and to leave open the possibility to revert to this matter at a future date.

The representative of Sweden, on behalf of the Nordic countries, said that these countries understood fully the difficulties connected with German unification and, consequently, the need for some transitional measures. Since any such measures required some form of surveillance, the Nordic countries appreciated the Community's preparedness to be transparent and to discuss the matter further.

The representative of Japan said that the unification of Germany as well as the integration of the former GDR into the Community would have various impacts on international trade. Japan appreciated the Community's

efforts to avoid serious economic and social disruption in the territory of the former GDR and its eastern trading partners, and hoped that the necessary transitional measures would take into account the legitimate interests of other contracting parties. Japan particularly appreciated the Community's readiness to provide further information and to have these measures examined by contracting parties. Japan, in a positive spirit and with an open mind, would examine in detail the Community's request concerning transitional measures.

The representative of Hungary said that the former GDR had been one of Hungary's major trading partners and that the unified Germany would undoubtedly become its largest partner in terms of trade and economic cooperation. Taking these considerations into account, Hungary believed that it was justified to expect that the potential, and hopefully short-term, negative consequences of this process on its economy and trade would be avoided. All possible means should be deployed to maintain and expand previously existing trade flows, as well as to compensate for losses that had already occurred or were likely to occur. With regard to the Community's transitional measures, as outlined in L/6730, Hungary believed that the establishment of tariff quotas on a duty-free basis might contribute to the accomplishment of the Community's objectives, although their application might be limited in quantity or value terms.

He noted that Hungary had significant trade interests in agricultural products and that the eastern part of Germany constituted an important market for Hungarian exporters. Therefore, a sudden shift from a régime without import charges to one solely guided by the Community's Common Agricultural Policy would have a disastrous effect on Hungary's trade possibilities. However, the Community had stated in its communication that the transitional arrangements outlined therein did not apply to agricultural products. Hungary's understanding of the Annex of the relevant EEC Council Regulation (No. 2684/90 of 17 September 1990), was that the entire agricultural sector as such was not excluded from these measures; rather, their application was limited to those products that were subjected at the same time to tariffs and to a régime of reference or minimum prices. Even if this understanding was correct, it was regrettable that the Community had not exempted a larger majority of agricultural products from the imposition of import charges. Hungary could only hope that the Community's position would change favourably in this respect fairly soon.

The representative of the Czech and Slovak Federal Republic welcomed the Community's adoption of transitional measures which would help to overcome the problems of trade between his country and the former GDR. These measures were of a temporary nature and would be in force until the end of 1991, with the possibility of prolongation. The Czech and Slovak Federal Republic hoped that contracting parties would understand the necessity of these exceptional measures, which concerned only a limited volume of goods according to the bilateral agreements concluded between the GDR and the CMEA countries. The Czech and Slovak Federal Republic presumed that in light of these facts it would not be necessary to establish a working party, but was ready to participate in such a working party if one were established.

The representative of Australia welcomed the Community's willingness to have the transitional arrangements subjected to processes of consultation and transparent examination. He emphasized Australia's interest in information concerning the potential trade effects on the interests of third countries, and said that any working party examination that might be pursued should not confine itself solely to the transitional arrangements concerning the GDR's former CMEA partners but should also consider a number of broader issues which Australia would raise at a future date.

The representative of Switzerland said that the transitional measures were necessitated by the historic political event of German unification. Switzerland looked forward to receiving additional and more precise information, and appreciated the transparency with which this process was to be conducted in the GATT.

The representative of Poland noted that German unification in economic terms meant that Poland now neighboured the world's largest trading partner. His country hoped that unification would not have negative effects on its trade relations with its biggest trading partner and with other members of the Community, and in this context welcomed the Community's transitional measures relating to the external trade of the former GDR. Poland was in the process of studying these measures and, once this was completed, would duly inform contracting parties about all the implications.

The representative of Austria thanked the Community for its information concerning the transitional measures and for its preparedness to discuss possible problems.

The representative of New Zealand said that New Zealand endorsed the importance given to avoiding disruption, both domestically and in third-country trading nations. New Zealand looked forward to the transitional measures proceeding in line with the principles and arrangements of the GATT, and appreciated the Community's assurance of transparency and consultation on this score.

The representative of India said that his delegation appreciated the Community's statement and the information it had provided on the transitional arrangements resulting from German unification. His delegation also appreciated that this was being done in a transparent manner and with the possibility of consultations. India would study the communication in L/6730 and would consult with the Community and others.

The representative of Egypt said that he appreciated the Community's statement in regard to transparency and also its readiness to negotiate with other contracting parties. He noted that more than 60 per cent of Egypt's import and export trade was conducted with the Community, and that the former FRG had been Egypt's largest trading partner. He therefore welcomed the Community's communication, which his authorities would study, and appreciated the Community's invitation for further consultation.

The representative of the Cameroon said that he had noted with satisfaction the measures taken by the Community. Cameroon had had very strong links both with the Federal Republic and with the former GDR, and was certain that these measures would contribute to a reinforcement of those relations.

The representative of Korea thanked the Community for providing the information on transitional measures and said that his delegation wanted to be kept informed and consulted about further implications of German unification.

The representative of Uruguay said that his delegation had noted with satisfaction the Community's statement and the information in L/6730. Uruguay had a concrete interest in trade with Germany during the legitimate and justified transitional period that had just begun and would therefore participate in any working party established to examine the consequences of the integration of the other part of Germany into the Community.

The representative of Romania said that the Community's communication showed that reciprocal understanding was necessary on the part of all partners in regard to the complex aspects of the transition process. On the one hand, this process involved the integration of centrally-planned countries which had chosen the option of proceeding to free-market economies, and, on the other, it involved the demands made by other partners towards this first category of countries. A correlation between these two facets of the transition process would facilitate the transition of east-European economies toward market economies, and would at the same time facilitate the universality and homogeneity of the GATT. His delegation reserved the right to revert at a later date to problems raised by the Community's communication.

The representative of the European Communities said that his earlier statement on this item had contained important elements, which he would wish members to duly take into consideration, in addition to the Community's communication in L/6730. He recalled that he had specified the Community's wish to request a waiver under Article XXV:5, and said that such a request would be formally submitted shortly. At the same time, the Community would be pleased to have these issues examined in a GATT mechanism, in the spirit of economic solidarity which linked all within the multilateral system.

The Chairman noted that in due course this matter would call for some form of GATT examination.

The Council took note of the statements.

2. International Trade Centre UNCTAD/GATT
- Report of the Joint Advisory Group (ITC/AG(XXIII)/122)

Mr. Lebkowski (Poland), Vice-Chairman of the Joint Advisory Group (JAG), introduced the report on its twenty-third session (ITC/AG/XXIII 122). The Group had reviewed the activities of the

International Trade Centre (ITC) during 1989 and had formulated recommendations to the governing bodies of the UNCTAD and GATT. He recalled that the ITC's Executive Director had, inter alia, announced the adoption by the ITC of a strategy paper on women in development and emphasized the ITC's commitment to assisting least developed countries. The Executive Director had also recalled that the ITC's expenditure on technical cooperation activities had risen by 12% between 1988 and 1989 when it had reached a record level of US$29.6 million. During the period 1985-1989, the ITC's implementation had doubled in response to requests for assistance from developing countries. The Executive Director had also referred to the increased collaboration between the ITC and the UNDP. Intensification of consultations with the UNCTAD on technical cooperation programmes had highlighted the complementarity between the two organizations in trade policy and trade promotion. The UNCTAD had identified three sectors for further cooperation: trade information, training in trade promotion and the establishment of effective commercial policies.

