GENERAL AGREEMENT ON

TARIFFS AND TRADE

RESTRICTED

C/M/255
10 April 1992

Limited Distribution

COUNCIL
18 March 1992

MINUTES OF MEETING

Held in the Centre William Rappard
on 18 March 1992

Chairman: Mr. B.K. Zutshi (India)

1. United States - Denial of MFN treatment as to non-rubber footwear from Brazil
- Panel report (DS18/R)

The Chairman recalled that at its meeting in April 1991 the Council established a panel to examine the complaint by Brazil. At its meeting in February 1992, the Council had considered the Panel report and had agreed to revert to it at the present meeting.

The representative of Brazil recalled that at the February Council meeting his Government had requested adoption of the Panel report. It had also requested that the Council recommend that the United States take the necessary steps to bring itself into compliance with the requirements of Article I:1 and, in accordance with the 1982 Ministerial Declaration (BISD 29S/9), report to the Council within a specified time-period, which should not be later than the present meeting, on the action it had taken in this regard. The United States had stated then that it was in the process of reviewing the report and that the Council should defer consideration thereof until the present meeting. Brazil hoped that the United States' consideration of the report was now complete and that it was ready to agree to its adoption and to bring itself into compliance with the requirements of Article I:1. This was not an academic dispute for Brazil; concrete commercial interests were involved. Brazil's exporters had been operating under great uncertainties throughout this dispute and still continued to do so. Brazil therefore renewed its request that the Council adopt the Panel report and recommend that the United States take the necessary steps to bring itself into compliance with Article I:1 and report to the Council at its next meeting on the action it had taken in this regard. Brazil was ready to discuss with the United States details of how best this action could be accomplished.

The representative of the United States said that since the February Council meeting his authorities had reflected on comments by Brazil and others regarding the importance of this matter and of the dispute settlement process to the continued smooth functioning of the GATT system. They had also given serious consideration to the manner in which this matter could be fairly and equitably resolved between the two parties. The countervailing duty in question had given rise to a complicated and lengthy dispute which was currently in commercial litigation in the United States between various footwear importers and the Department of Justice. There had recently been discussions as to how that matter could be resolved between the parties concerned. He had noted the point made by Brazil that the matter was not just of academic interest. His authorities would continue to seek a solution that would be acceptable to both parties. While the United States was not in a position to agree to adoption of the Panel report at the present meeting, it was hopeful that by the next Council meeting it would be in a position to indicate how this matter could be resolved. His delegation therefore requested that the Council appreciate and understand the situation which, as he had stated before, involved quite complex commercial litigation in the United States. He would also point out that the countervailing duty in question was no longer in effect with respect to prospective imports from Brazil.

The representative of Argentina said that the findings of the Panel were relevant. While Argentina was encouraged that the United States was seeking a mutually satisfactory solution to this matter, it believed that the most appropriate solution was adoption of the report so as to ensure compliance by contracting parties with GATT provisions. His delegation therefore urged adoption of the report.

The representative of Brazil said his Government was not in search of a moral victory. The matter involved serious commercial consequences for Brazil's exporters and the delay in adopting the Panel report and in bringing the United States into compliance with Article I:1 represented an additional burden for them. The United States' claims on the imports involved in this dispute continued to amount to US$1 million per month. Brazil therefore could not agree to an indefinite delay in this matter. Nevertheless, it was gratifying to hear that the United States would seek a solution to this problem that would remedy the violation found by the Panel. Brazil was ready to work with the United States toward such a solution.

The representative of the European Communities said that, as in all disputes, conciliation was preferable to any other course of action. He considered that the statements made in this regard at the present meeting were useful.

The representative of Uruguay welcomed the United States' statement concerning its readiness to find a solution to the problem. He shared Brazil's concern with respect to trade impediments entailed by the delay in the adoption of the Panel report. He believed that any solution should be based on the principle, which should be observed in all dispute settlement cases, of the prior adoption of the Panel report.