The Group had invited the ITC to take into consideration, in the planning and execution of projects in all sub-programmes, how it might reflect the Group's expressed concern for environmental protection, the strengthened rôle of women, human resource development and the special needs of LDCs. As to the review of the ITC's activities during 1989, the Group had paid special attention to a number of sub-programmes, namely: export market development, trade in services, commodities, human resource development, import operations and techniques, monitoring of market opportunities in eastern Europe, and the participation of women in trade promotion activities.

The Group had also examined the draft section on trade promotion and export development of the Medium-Term Plan for 1992-1997. The Group had endorsed the overall thrust of the strategy proposed by the ITC for that period, and had agreed that the ITC should continue its work further to refine the priorities established in the Medium-Term Plan and report to the next session of the Group on its proposals in this regard. The Group had also expressed its support for the enterprise-oriented approach, subject to two qualifications: first, a balance should be achieved between this type of assistance and broader technical cooperation in trade development and promotion as a whole; and second, the importance of spreading the benefits of this assistance to the entire industry.

On behalf of the Group, he expressed gratitude to the Governments which had already announced their contribution to the ITC's extra-budgetary resources, namely: Austria, Canada, China, Denmark, Finland, France, India, Indonesia, Ireland, Japan, the Republic of Korea, Malta, Norway, Poland, Sri Lanka, Sweden and Switzerland.

The representatives of Peru, Norway on behalf of the Nordic countries, Argentina, Bolivia, Morocco, Cuba, Bangladesh, Uruguay, Switzerland, the European Communities, Pakistan, India, Tunisia, Senegal, Nicaragua and the observer for Costa Rica expressed interest in and appreciation for the useful and valuable work of the ITC, its Executive Director and secretariat.

The representatives of Peru, Argentina, Cuba, Bangladesh, Uruguay, Pakistan, India, Tunisia, Senegal, Nicaragua and the observer for Costa Rica drew attention to and thanked the ITC for assistance which their respective countries had been given.

The representatives of Morocco, Uruguay, Pakistan, India and Tunisia supported the recommendations contained in the report and the adoption thereof. The representatives of the European Communities and India supported in particular the recommendation that ITC assistance be extended to include new areas such as trade in services.

The representatives of Norway on behalf of the Nordic Countries, Argentina, Uruguay, Sri Lanka and Senegal urged donors to continue to finance and even to increase their contributions to the ITC or appealed to other countries to make a contribution.

The representative of Peru said that ITC assistance to his country had helped it greatly in liberalizing its trade policies. Peru had, for example, reduced the level of its tariffs, eliminated all import prohibitions and had set a standard for the elimination of all import licensing régimes. With regard to its export-related policies also, Peru had found the ITC's trade promotion assistance to be very beneficial.

The representative of Norway, on behalf of the Nordic countries, said that their strong support for the ITC's activities was well known; their combined share of ITC financing was about one-third of the total. He said that the recent JAG meeting, in particular, had been useful because delegations had spent quite some time discussing the ITC's rôle in a broader context. Specifically, the Nordic countries called attention to paragraph 123 of the report where important new elements in the planning of future ITC activities were mentioned. The Nordic countries were pleased to note that the ITC had already made important progress in addressing these new challenges. The elaboration of the ITC's regional strategy was particularly welcome. Of equal importance was the inclusion of some of their long-standing concerns as to the planning of future ITC work, namely issues such as the rôle of women, human resource development, environmental aspects and the needs of least-developed countries. In the light of recent developments in international political and economic relations, the Nordic countries were convinced that the ITC continued to have a useful rôle to play. Indeed, the ITC was among the first organizations in the UN family to have actively adopted practical work in such highly topical fields as the development of the enterprise sector and the improvement of the working of the market mechanism. The Nordic countries were confident that the ITC's current new orientations merited a close look also from some major donors which, for some reason, did not seem to have yet discovered that the ITC was an efficient tool in helping developing countries integrate into the international economy through increased trade.

The representative of Argentina said that his delegation hoped that GATT and the contracting parties would continue giving priority and assistance to the ITC in the interest of developing countries. Indeed, Argentina considered that the ITC carried out a task which was not to be found anywhere else.

The representative of Bolivia stressed the particular importance of ITC programmes which were being introduced at the level of small- and medium-sized enterprises in developing countries.

The representative of Bangladesh said that his country was particularly pleased that the ITC had devoted about 30 per cent of its technical cooperation activities to the export development of least-developed countries, although his delegation would like to see such assistance increase further. Bangladesh was also glad to see that the ITC had worked out a special programme for these countries, which would have a very important bearing on its rôle in the context of the programme of action recently adopted at the Second UN Conference on Least-Developed Countries in Paris.

The representative of Uruguay noted that the JAG report had mentioned that the ITC had assumed greater responsibilities in respect of very sensitive sectors of interest to developing countries. Uruguay believed that the ITC's activities should be seconded and assisted by all contracting parties.

The representative of Switzerland said that his authorities attached great importance to the ITC's work. As the second biggest donor country, Switzerland would continue to lend its strong support to the ITC.

The representative of the European Communities said that the JAG's report was testimony to the importance of the ITC's work. The thrust in particular of the Medium-Term Plan was central to the work of the ITC and was noteworthy; the provision of a mechanism for evaluating that Plan was also an issue of importance to the Community.

The representative of Senegal said that his country appreciated the ITC's efforts in lending support to developing countries in the area of their own economic development, the increased participation of women in their development and in the training of officials.

The Council took note of the statements and adopted the report.

3. United States - Proposed legislation concerning marketing orders on kiwis, plums, nectarines and apples
- Communication from Chile (L/6723)

The representative of Chile, referring to the communication from his delegation in document L/6723, recalled that on 29 November 1989, at a meeting of the Surveillance Body of the Uruguay Round, his delegation had drawn attention to the perils of certain protectionist trends in some of the positions taken by the United States, which ran contrary to the spirit of GATT provisions and the ongoing negotiations. Concern had been expressed then[1] about the US marketing orders, which were programmes that

[1] MTN/SB/W/10.

regulated the quality and quantity of horticultural and fruit products in order to maximize prices and reduce uncertainties for local producers thereof; that concern was unfortunately now becoming real. In July 1990, the US Senate had proposed an amendment to the 1990 Farm Bill to extend the coverage of the marketing orders to kiwis, nectarines, plums and apples. Chile recognized that US legislative procedures required the Senate version of any proposed law to be reconciled with that of the House of Representatives. If, however, the US President did not subsequently veto the proposed legislation, Chile would be seriously affected.

He said that even without the proposed modifications, marketing orders had already cost Chile approximately US$60 million over the preceding four years through reduced sales in the US market and reduced prices in third-country markets. Were the coverage of marketing orders extended to all fruit exported by Chile to the United States, this could negatively affect exports amounting to some US$300 million annually. Chile believed that these measures were protectionist and discriminatory and in contradiction with the General Agreement and the Standards Code[2]. They continued to be aimed at managing prices with a view to protecting US producers, who played a preponderant rôle in promoting the establishment of the marketing orders. In his view, the US Administration did no more than sanction and apply the decisions taken by the producers and their intermediaries.

The marketing orders contradicted explicitly not only GATT philosophy and the standstill and rollback commitments undertaken in the Uruguay Round, but also the present GATT provisions. First, the marketing orders were discriminatory and violated the national treatment principle of Article III in two ways: (a) at least in the case of grapes, there was an unquestionable discrimination since in the life-time of the marketing orders, 100% of certain species of grapes imported into the US market underwent obligatory inspection, whereas only a small proportion of the domestic production of these types of grapes was subject to such inspection. In concrete terms, only 13.6% of the California table-grape production was subject to the standards of the marketing orders, whereas the totality of imported grape was affected thereby. (b) The marketing orders also made distinctions between sizes of fruit. Under Article III:4, however, discrimination between "similar products" was not allowed.

Second, the marketing orders violated the most-favoured-nation principle. Indeed, by virtue of a special agreement with Canada and Mexico, the US Department of Agriculture authorized the inspection of products subject to marketing orders at their origin, i.e., in Canada and Mexico respectively. In spite of repeated requests from Chile for the same treatment, however, inspections of Chile's products continued to be made at the US ports of entry. Chile was, therefore, discriminated against compared with the above-mentioned countries.

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[2]Agreement on Technical Barriers to Trade (BISD 26S/8).

Third, the application of marketing orders to imported fruit was also contrary to the Standards Code, to which both Chile and the United States were signatories. Domestic production was inspected at the point where it was packaged, with the requirement that it comply with the norms applied at the embarkation point; it was then refrigerated for a number of weeks and transported to various points in the United States. Imported fruit, however, was inspected on arrival at the US port of entry, but according to the same standards as those that applied at the embarkation point, and in circumstances in which the product might have suffered natural deterioration due to transport by land or sea. Consequently, damage owing to refrigeration and transport was taken into consideration only for imported goods; domestic fruit was not affected by such standards. These double standards constituted an impediment to international trade and hence were in contradiction to Article 5.1.1 and 5.1.2 of the Code.

The possible new restrictions would add to those that already affected Chile's exports of table grapes to the United States. Hence, this would mean yet another measure affecting Chile's fruit industry which, only through strong perseverance and without subsidies or special protection, had acquired a high degree of prestige in the very demanding international market. Chile did not ask for any special treatment, but only that the access of its products to foreign markets be governed by healthy competition based on comparative advantage. Chile trusted that the US Government, which in the past had successfully opposed other protectionist trends, would act in keeping with its history and would turn down these legislative proposals that would violate the principles of the General Agreement.

The representative of the United States said that the bill in question had been approved by one US legislative chamber but had not been acted upon by the other, which in fact had passed a farm bill not containing the proposed marketing orders. A Conference Committee of the two chambers was presently working to reconcile the differences in the two pieces of legislation and, once these were resolved, a single bill would go to the President, who would then decide whether or not to sign it. Accordingly, the United States was surprised that Chile had raised this item as one for action by the Council. While contracting parties had the right to bring matters of concern to the Council's attention, the present item involved a bill still being debated in the legislature and should have been raised under "Other Business". He emphasized that none of Chile's assertions had been the subject of a dispute-settlement process or of any Council decision or action as to the appropriateness of existing or proposed marketing orders. The United States recognized the serious concerns of Chile and other governments with the proposed measures regarding the importation of these types of products. In fact, the United States represented a very large import market for these products from Chile and other countries, and would continue to seek to work in a cooperative manner to resolve any concerns.

The representative of the European Communities expressed the Community's concern that this matter had appeared formally as an item on the Council's proposed agenda, as it obviously related only to draft legislation. In the Community's view, if a contracting party considered an

early warning justified, such a matter could be raised under "Other Business" in the Council, in the Surveillance Body of the Uruguay Round or in the context of the Trade Policy Review Mechanism exercise. It was clearly inappropriate to raise it formally in the Council. For this reason and in the interest of the efficiency of the Council's work, the Community did not intend to address the substance of the matter.

The representative of Mexico said that the instruments in question were barriers to the export trade of some countries and were contrary to the trade liberalization expected by all through GATT and in the Uruguay Round. He echoed Chile's concerns and said that Mexico favoured the dismantling of all instruments that hindered the free flow of agricultural trade, and trade in horticultural and fruit products in particular.

The representative of Uruguay expressed sympathy for Chile's concerns. Uruguay had no difficulty -- quite the reverse -- with this type of question being formally submitted to the Council because, quite apart from considerations relating to GATT procedures, contracting parties were meeting with a view to liberalize trade and not set impediments to it. Uruguay hoped that the statements made at the present meeting would yield a positive result and would have an impact on the US legislature and Executive. What applied presently to one product might apply to others in future, and many countries might be affected by these types of legislative measures. He observed that this item would be on the Uruguay Round Surveillance Body's agenda, and said that his delegation would ensure that no measure would bring about any trade distortion, in keeping with the aims and purposes of the Uruguay Round.

The representative of Australia said that his delegation had noted the United States' explanation as to the status of this legislation, and the Community's views regarding the appropriateness of this matter being before the Council, or at least proposed formally for its agenda. However, since the subject had been raised, his delegation would note that if this was a prospective development along the legislative path, it was one with which Australia would have some concern, particularly as to its direction at a time when all were engaged in efforts to liberalize trade. Clearly this would be a restrictive measure as such and also in terms of the standstill commitments of the Uruguay Round and the spirit thereof. He registered Australia's concern and sympathy with many aspects of the views put forward by Chile and other contracting parties.

The representative of Cuba broadly supported Uruguay's statement. He also expressed concern because although the United States had said that this was only draft legislation, Chile had indicated that in fact its effects were already being felt on its exports.

The representative of Colombia supported Chile's and Uruguay's statements.

The representative of New Zealand said that Chile had raised an important point of general principle. Clearly, standards and such instruments as referred to should not be used as a disguised barrier to market access. New Zealand had noted, however, the US explanation of the

current status of this initiative, which had prompted the concerns, and was confident that the United States was very conscious of them. He did not think the debate needed to be prolonged further.

The representative of Peru shared Chile's concerns and considered that if these measures were to be adopted, they would certainly not strengthen the objective set at the launching of the Uruguay Round at Punta del Este, i.e., the strengthening of GATT itself.

The representative of Costa Rica, speaking as an observer, said that this problem deeply concerned Costa Rica and all the members of the Central American Common Market (CACM) at a time when one should be trying to liberalize international trade to the largest extent possible. At present, the products involved were kiwis and other fruit; in future, they might well be products of export interest to CACM countries.

The representative of Argentina supported Chile's and others' concerns. The discussion of this matter showed the extent to which one contracting party's concerns were shared by a significant number of others. Argentina believed that it was better to take preventive measures than to try to cure the situation afterwards.

The representative of Venezuela said that her delegation joined fully in Chile's statement, and hoped that the United States' statement would become true and that this matter would not need to be discussed in future.

The representative of the European Communities noted the large support for Chile's statement and said that this should be placed in an appropriate context. The Community shared the concerns expressed, but if one really wanted these concerns to be taken seriously, then this should be done in an orderly fashion. It seemed to the Community that if the Council were to discuss all the projects under way and all prospective legislative bills, there would be a huge bottleneck and a huge inefficiency in its work. As long as the proposed measure had not been taken, it should not be given too much importance; otherwise serious problems would have to be faced. He had full confidence that the US Administration was fully aware of these problems and would try to solve them internally. If one intervened too much in the domestic process of trade policy making, it would be difficult to find the limit of sovereignty. One had to place full confidence in the sovereignty of a nation over its domestic process; serious unease was created when such problems were discussed abroad in fora such as the GATT Council.