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

2. United States - Restrictions on imports of tuna
- Panel report (DS21/R)

The Chairman recalled that at its meeting in February 1991 the Council had established a panel to examine the complaint by Mexico. At its meeting in February 1992, the Council had considered the Panel report at the European Communities' request, and had agreed to revert to this item at a future meeting. It was on the Agenda of the present meeting at the European Communities' request.

The representative of the European Communities said that at its February meeting the Council had had a useful and necessary discussion on the contents and findings of the Panel report, and had been able to weigh its implications and importance in the context of a common concern about the trade and environment relationship. For some, it had also been an occasion to protest at the effects of the secondary embargo resulting from the application of the US Marine Mammal Protection Act. At the same time, the Community and others had underscored their strong commitment to

international action for dolphin protection. In this connection, he noted that the Community had stated its support, in other fora, for Mexico's initiative to convene an international conference on responsible fishing, due to be held in Cancun, Mexico, in May. As the Chairman had noted, the Council had agreed to revert to this matter at a future meeting. However, it had not been clear when that might have been. In the meantime, no action was envisaged as regards adoption of the report, nor as regards the embargo on intermediary nations with all the extra-juridical implications thereof. The debate had therefore been inconclusive, and the Community, as a vitally interested party, had felt bound to revert to this matter at the present meeting. In so doing, it had a threefold objective: (1) the principles set forth in the Panel report were too important to be ignored or to be set aside sine die. One had the opportunity of putting a modicum of order into the trade and environment relationship through this report which, if missed, would be regretted later. The Community therefore strongly continued to urge adoption of the report while reiterating its attachment to international action for dolphin preservation; (2) the Community, because it was directly affected, was anxious to know the results of the discussion between the parties to the dispute. If the parties needed more time to weigh the implications of this report before agreeing to its adoption, the Community might look on this sympathetically, provided it was kept informed; (3) the Community also needed to be informed about the US Administration's initiative to introduce a draft bill aimed at lifting the embargo on intermediary nations and, in particular, the scope, prospects and timing thereof.

Given the uncertainties which the Community faced, and its direct interests in this matter, it had taken the precaution of requesting Article XXIII:1 consultations with the United States (DS29/1). The Community would seek answers to its questions, and corrective action, either through a multilateral or bilateral process. It would -- and hoped others would too -- persist on this matter because it believed that an important issue, as well as direct economic interests, were at stake.

The representative of Mexico reiterated that his Government had been working with the United States and other directly interested contracting parties to find a solution to the problems underlying the Panel report. The problems were multi-faceted -- encompassing ecological, fishing and trade issues -- and the endeavour was to find a solution that would satisfy all the valid concerns of the interested parties. Mexico, together with other governments, had decided to deal with this matter with the greatest possible discretion and care, because of its very complex nature. His Government had announced, in August and September 1991, new dolphin protection measures in addition to all the improvements that had been made in this regard over the years. As to the conference on responsible fishing referred to by the Community, this was being organized, in parallel with other efforts, as a truly global and multilateral effort -- the only way to find a long-term solution. In recent consultations between Mexico and other governments, important progress had been made in developing a multilateral dolphin-protection scheme, which included a commitment to make additional and important reductions in the incidental mortality of dolphins in tuna fishing over the next two years. There would also be an individual and collective effort to improve and increase research into the development

of technologies which would make it possible to continue tuna fishing in the eastern tropical Pacific Ocean while at the same time avoiding dolphin mortality. At the end of the two years, a moratorium on purse-seine tuna fishing would be introduced for a period of five years, thus avoiding any incidental dolphin mortality with such fishing. During those years, the identification and development of alternatives to this kind of fishing would be continued. This scheme had been elaborated on the basis of a dialogue between the countries concerned, and had already been reflected in commitments undertaken by several authorities. Indeed, Mexico had committed itself to a package of measures which reflected the various elements that had been described, and the United States had also been working along the same lines. Mexico hoped that the measures being adopted and foreseen would lead to a satisfactory solution in the immediate future to the trade problem posed by the United States' actions, and would serve as a good example of the kind of results that could be achieved through multilateral cooperation. With regard to the Panel report itself, Mexico had nothing further to add.