The representative of Chile said that he had not intended to open such a debate, but had merely wanted to bring to Council members' attention, in their capacity as representatives of contracting parties, his Government's legitimate concern in regard to a situation which was already affecting Chile negatively and which could affect it even much more in the near future. He had also wanted to indicate that the measures concerned were part of prospective legislation. In doing so, his delegation had followed the precedent established by other Council members, such as the Community itself which had presented its concerns on a previous occasion concerning Section 301 and the so-called "Super" 301 provisions of the US Omnibus

Trade and Competitiveness Act 1990, when those were still proposals. He had also heard concerns raised earlier by the Community with respect to subsidies and other such proposals. Even as early as November 1989, the Community had referred in the Council to the possible reunification of Germany. Chile believed that if there were dangers hovering like a Damocles' sword, it was legitimate to draw attention to them. He welcomed the understanding expressed by other delegations at the present meeting.

The Council took note of the statements.

4. 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 in February, April, May, June and July 1990, the Council had considered the Panel's report (L/6631), and in July had agreed to revert to this item at the present meeting.

The representative of the European Communities said that the Community's position was evolving toward adoption of the report but that this would be possible only at the next Council meeting. The US Waiver created problems for the Community, and since the United States had often stated that it was negotiable, the Community was waiting to see whether that offer would be tabled before the 15 October deadline set in the Uruguay Round.

The representative of the United States noted that the Council was considering this matter for the sixth time and that the United States continued to seek adoption of the Panel report. He hoped the Community would be able to take this important step in the interest of ensuring a strong and vital dispute settlement process which itself was in the interest of all contracting parties. If the report was not adopted at the present meeting, he asked that it at least be derestricted, as a first step toward adoption. He requested that the Council revert to this matter at its next meeting.

The representative of the European Communities said that as a matter of principle the Community would only agree to derestrict the report when it had been adopted.

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

5. United States - Countervailing duties on fresh, chilled and frozen pork from Canada[3]
- Panel report (DS7/R)

The Chairman recalled that at their Forty-Fifth Session in December 1989, the CONTRACTING PARTIES had established a panel to examine the complaint by Canada. The Panel report (DS7/R) had been circulated to contracting parties on 5 September 1990. He said that while this report would not be considered for adoption by the Council at the present meeting, it had been placed on the Agenda at the request of one of the parties to the dispute.

Mr. Hussin, Chairman of the Panel, recalled that the Panel had been established with standard terms of reference. The Panel had met with the two parties on 2 April and 18 May 1990. The report had been submitted to the two parties on 3 August 1990 and subsequently circulated to contracting parties on 5 September 1990. The Panel had given full and very close attention to the arguments put forward by Canada and the United States as they related to the facts of the case, as well as to the application and interpretation of Article VI of the General Agreement. The Panel had unanimously concluded (paragraph 5.1) that the countervailing duties by the United States on fresh, chilled and frozen pork from Canada were being levied inconsistently with Article VI:3 because the United States' determination that the production of pork had benefited from subsidies was not made in accordance with the requirements of that provision. The Panel had submitted a written report to the Council, which set forth its findings and conclusions as to the question of fact and the application of the relevant provisions of the General Agreement and the reasons and bases therefor. The Panel had also made suggestions concerning recommendations the CONTRACTING PARTIES might wish to address to the United States (paragraph 5.2). The Panel considered, therefore, that it had fulfilled its task as provided for in its terms of reference.

The representative of Canada said that Canada was pleased with the results of this Panel. The report upheld a very important principle in the application of countervailing duties, namely that before they were imposed, it was essential that an investigation prove that the subsidies in question were provided to an exported product; mere allegations or assumptions that such a subsidization was taking place, were an inadequate basis for imposition of a countervailing duty. Canada expected that the United States would be in a position to agree to adoption of the report at the next Council meeting, and considered it unfortunate that the report had not been circulated in time for adoption at the present meeting. An improved dispute settlement system was being created which depended heavily upon time-limits; it was thus important to exercise vigilance to ensure that these new procedures and time limits were implemented. Canada requested the derestriction of the Panel report at the present meeting.

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[3]Carried in previous Council minutes as "United States - Countervailing duty on pork from Canada".

The representative of the United States said that the United States did not object to the derestriction.

The Council took note of the statements, agreed to derestrict the Panel report in DS7/R and agreed to revert to this matter at its next meeting.

6. Uruguay - Import surcharges
- Request for extension of waiver (C/W/639, L/6689 and Add.1, 2 and 3)

The Chairman recalled that at its meeting in July, the Council had agreed to defer consideration of this matter until the present meeting in order to allow more time for delegations to study Uruguay's request for a further extension of its waiver from the application of the provisions of Article II, which allowed it to maintain certain import surcharges in excess of bound duties. He drew attention to document L/6689 and its Addenda 1, 2 and 3, the latter having been very recently circulated, and to a draft decision contained in C/W/639.

The representative of Uruguay referred to the simplification and restructuring of Uruguay's bound tariffs. L/6689/Add.3 contained a new proposed Schedule XXXI which would enable Uruguay to launch Article XXVIII renegotiations. Accordingly, Uruguay suggested that it submit a new request and that delegations examine L/6689/Add.3, in which Uruguay asked those contracting parties which wanted to undertake Article XXVIII renegotiations with Uruguay to submit a written note to his Government and to the Secretariat. He suggested that the Council revert to this matter at the following meeting.

The Council took note of the statement and agreed to defer consideration of this matter to its next meeting on the basis of a new request to be submitted by Uruguay.

7. Working Group on the Export of Domestically Prohibited Goods and Other Hazardous Substances
- Extension of the Working Group's mandate (C/W/645, L/6553)

The Chairman recalled that by its Decision of 19 July 1989 (L/6553), the Council had established the Working Group on the Export of Domestically Prohibited Goods and Other Hazardous Substances, and had called for the Group to complete its work by 30 September 1990. He drew attention to the note from the Chairman of the Working Group (C/W/645) requesting that the Council extend, until the end of December 1990, the deadline for the completion of the Group's work, and proposed that the Council grant the request.

The representative of Nigeria supported fully the three-month extension as proposed in C/W/645. Nigeria had participated actively in the work of this Group since its inception, and noted that substantial progress had been made. If all contracting parties showed the necessary will to

engage in constructive negotiations, the Group would be able to complete its work in time for a decision to be taken on this matter at the 46th Session of the CONTRACTING PARTIES in December 1990.

The draft decision being discussed in the Group aimed at laying down guidelines for regulating the export of products banned for sale or severely restricted in domestic markets, and was of vital interest to all countries. He recalled that a number of countries had wanted this subject to be included in the Uruguay Round. Although this had not been done, there had always been a tacit understanding that work in this area should be completed at the same time as, or before, the end of the Round. This had been reflected fully in the Council's Decision establishing the Working Group (L/6553), which called for its work to be completed by 30 September 1990. Nigeria hoped that the commitment shown by contracting parties at recent meetings of the Group would continue, and that all would work towards the achievement of a substantial agreement in this area before the December meeting, at Ministerial level, of the Uruguay Round's Trade Negotiations Committee, so that a decision could subsequently be adopted by the CONTRACTING PARTIES at their Forty-Sixth Session.

The representative of the United States said that significant progress had been made by the Group in fulfilling its mandate. It had identified the extensive work of other international organizations on banned and severely restricted substances as well as on hazardous wastes. While the Group had examined significant portions of eight international instruments pertinent to this general area, it was clear that these instruments were complex in their operations, and that they committed signatories to various levels of action and responsibilities. Serious issues remained as to the appropriate GATT action, if any, which should be taken on this matter. In addition, the demands on all over the next three months would be particularly great. In the light of these considerations, an agreement to extend the Group's mandate for only three months would give the misleading impression that sufficient resources were available to conclude properly the complex review that had been undertaken. Accordingly, the United States believed that the deadline should be extended to 30 September 1991, which would not preclude the Group's completing its work sooner.