The representative of the United States said that the purpose of the GATT dispute settlement mechanism was to encourage parties to resolve disputes through conciliation and mutual agreement. The United States believed that parties to a dispute should be free to work out a resolution of that matter. The United States, as Mexico had indicated, was continuing to work with Mexico towards that end and had had extensive discussions on the entire matter over recent weeks. Since the February Council meeting, the United States had proposed new legislation that addressed the embargo issue. That legislation was scheduled to be the subject of a hearing before the United States' Congress that day. The proposed legislation would promote an international solution to the problem of dolphin preservation and the tuna embargo by proposing that nations agree to enhance dolphin protection measures, including agreeing to a moratorium for five years beginning in March 1994 on the practice of setting fishing nets on dolphins, when fishing for yellow-fin tuna in the eastern tropical Pacific. The United States hoped that on the basis of such an international understanding it could move towards the elimination of the current embargo. In its testimony to be presented to Congress, the US Administration made clear that its approach was based on international cooperation rather than on coercive trade measures, and that this would attain a more favourable result than the current legislative scheme. That would be good for dolphins, good for the United States' foreign relations and obviously would reduce trade tensions. His delegation would provide further information on this legislation as it became available. With respect to the Panel report, the United States wished to reiterate its strong desire to have the underlying problem that had given rise to the dispute resolved in a satisfactory manner.

The representative of Venezuela reiterated his Government's support for the Panel's findings and recommendations. Venezuela had contributed to the Panel as an interested third party, because it had been seriously affected by the United States' embargo under the Marine Mammal Protection Act, which Venezuela believed was inconsistent with Article XI. The situation had been aggravated further by the imposition of a secondary

embargo which Venezuela believed also violated the United States' GATT obligations. In Venezuela's view, the Council should adopt the Panel report. Venezuela was continuing to make great efforts to protect dolphins, as had been described by his delegation at the February Council meeting. Venezuela had also initiated consultations with the United States to promote a multilateral agreement aimed at lowering dolphin mortality rates, and to elaborate technologies to prevent incidental dolphin mortality in tuna fishing. Until the appropriate technologies had been found, Venezuela would agree to a five-year moratorium on dolphin fishing as from 1994, which would be directly linked to the lifting of the US embargo on Venezuela's tuna exports. Venezuela was aware that this required specific action by the US Congress, and hoped this would be done as soon as possible. His Government's constructive attitude resulted from the conviction that it was necessary to exhaust all efforts to solve this problem. Venezuela nevertheless reserved the right to request Article XXIII:1 consultations if satisfactory results were not obtained by other means.

The representative of Costa Rica said that the US embargo against countries that were fishing tuna in the eastern tropical Pacific not only threatened sectors of strategic importance for the affected countries, but also affected dialogue, understanding and the dispute settlement procedures in the GATT. Costa Rica saw an urgent need to open a dialogue with the aim of defining mechanisms that should be applied by all contracting parties in order to preserve endangered resources without harming world trade and economies through the discriminatory or unilateral application of undesirable trading practices. The measures that were presently applied to tuna could in the future be extended to other activities. The solution to such disputes could only be found in a multilateral framework; otherwise, the possibility of further such conflicts between trading nations could lead to the deterioration of the multilateral trading system. Costa Rica considered it necessary that the Council adopt the Panel report.

The representative of Argentina underlined his Government's concern at the decision by the parties concerned to postpone adoption of this report. While it was true that one of the objectives of the GATT dispute settlement mechanism was to seek an amicable solution between the parties concerned, other aspects should also be considered, in particular when trade measures for environmental protection purposes were involved. In this regard, he recalled that the Group on Environmental Measures and International Trade had been convened, which pointed to the importance and the implications of this subject in the functioning of the GATT. One could also not overlook Council's decision at its February meeting to invite the Director-General to send to the UNCED the factual note by the Secretariat on trade and environment (L/6896), together with the chapter on trade and environment from the GATT annual report on International Trade 1990-1991, nor the various statements made by the Director-General regarding this subject. The importance of the environment for the GATT lay in the fact that environmental protection measures should be taken precisely for that purpose and not in pursuit of other objectives. In other words, the environment should not be used as a justification for protectionist policies. Argentina believed that the Panel's findings and recommendations

set an extremely important precedent for work within the GATT and also for the interpretation of the application of measures taken for environmental purposes. The report highlighted the importance of collective action by the CONTRACTING PARTIES, and the need to avoid any unilateral or bilateral action which could have substantially negative implications for the multilateral trading system. Argentina urged the parties involved to consider, in the course of their consultations, the importance of having this report adopted by the Council. This would be a significant contribution to the multilateral trading system as well as to the interpretation of the environmental issue and its relation to trade. Argentina believed that until an adequate solution had been found this topic should remain on the Council agenda.

The representative of India recalled that at the February Council meeting -- the first time this Panel report had been considered -- India had supported adoption of the report because it had believed it to be well-reasoned and sound. At the present meeting, India was encouraged to hear from Mexico and the United States that bilateral discussions were being held with a view to arriving at an amicable resolution of the dispute. However, as others had stated, in addition to the elements of the bilateral dispute and its effects on third parties, the Panel report also dealt with a fundamental principle of GATT which was particularly important to reiterate at the present time when wide-ranging discussions on the interface between trade and the environment were taking place in other fora. It was important for the GATT, at the present stage, to pronounce itself clearly on what its provisions were with respect to the adoption by contracting parties of unilateral measures of an extra-territorial nature to protect the global environment. This issue of fundamental principle was also pertinent in the case of the Panel report considered under Agenda item[1]. In that case also, bilateral discussions between the parties were ongoing, but the Panel report had, like the one at hand, dealt with fundamental GATT obligations and principles which needed to be reaffirmed unequivocally and adhered to by all. India therefore strongly urged the rapid adoption of this Panel report, if possible at the present meeting.

The representative of Canada expressed gratitude to Mexico and the United States for having provided information on the practical and legislative plans that they were working on to bring about a bilateral resolution to the issue at hand. Canada would clearly support any action by the parties to a dispute to try and resolve it. In this case, however, a large number of contracting parties were also involved. Therefore, while Canada welcomed the information from the two parties concerned, it would note that the embargo remained in place and was affecting a large number of contracting parties, despite the fact that a Panel had reported on this matter and found the actions to be GATT inconsistent. Canada supported the Community regarding the need to bring more light to this dispute, and wished to have more information about the discussions between the parties concerned. As his delegation had stated at the February Council meeting, Canada considered that the Panel report was sound, advanced GATT jurisprudence in a number of areas and clarified a number of important points. In this context, his delegation supported India's statement. This Panel report had pronounced itself on a number of issues that contracting

parties were trying to deal with in the Group on Environmental Measures and International Trade, in particular on the use of unilateral trade measures to enforce domestic environmental goals. Canada believed this work to be important, and urged the United States to agree to adoption of the Panel report and to take quick action to remove its trade restrictions.

The representative of Peru said that his delegation had noted with interest Mexico's and the United States' statements. It was particularly interesting that an effort was being made to change the approach to marine mammal protection from trade coercion towards an agreement which would hopefully be of a multilateral nature and which would satisfy both exporting as well as importing countries. Peru hoped that more detailed and clear information on the progress made in this initiative would be forthcoming. Peru found it paradoxical that dolphin protection measures were being limited only to one specific geographical area, and believed it would be more balanced and correct if similar measures were taken to protect dolphins everywhere. Peru believed that the Panel report should be adopted as soon as possible because it set an important legal precedent regarding the relationship between environmental protection and international trade.

The representative of Japan said that the issue of this Panel report touched on the general question of the relationship between trade and the environment and on the rôle of the GATT in that regard. It also touched on the question of the functioning of the GATT dispute settlement system. This report had been duly discussed and many considered it to be balanced and well-reasoned; the question, therefore, was whether contracting parties should act on it or postpone their decision. This issue also had direct trade consequences for Japan and a number of other contracting parties resulting from a unilateral action by one contracting party; hence the question of how contracting parties should deal with this. For these reasons, Japan urged that the Council adopt the Panel report and that the United States implement its recommendations. His delegation had listened carefully to Mexico's and the United States' statements, and had noted the United States' assertion that the objective of the GATT dispute settlement process was to encourage the parties concerned to settle their dispute amicably. He hoped that that statement would be put clearly on the record. His delegation had also noted the information regarding recent discussions concerning dolphin protection, and hoped that these would be brought to a rapid and successful conclusion because the embargo was still in place and its effects were real. The timing of those discussions was of crucial importance and, in that context, Japan reserved its GATT rights on this matter.