The representative of Cameroon supported a three-month extension. Cameroon acknowledged that agreement remained to be reached on certain parts of the draft decision under discussion in the Group, but believed that the work was proceeding in the right direction. Cameroon continued to be concerned with the question of respecting the Group's terms of reference and believed that, taking into account the work already accomplished, the objective pursued was within reach. It would be regrettable if as a result of certain considerations raised by some delegations, the Group's work were not completed before the CONTRACTING PARTIES' 46th Session. It was important for Cameroon that this work be completed by then.

The representative of Morocco supported the request in C/W/645. While it was true that serious questions remained, Morocco believed that all should act in good faith to complete their examination of this matter by December. This was important not only for countries in the African continent but also for others.

The representative of Mexico recognized that this was a complex matter which required committed attention on the part of all to reach appropriate results. Mexico would support a three-month extension with the intention that all participants in the Group make the necessary efforts to intensify negotiations in the months to come and complete this work before the CONTRACTING PARTIES' 46th Session.

The representative of Côte d'Ivoire said that one should not overlook the history that had preceded the establishment of this Group. Although no links had been established between its work and the Uruguay Round negotiations, Côte d'Ivoire supported the proposal in C/W/645 and hoped to see the two completed at the same time.

The representative of the European Communities said that proceedings at the most recent meeting of the Group had indicated that with some effort it would be entirely possible to complete the work by the end of the year. For this reason, the Community supported extending the Group's mandate until 31 December 1990, which could be further prolonged at that time, if necessary.

The representative of Egypt said that his delegation also attached importance to the work of this Group, and hoped that its task would be completed by December.

The representative of Senegal supported the extension as requested so that the Group could complete its task, as had originally been decided, before the end of the year.

The representative of Finland, on behalf of the Nordic countries, said that these countries agreed with the Community's evaluation of the work done in the Group. The Nordic countries believed it quite possible to complete the work in a reasonable period of time, and therefore supported the request to extend the Group's mandate until the end of December.

The representative of the United States said that given the overwhelming sentiment of other contracting parties, the United States would be prepared to agree to an extension on the terms proposed in C/W/645. The United States continued to be concerned, however, that the three-month extension would not allow the Group sufficient time to complete the examination mandated by the original Decision (L/6553).

The Council took note of the statements, and agreed to the extension as requested in C/W/645.

8. Accession of Costa Rica
   - Extension of time-limit for signature by Costa Rica of the Protocol of Accession (C/W/644 and Corr.1, L/6607, L/6626, L/6693, L/6734)

The Chairman recalled that on 20 November 1989, the CONTRACTING PARTIES had adopted a Decision (L/6607) authorizing Costa Rica 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/6626. On 24 November

1989, Costa Rica had signed the Protocol subject to ratification. At its meeting in June 1990, the Council had extended the time limit in paragraph 7 of the Protocol for Costa Rica's signature to 30 September 1990 (L/6693). He drew attention to a communication from Costa Rica (C/W/644 and Corr.1) requesting that the time-limit be further extended to 31 December 1990, and proposed that the draft decision therein be adopted.

The Council so agreed (L/6734).

9. Accession of Honduras
- Modification of the Working Party's terms of reference (L/6727, L/6735)

The Chairman recalled that in May 1987 the Council had established a working party to examine Honduras' application for provisional accession and that this Working Party had been carrying out its assigned task under the Chairmanship of Mr. Artacho (Spain). He drew attention to a recent communication from Honduras in which that government had now asked for full accession (L/6727).

The representative of Honduras, speaking as an observer, said that since 1986 Honduras had successively reduced its tariffs from 80% to 40%. Moreover, as of 1 January 1992, the maximum tariff level would be fixed at 20%. These autonomous and unilateral liberalization efforts, made in a continuing and systematic manner, were proof of Honduras' conviction and determination to make its external trade policy conform with GATT's norms and disciplines. Having made these unusual efforts and having arrived at a national consensus, his Government now requested full accession to the General Agreement.

The representative of Nicaragua welcomed Honduras' request for full accession and acknowledged the liberalization efforts it had made toward this purpose. Honduras' accession to GATT would be beneficial not only to itself but also to contracting parties generally. Honduras could be assured of Nicaragua's support in the framework of the accession process.

The Council took note of the statements and agreed to change the terms of reference of the Working Party[4] previously established to examine Honduras' earlier request for provisional accession, as follows:

Modified terms of reference:

"To examine the application of the Government of Honduras to accede to the General Agreement under Article XXXIII, and to submit to the Council recommendations which may include a draft Protocol of Accession."

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[4]Subsequently circulated as L/6735.

The Council also agreed that membership in the Working Party would continue to be open to all contracting parties indicating their wish to serve on it, and further agreed that Mr. Artacho (Spain) would continue to serve as its Chairman.

The Chairman invited the representative of Honduras to consult with the Secretariat as to further procedures to be considered by the Working Party.

10. Thailand - Rates of certain business and excise taxes - Extension of time-limit (C/W/640, L/6690 and Add.1, L/6736)

The Chairman recalled that at its meeting in July the Council had agreed to defer consideration of this matter to the present meeting. He drew attention to document L/6690 and Add.1 in which Thailand had requested an extension of the time-limit established in paragraph 3 of its Protocol of Accession, in order to enable it to bring the application of its differential rates of business and excise taxes into line with Article III of the General Agreement. He also drew attention to a draft decision in document C/W/640 and said that following informal consultations, the first line of the last paragraph had been amended and should now read "The CONTRACTING PARTIES decide to extend for a period of eighteen months, i.e., until 31 December 1991, the ....".

The representative of Thailand said that since the July Council meeting, developments in this matter had been in a direction consistent with Thailand's GATT obligations. For instance, Thailand had been able to remove the differences previously existing in the rates of excise and business taxes on domestically produced and imported cigarettes. The request for an 18-month extension being tabled by Thailand at the present meeting, therefore, would not cover cigarettes and related solely to an extension of the time-limit established in paragraph 3 of the Protocol of Accession of Thailand in order to enable his Government to take further steps in the adoption of the value-added-tax system, as well as the modification of the excise tax system for certain products. Radical changes such as these required a sufficient adjustment period as well as the understanding and cooperation of the general public. Time, therefore, was the most important factor.

The Council took note of the statement, and agreed to the draft decision in C/W/640, as amended, extending the time-limit to 31 December 1991 (L/6736).

11. Communication from the United States concerning the relationship of internationally-recognized labour standards to international trade (L/6196, L/6243, L/6729)

The Chairman said that this item was on the agenda at the request of the United States.

The representative of the United States referred to the recently circulated communication from his delegation in L/6729, and said that the United States wished to reiterate and seek action on its request that a working party be established to examine the possible relationship between internationally-recognized labour standards and international trade. Since the last Council discussion on this issue in January 1990, he had discussed with other delegations and reflected on the concerns expressed with regard to the US proposal. Those concerns fell into two general categories: the issue of GATT relevance, and the possible use of GATT discussion of this matter toward protectionist ends. With respect to the first concern, he reiterated that the United States had proposed the creation of a working party to examine the very issue of GATT relevance, without prejudice to any delegation's view. As to the second concern, the United States shared the view of other delegations that GATT discussion of the issue of internationally-recognized labour standards and their relation to trade should not, and could not, be used to justify protectionist measures, to put into question the principle of comparative advantage, or to interject the GATT into the process of establishing labour norms.

Given this uniformity of view, and the added protection afforded by the consensus-based procedures of GATT working parties, the United States saw no basis for refusing at this point to establish a working party. Nevertheless, if other delegations continued to have reservations, the United States stood prepared to consult further with them in drafting terms of reference for it. He noted that the United States had already amended the originally proposed terms of reference, by narrowing the definition of internationally-recognized labour standards to focus on three basic and fundamental rights: freedom of association, freedom to organize and bargain collectively, and freedom from forced or compulsory labour. The United States hoped that this change would allay many of the concerns expressed, and was ready to consider suggestions for further improvement.

He noted that this matter had been before the Council for almost three years; the United States believed it was time for the Council to take action. One of the key strengths of the ATT was its tradition to view its deliberative competence broadly and to grant requests to establish working parties. The United States had, for its part, shown flexibility and, as a matter of principle, accepted the establishment of GATT working parties where it had had doubts about the GATT relevance of the issue involved. It would ask that the same flexibility be shown by others.

The representatives of the European Communities, Sweden on behalf of the Nordic countries, Switzerland, Canada, New Zealand, the Czech and Slovak Republic, Poland, Hungary and Japan supported the US request on the principle that a contracting party's request for the establishment of a working party to examine a matter it believed was relevant to the General

Agreement should be granted without prejudice to discussions therein or conclusions thereof.

The representatives of Brazil, the Philippines on behalf of the ASEAN contracting parties, India, Nigeria, Egypt and Peru reiterated their earlier position that they remained to be convinced of the existence of a relationship between internationally-recognized labour standards and international trade.

The representatives of Mexico, the Philippines on behalf of the ASEAN contracting parties, Tanzania, Chile, Bolivia, Nigeria, Egypt, Peru, Nicaragua, Yugoslavia, Morocco and Cuba emphasized that the competent forum to discuss labour standards was not the GATT, but the International Labour Office (ILO). They did not support the establishment of a working party as proposed.

The representatives of Brazil, Peru and Korea pointed out that the heavy workload at this juncture of the Uruguay Round negotiations made it undesirable to tackle other remote issues at the present time.

The representatives of India and Cuba suggested that this matter be dropped altogether from the agenda.

The representative of the European Communities said that in the light of the latest US proposal to restrict the terms of reference to three types of labour standards, it was now incumbent on the Council to agree to establish the working party. Like others, he did not know yet what the GATT relevance of this issue was, but to foreclose study of what the relevance might be seemed to be the wrong procedure to follow.

The representative of Brazil pointed out that this issue was not the only one, at the present time, in respect of which GATT competence might be questioned. In the Uruguay Round negotiations on intellectual property rights, for example, some delegations believed that certain aspects should be dealt with at the World Intellectual Property Organization. In the agriculture negotiations, the United States seemed to want the food aid issue to be dealt with by the Food and Agriculture Organization, and future sanitary measures to be developed in other fora such as the World Health Organization (WHO) and International Office of Epizootics.

The representative of Mexico recognized that the United States had made an effort to facilitate matters by limiting the number of standards for consideration in GATT to only three. Unfortunately, the substantive problem was not the number or type of standards to be considered. Nor was it a matter of negotiating whether these quantities or this or that standard was acceptable to other contracting parties. This was a matter that was foreign to the GATT and, in spite of rumours that might have circulated to the contrary, Mexico remained opposed to the inclusion of such items in the GATT's agenda, and thus to the establishment of a working party.

The representative of the Philippines, on behalf of the ASEAN contracting parties, expressed their concerns with the US request. She

said that no one would speak in favour of exploiting labour or deny the existence of exploitation of workers. That was the reason why most countries were working together through the ILO towards the adoption of fair labour standards. In formulating such standards, the ILO took account of differences in the political, social and economic environment of countries. The bottom line, of course, was to ensure that everyone shared the fruits of economic progress. Because of its charter, the ILO was able to deal with this fundamental issue from a wider perspective. This fact had also been recognized by the drafters of the Havana Charter referred to in one of the US communications, in which members who were also members of the ILO had been enjoined to cooperate with that organization to give effect to the undertaking to provide fair labour standards for their workers.

The representative of Tanzania recalled that on several occasions, both formally and informally, his delegation had expressed its continuing concern over the attempt to relate labour standards to international trade. In doing so, one ran the risk of getting into interminable wrangles over what constituted internationally-accepted standards in the context of specific, bilateral or multilateral trading frameworks. Labour was not an objective, scientific, clinically identifiable quality or value, but rather a function of myriads of permutations and combinations. In developing countries, labour was in a minority in the classical sense of differentiation between workers and the peasantry. If the outcome of all this were to inhibit industrial production of goods and services -- unless by some miracle the labour standards were accepted by those measuring similar standards in the industrial countries which had taken considerable time, often without consideration of a democratic consensus in their earlier phase -- then one might as well be asked to abandon any hope of steady industrialization. Referring, inter alia, to other vital factors of production, land and capital, he said it was very difficult to see how all these questions could be brought into GATT overnight.

The representative of Chile said that GATT's competence per se lay with the principle of non-discrimination in trade in goods, imports, exports, funds transfers of an international nature and import and export payments, and methods to regulate the flow of imports and exports. However, labour standards were within the exclusive competence of the ILO, in the same manner as health matters pertained to the WHO. From GATT's point of view, therefore, the first service that could be rendered to workers in developing countries was to open markets without discrimination to the products they produced so that by increasing the foreign exchange of developing countries through trade, the latter would increase their workers' income. Chile's workers enjoyed all the internationally-recognized labour rights, and more particularly freedom of association, the right to collective bargaining and freedom from forced or obligatory labour. His Government understood the need to protect labour standards as well as to set up social security systems, but believed that the GATT was not the best place to discuss these matters.

The representative of India noted the slight modification suggested by the US in the terms of reference of the proposed working party, but said that his delegation could not see that any new facts, reasons or arguments

had been advanced. India remained to be persuaded that this was an issue within GATT's competence. He noted that a distinction had been made in previous Council meetings between the GATT's deliberative and substantive competences. India was not persuaded that GATT had such an unlimited deliberative competence that it could take up for consideration issues totally unrelated to trade, and merely seek their examination on the grounds that they could be trade related. As to the labour standards mentioned in L/6729, their connection with trade was even more tenuous than that of other standards which the United States had sought to include.

The representative of Bolivia said that his delegation considered that the ILO was especially designed to deal specifically with labour problems and to preserve and defend labour rights. There was no need to duplicate this effort in GATT. Bolivia's concern was merely one of dealing with the problem in the appropriate organization.

The representative of Sweden, on behalf of the Nordic countries, said that these countries were conscious that the issue of the possible relationship of internationally-recognized labour standards to international trade had many aspects and was controversial. They believed, however, that much of the scepticism was unfounded, and they had expressed the view on several earlier occasions that it was of the utmost importance that a discussion on this issue not lead to results that could be misused for protectionist ends. Since 1987, when this matter had first been raised, the Nordic countries had strongly supported the establishment of a working party to address the issues that had been suggested, i.e., that the international labour standards to be addressed should be freedom of association, freedom to organize and bargain collectively, freedom from forced or compulsory labour, a minimum age for the employment of children and finally, measures setting minimum standards in respect of conditions at work.

The issue of the minimum age for the employment of children had been deleted from the present US proposal. The Nordic countries continued to believe that this issue was highly relevant to a discussion of the relationship between trade and worker rights, and stressed the importance of ILO Convention No. 138 concerning the minimum age for admission to employment, as well as of the recent UN Convention on the rights of the child which had come into force as late as 2 September 1990. The Nordic countries regarded the second issue which had been deleted -- minimum standards in respect of conditions at work -- as being equally important for the above discussion. This need not necessarily lead to a decision on specific measures, but the relation between these standards and their trade impact should at least be addressed. The Nordic countries were consequently willing to show flexibility regarding the precise content of the terms of reference in order to unblock the situation and finally to begin work on this important question within the GATT. They hoped that other contracting parties could do likewise.