The representative of Cuba recalled his delegation's statement during the review of the United States' trade policy under the Trade Policy Review Mechanism[2] that Cuba was not one of the countries affected by the United States' measures in the case at hand. However, Cuba believed that this subject involved a number of other contracting parties that were affected

[2]See C/RM/M/23.

by the embargo. Therefore, while Cuba welcomed the information provided by Mexico, it believed that the Community's request, namely that more light be shed on developments in this area, was very timely. Cuba also urged the Council to adopt the report.

The representative of Colombia expressed gratitude for the information that had been provided, in particular by Mexico on the additional measures it was taking to save dolphins. Colombia believed it important that Mexico's effort be counter-balanced by measures by the United States, which had implemented the embargo that was affecting not only Mexico but many intermediary nations including Colombia. Although the bilateral consultations being held to resolve this problem were useful, Colombia believed that a multilateral solution should be found for this matter, in light of the large number of countries that were presently affected by these measures. However, any solution had first to involve adoption of the Panel report by the Council.

The representative of Korea reiterated his Government's position on this matter, as expressed at the February Council meeting. Korea was encouraged to hear that the United States was seeking a solution internally and that it supported the resolution of disputes through conciliation. Korea's concern about the tuna dispute was that it provided a typical example of unilateral and extra-territorial trade measures taken on environmental grounds which were inconsistent with GATT and could affect the interests of many contracting parties. The Panel report had concluded that the import prohibition on certain yellow-fin tuna and tuna products from Mexico and intermediary nations was contrary to Article XI:1 and was not justified under Article XX (b) or (g). Korea supported the early adoption of the report and urged that the necessary follow-up measures be taken as soon as possible.

The representative of Senegal said that although his country was not directly affected by this embargo, its effects were being felt in its fishing economy. For this reason, Senegal supported the Panel's findings. He welcomed the efforts being made to find an amicable solution and hoped this would be done soon in order to avoid any further damage to his country's fishing industry. Senegal hoped that the report would be adopted as soon as possible and its recommendations implemented by the United States.

The representative of New Zealand said that his Government considered this issue sensitive both because of the need to protect dolphins and of the relationship between environment and trade. He had listened carefully to the United States' remarks about the rôle of panel reports in the GATT dispute settlement system and agreed that a major purpose was reconciliation between the parties concerned. However, panel reports and implementation of their recommendations had a bearing on the international framework of rules and their interpretation, as well as on the rights and obligations of all contracting parties. This emphasized the need to ensure the necessary transparency. He expressed gratitude for the information provided by the United States and Mexico concerning the steps they were taking between themselves and with the involvement of some other parties. New Zealand was interested in the implications of these steps, and of the

solution these parties were working towards, for other contracting parties. In particular, it wanted to know whether the arrangements being discussed would be of a multilateral or a regional nature. It was also interested to know which other countries were already involved in these discussions or might be subsequently involved, and whether the process underway was expected to lead to the adoption of the Panel report.

The representative of Pakistan said his country had a substantial interest both in trade in fish and fish products and in environmental protection. The operation of the US Marine Mammal Protection Act and the action thereunder against imports of yellow-fin tuna from Mexico had brought up a number of issues and concerns, and had led to a very welcome discussion. These concerns were related to ecological objectives, the application of unilateral extra-territorial measures, the protection of GATT rights and the possible use of environmental protection measures as an excuse for trade protection. The discussion had led to two very important steps in the framework of the GATT itself: the convening of the Group on Environmental Measures and International Trade and the circulation of the chapter on trade and environment from the forthcoming GATT annual report on International Trade 1990-1991, which had already been the subject of considerable interest among environmental lobbies. These were indeed steps which would further the discussion on this important issue. He commended the Panel report for having clarified the issues referred to by him in a precedent-setting manner. He noted that the report did not deny the right of individual contracting parties to pursue domestic environmental policies. At the same time, the report emphasized the need to protect individual contracting parties against unilateral and extra-territorial measures. Like others, Pakistan believed that the Panel report and its conclusions were well-reasoned, comprehensive and sound. The Panel had clearly upheld that exceptions under Article XX could not be used for general protectionist purposes or for discrimination among contracting parties. Equally important was the finding that the United States' action was contrary to Article XI. For these reasons, Pakistan supported adoption of the Panel report. The issue before the Council at the present meeting was whether the Panel report would be set aside and the parties involved would pursue their concerns in a bilateral setting. Pakistan's preference -- indeed commitment -- was for multilateral solutions to problems and, since the issue at hand was of a general topical interest, Pakistan supported the view that a decision thereon ought to be taken in a multilateral context. It therefore hoped that the Panel report would be adopted as soon as possible, preferably at the present meeting.

The representative of Brazil said that his Government appreciated the concern for dolphin protection. The real issue before the Council was not so much to determine environmental standards that were adequate in this regard, but the extra-territorial application of domestic legislation. This was probably the most important issue addressed in the Panel report, and was a concern of a multilateral nature. Brazil therefore supported an early adoption of the Panel report.

The representative of Switzerland expressed appreciation for the additional information provided by the United States and Mexico and hoped that the dispute would soon be resolved. He was also glad to hear that a

multilateral solution was being considered. His delegation believed that this issue was no longer of a purely bilateral nature, but a problem which concerned all contracting parties. The Panel report had flagged some conclusions which were certainly both important and relevant to the link between national environmental regulations and GATT rules and provisions. Furthermore, the US legislation currently under consideration affected the interests of a great number of contracting parties, and it would be regrettable if the Council would not be in a position to pronounce on the application of national legislation or unilateral measures beyond a country's frontiers. The Panel findings were highly relevant and its report should be adopted without any hesitation. His delegation would therefore welcome the adoption of the Panel report at the present meeting. It also wished to voice a more general concern with respect to the blocking of the adoption of panel reports in general. Such a practice put in jeopardy the credibility and functioning of the dispute settlement system.

The representative of Chile welcomed the fact that the United States and Mexico were seeking a bilateral solution to this dispute which was of great importance to all contracting parties since it affected both environment and trade. Given the determined wish of the two parties to find a solution, he believed that the most logical step -- which Chile favoured -- was the adoption of the Panel report. Chile would also request that Mexico and the United States keep contracting parties informed of the progress made and the results achieved on this issue, which was clearly of a multilateral character and affected many contracting parties.

The representative of Hong Kong recalled that his delegation had expressed its views on the Panel report at the February Council meeting. He would now only emphasize that it was the responsibility of the Council to decide within a reasonable time whether the Panel report should be adopted. He joined other delegations in urging adoption of the report, failing which the credibility of the GATT system would be jeopardized.

The representative of Sweden hoped that the parties to the dispute would be able to find a solution thereto. It was also important that issues of this kind be discussed in the Council in order to avoid solutions which might be detrimental to other contracting parties. This was even more important in this particular case, which was of interest to all and had a bearing on a number of important principles. He believed that the Panel had done contracting parties a great service in bringing out the issues involved with great clarity. For example, Sweden considered it appropriate, as the Panel had clearly stated, to exercise restraint in placing process requirements on imported products. Normally the effects that the production processes in exporting countries could have on importing countries were transmitted through the product itself. Process requirements should therefore relate to product characteristics, except in the unusual circumstance when the production process itself directly affected the importing country. He also shared the Panel's view that extra-territorial issues were most appropriately tackled through multilateral cooperation and not through unilateral measures. Multilateral cooperation ensured the respect of sovereignty of nations to a fuller extent, enabled a comprehensive approach to issues and spared efforts of

individual countries which might work at cross purposes. Sweden therefore noted with satisfaction that multilateral cooperation was one of the three topics agreed for the agenda of the Group on Environmental Measures and International Trade. Although the Panel report had stirred a certain amount of controversy outside the ranks of trade-policy makers, Sweden believed that the report was not inimical to environmental concerns. The Panel's analysis had indicated that there were limits to ways in which national legislation could be extended to other countries. It had also pointed in the direction of greater multilateral cooperation in the environmental field which, in Sweden's view, should be the strongest form of response to global and regional environmental concerns. Sweden therefore wished to firmly endorse the analysis of the Panel report in this respect.