The representative of Nigeria said that Nigeria's position remained unchanged, though not because it did not believe in all the labour rights advocated by the United States or by the other contracting parties; indeed, it shared the same interests in all these freedoms. If one wanted

to work on the basis of assumed trade-relatedness, everything would very soon be discussed in GATT. Nigeria believed that GATT was not in an advantageous position to deal with labour standards. GATT's preoccupations were in other issues. International labour standards should be dealt with by a body better suited and better qualified to deal with them.

The representative of Switzerland said that an examination of the possible relationship and relevance of this matter was being discussed. His delegation wished to make it clear that the proposed working party, or the eventual results of its examination, should not be used to put into question the operation of comparative advantage, which formed the very basis of international trade. Switzerland hoped that a solution to this problem could be found at the present meeting.

The representative of New Zealand recognized the very clear anxieties and concerns that had been expressed about the US proposal. New Zealand, however, saw a relationship to trade in the substance of the matter, because trade was ultimately about raising living standards in all countries. On the other hand, it was not certain that there was full scope for a thorough debate on all the issues raised at the present meeting. Both in terms of substance and of GATT practice, the US request deserved positive consideration by the Council. This would not be a prejudicial course. New Zealand felt confident that the issues raised could be worked on to the satisfaction of all concerned in the working party. Like the United States, New Zealand would not expect the working party to be used as a vehicle for protectionist ends. New Zealand, therefore, supported the establishment of a working party and noted in this connection the United States' expression of further flexibility with regard to its terms of reference.

The representative of Korea said that his delegation was of the view that further consultation was required with regard to the establishment of a working party to examine this matter.

The representative of the Czech and Slovak Republic recognized the efforts undertaken by the United States over the preceding three years in the search of a consensus on this matter. His delegation appreciated the US offer to continue consultations in order to find a consensus on the terms of reference. If a consensus could be reached on the latter, it would also help if a global study were carried out by the GATT Secretariat and that of ILO. The matter could then be subject to a recommendation by the Council.

The representative of Poland said that a positive aspect of the US proposal was that there would be an examination as to whether there was indeed a relationship between internationally-recognized labour standards and international trade. Poland welcomed the United States' clear statement that the request for establishment of a working party was not aimed at questioning the legitimate comparative advantages of other contracting parties.

The representative of Hungary said that without prejudice to the question of eventual GATT competence in this area, or lack thereof, his

delegation did not object to the establishment of a working party with terms of reference as proposed in L/6729.

The representative of Japan noted that the issue at hand was not internationally-recognized labour standards per se but their relationship to international trade, an issue which might be relevant to GATT. As to whether this should be best left to the ILO or to other international organizations, Japan considered that one solution might be to involve the other international organizations in the matter, as had been the case in some other GATT working party activities.

The representative of the United States said that, in light of the discussion, he had decided that this matter should not be put up for decision at the present meeting. He indicated, however, the United States' continued interest in pursuing this matter and in seeking to work co-operatively with other delegations to clarify both his Government's intentions in seeking this working party and the concerns of other parties. He emphasized that the United States did not intend in any way to prejudge the question of whether there was a relationship between internationally-recognized labour standards and international trade, or to prejudice the competence of organizations which clearly had jurisdiction over matters relating to international labour rights. He reiterated that the United States recognized that the issue of internationally-recognized labour standards should not and could not be used to justify protectionist measures, to question the principle of comparative advantage or to interject the GATT into the process of establishing labour laws. The United States was prepared to work with other delegations to clarify any proposed terms of reference for this working party, and would continue to seek to achieve consensus on this matter.

The Council took note of the statements.

12. Canada - Import, distribution and sale of alcoholic drinks by provincial marketing agencies - Follow-up on the Panel report - Communication from the United States (C/W/646, BISD 35S/37)

The Chairman recalled that this matter had been raised by the United States at the July Council meeting under "Other Business". He drew attention to the US request that the Council decide, pursuant to Article XXIII:2, that the circumstances concerning this matter were serious enough to authorize the United States to suspend the application to Canada of appropriate concessions or other obligations (C/W/646).

The representative of the United States asked that a Council decision be taken at the present meeting affirming his Government's Article XXIII:2 rights on the basis of the 1988 Panel report (BISD 35S/37). In addition, as indicated in C/W/646, the United States sought Council authorization to withdraw concessions in the event that Canada did not comply with the Panel's recommendations. The Panel report had identified certain areas in which Canada's provincial liquor board practices were not in compliance with the General Agreement. These practices remained in place despite Canada's obligation to bring tnem into GATT-conformity. The United States and the Community were similarly-situated exporters of beer to Canada, and

therefore, the practices identified in the 1988 Panel report nullified and impaired benefits accruing to the United States under the General Agreement. The Panel report satisfied the function of the CONTRACTING PARTIES to investigate and make recommendations under Article XXIII:2 with respect to the United States. No further panel proceeding was required or appropriate.

The representative of Canada said that provincial listing practices did not discriminate against imported beers. This matter had been dealt with in the "Agreement concerning trade and commerce in alcoholic beverages" with the European Economic Community signed on 17 December 1988, which was being applied on an MFN basis. Canada had already indicated this to the United States in the July Article XXIII consultations and had informed it that the Heileman brewery's petition to the US Trade Representative contained many factual errors. Canada had invited the United States to provide details of any specific concerns, which it would be ready to take up with the relevant provincial authorities. To date, the United States had not done so. Canada acknowledged that some matters did not comply fully with the Panel finding. To that end, it had engaged in negotiations with the Community and expected them to conclude before the November Council meeting. As his delegation had stated at the July Council meeting, the results of these negotiations would be implemented on an MFN basis. As was evident from the foregoing, Canada had taken reasonable measures to ensure observance by its provincial governments of GATT provisions. Canada had already undertaken to return to consultations with the United States upon completion of its negotiations with the Community. Canada did not consider the consultative phase to be either concluded or unsuccessful. In Canada's view, it was not appropriate for the Council to deal with this matter at the present time.

The representative of the European Communities said that the Community had sympathy for the United States' concern with the implementation of a report by a panel to which the latter had chosen not to be a party. The Community also welcomed the fact that the United States, in defence of its trade interests, took recourse, for the first time, to the procedures of Article XXIII:2 to request authorization to suspend the application of US GATT concessions. He confirmed that Canada and the Community were currently negotiating with a view to finding a mutually satisfactory solution in respect of the elimination of discriminatory markups on beer. The Community suggested that the Council accept a reasonable delay for these negotiations to be completed.

The representative of the United States requested that the Council revert to this matter at its next meeting.

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

13. Office of Deputy Director-General
- Announcement by the Director-General

The Chairman recalled that the procedures for the future appointments of the Deputy Directors-General, approved by the Council on 15 April 1987

(BISD 34S/173), called on the Director-General to make such appointments following consultations to be announced at a Council meeting, and that these consultations should begin at least three months before the expiration of the term of office of the Deputy Director-General concerned.

The Director-General informed the Council that in accordance with the procedures, he had begun consultations before 30 September 1990 with a view to appointing Mr. Mathur, Deputy Director-General, for an additional seven-month period, i.e., until 31 July 1991. In accordance with the procedures, he would inform the Council of his decision at the end of his consultations.[5]

The Council took note of the Director-General's statement.

14. Trade Policy Review Mechanism (TPRM)

(a) Programme of Reviews for 1990 (C/W/647, L/6554)

The Chairman recalled that on 19 July 1989 the Council had decided to review the trade policies and practices of the European Communities, Hungary and Indonesia in late 1990 (L/6554). He drew attention to his communication in C/W/647 in which he proposed that in light of the pressure of work on participants in the final phase of the Uruguay Round, and following informal consultations with delegations, the review meetings originally scheduled for the end of 1990 be postponed to the week of 15 April 1991.

It was his understanding that this change in schedule was exceptional, solely due to the strains on resources resulting from the Uruguay Round, and that the next reviews of the three contracting parties concerned would be held as if their trade policies and practices had been reviewed, for the first time, in late 1990. Accordingly, the second review of the European Communities would be held in 1992, of Indonesia in 1994, and of Hungary in 1996. It was also understood that the programme of reviews in 1991 as established by the Decision of the Council on 11 July 1990 (L/6701 and Add.1) remained unaffected by this change in schedule.

The Council took note of the information in C/W/647 and of the Chairman's understanding, and agreed to his proposal.

(b) Programme of Reviews for 1991 (L/6701 and Add.1)

The Chairman announced that, as indicated in L/6701/Add.1, Nigeria had agreed to be reviewed under the TPRM in 1991. This review would take place in September.

The Council took note of this information.

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[5]The Director-General subsequently informed the Council of his decision in C/174.

15. Canada - Import restrictions on ice cream and yoghurt
- Follow-up on the Panel report (L/6568, L/6694, L/6698)

The representative of the United States, speaking under "Other Business", recalled that at the July Council meeting Canada had indicated that it would implement the recommendations of the Panel report on Canada's import restrictions on ice cream and yoghurt (L/6568) in the light of the outcome of the Uruguay Round. The United States continued to be concerned about Canada's future intention with regard to implementing the recommendations of this Panel report. The Council had yet to be informed by Canada of the steps it intended to take in order to bring its practices into GATT-conformity. While the United States recognized that the Uruguay Round results would affect the manner in which many contracting parties would implement panel reports, it asked Canada to provide assurances with regard to implementation of the report.

The representative of Canada confirmed the US understanding concerning implementation in light of the results of the Uruguay Round. Contracting parties were given a reasonable amount of time in which to comply with conclusions of panel reports. Canada considered that, given the imminent conclusion of the Uruguay Round, it was perfectly justifiable to await its outcome, especially in view of the proposals currently being negotiated in the area of dispute settlement.

The Council took note of the statements.

16. United States - Restrictions on imports of sugar
- Follow-up on the Panel report (L/6514, L/6742)

The representative of the United States, speaking under "Other Business", informed the Council that, as of 1 October 1990, the United States had revised its sugar import policy in response to the Panel report on the complaint by Australia (L/6514). In June 1989, the Council had adopted the report, which found the sugar import quota in violation of Article XI. The Panel had recommended that the US import policy either be brought into conformity with Article XI or eliminated. On 14 September 1990, the United States had replaced the absolute sugar quota with a tariff quota. Since the tariff on sugar was not bound, the tariff quota was in conformity with the United States' GATT obligations. The United Sates had provided the Secretariat with the relevant Presidential Proclamation and the US Trade Representative's press announcement of this change in policy (L/6742).

The representative of Australia noted the introduction of an import control on sugar by tariff quota to replace the quantitative restrictions that had been found to be GATT-inconsistent by the CONTRACTING PARTIES. It was Australia's understanding that the US position was that by this action, the United States had discharged its obligations to rectify its GATT-inconsistent sugar import régime. The intention of the tariff-quota system was to maintain import controls of equal severity to those previously enforced by quantitative restrictions. These GATT-illegal quantitative restrictions had been in force since 1974, but from 1982 onwards had taken

on an increasingly protective character. According to research by the Australian Bureau of Agriculture and Resource Economics, the cost of the restrictions to the world economy from 1982 to 1988 had been approximately US$310 to US$490 million per year. He drew attention to the fact that the US Schedule contained a binding on sugar subject to qualifications. It was the meaning of some of these qualifications which had been the subject of the Panel's consideration. Whether the tariff quota introduced by the United States was technically GATT-consistent could only be determined by reference to the sugar régime which the measure was intended to support. Since the shape and provisions of the US support programme for sugar after October 1990 had not yet been determined by the Congress, Australia intended to revert to this matter at a future date.

The Council took note of the statements.

17. United States - Customs user fee
- Follow-up on the Panel report (BISD 35S/245, L/6741)

The representative of the United States, speaking under "Other Business", said that on 28 August 1990, the US President had signed the Customs and Trade Act of 1990. Included in this Act was a revision of the customs user fee, in response to the Panel report on this matter adopted on 2 February 1988 (BISD 35S/245). The report had found the existing US customs user fee to be inconsistent with Article VIII of the General Agreement. Specifically, it had found that: (a) the ad valorem structure of the fee was inconsistent with the obligations of Articles II:(c) and VIII:1(9) to the extent that it caused fees to be levied in excess of the approximate costs of customs processing for the individual entry in question; and (b) the fee was also inconsistent with the obligations of Articles II:2(c) and VIII:1(a) to the extent that it included charges that offset (i) the cost of customs operations not directly related to merchandise import processing and (ii) the cost of processing of imports excluded from the fee. Sections 111 to 115 of the 1990 Act brought the US customs user fee into conformity with the United States' GATT obligations as set out in the Panel report. The United States had provided the Secretariat with a copy of the relevant sections of the Customs and Trade Act of 1990 and of the associated legislative history (L/6741).

The representative of the European Communities noted that the Customs and Trade Act of 1990 had come into effect on 1 October 1990; his delegation welcomed the fact that the United States had enacted legislation which modified the customs user fee. The setting of a maximum fee went some way to meet the Community's objections which had been the subject of the Panel's recommendations. However, the Community had serious questions about this new legislation, in particular whether the Panel report required additional action and whether, in principle, the ad valorem fee structure adopted by the United States should be transformed into a system based on a charge-per-transaction. It was also clear from studies made by the United States that the revenue from the customs user fee in 1988 and 1989 far exceeded the amount the Panel had considered to be appropriate. In this respect, he asked whether those who had been overcharged had a right to claim back the excess from the US Government. The Community was still at

the stage of reflection with regard to this new legislation, which he noted would expire on 30 September 1991. In view of its present concerns, the Community was worried that if there were any suggestion that there should be a further extension of the fee in the form of the legislation as presently enacted, any such extension beyond next year should, in the Community's view, be conditional on its being modified further so as to reflect fully the Panel's recommendations.

The Council took note of the statements.

18. Canada - United States Free-Trade Agreement

The representative of the United States, speaking under "Other Business", informed the Council that earlier in the day, Canada and the United States had forwarded to the Chairman of the Working Party on the Canada - United States Free-Trade Agreement their joint reply to the questions on the Agreement posed by other contracting parties.

The Council took note of this information.

19. Union of Soviet Socialist Republics - Report on ongoing economic reforms (L/6738)

The representative of the Union of Soviet Socialist Republics, speaking as an observer under "Other Business", informed the Council that his authorities intended to inform the CONTRACTING PARTIES at their Forty-Sixth Session in December about the process of economic reform which was under way in the USSR. His delegation had made available to the Secretariat some material[6] related to legislation already adopted. However, a number of other laws, including the draft programme of transition to a market economy, the customs tariff law and the customs code were currently under consideration.

The Council took note of the statement.

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[6] See L/6738.