The representative of Tanzania said that the exhaustive Panel report, which concentrated on the trade aspects of the matter under dispute, the various submissions to the Panel, and the discussions in the Council, had all underlined the risks involved in mixing environmental issues and trade matters in an ad hoc manner. While the GATT determined the trade rules of the game, there was not as yet a multilaterally negotiated global environmental accord which could provide the scientific grounds for taking certain environmental measures. In the meantime there was no alternative to adopting the Panel report in the interests of transparency and of the multilateral trade rules and regulations.

The representative of Jamaica said that his country was in favour of adoption of the Panel report, and was deeply concerned about the implications of the extra-territoriality of domestic legislation. He was particularly concerned about the information provided by Mexico and the United States with respect to their continuing discussions on the issues underlying the report, because the interests of third parties were still being infringed and violated while these discussions continued. Jamaica hoped that the report would be adopted quickly, if possible at the present meeting, because that would indicate that the GATT had taken a firm position with respect to the need for greater importance to be placed on food, in the form of tuna fish, than on the alleged destruction of an animal species. Jamaica was concerned about the possible implications of the delayed adoption of this report.

The representative of Uruguay said that his Government agreed with the conclusions of the Panel report and was in favour of its rapid adoption. Uruguay also wished to voice its general concern along the lines set out by Switzerland. It was concerned at the difficulties that the Council was encountering in adopting panel reports. Adoption of reports should be the natural sequence followed in the dispute settlement mechanism once they had been submitted by the panels concerned.

The representative of the European Communities said that the best way to obtain adoption of this report was to put it on the agenda of the next Council meeting. Perhaps that would be the only way to do it in light of the many and persistent views that had been expressed at the present meeting for its adoption. The Community wished to express its gratitude to the United States and Mexico for the efforts they appeared to be

undertaking bilaterally to resolve this issue. However, such conciliation, which the Community would approve of, would not be helpful if it was done on the back of other contracting parties' interests. In that connection, the Community would ask that care be taken that others' interests were taken fully into account in any bilateral resolution of this dispute. The Community had been a little concerned to hear that the United States, in particular, was looking for ways to resolve satisfactorily the problems underlying the report. While that was important, the principles enunciated in the report itself were also important, and should not be set aside, or else an opportunity would have been lost.

The representative of the United States reiterated that efforts were being made by the United States and Mexico to resolve this matter bilaterally. He noted that this was the first time that a contracting party not party to a dispute had called for adoption of a panel report by placing it on the Council's agenda. The United States believed that this was not appropriate and that it would fundamentally change the customary rôle of third parties in the GATT dispute settlement process. In fact, in the United States' view, there was no basis in the GATT for such a request. It was perhaps important to note that according to past practice under the GATT, a panel report served only to define, for purposes of the particular dispute, the obligations of the contracting parties that were parties to a dispute. Prior to the adoption of the April 1989 improvements to the GATT dispute settlement rules and procedures (BISD 36S/61), the United States had sought to put forward the position that, upon adoption, panel reports should be treated as an agreed interpretation of GATT rules binding upon and applying to all contracting parties. That proposal had been vigorously opposed by a great many contracting parties, not least of which the Community, which had long maintained that adoption of a panel report did not constitute a legal precedent and that panel reports had no precedential value with respect to non-parties. If other contracting parties were now telling the United States that there was a wide-spread desire to change their views with respect to the precedential value of panel reports, and that contracting parties would now take the position that all panel reports previously adopted, and those adopted in the future, would constitute agreed interpretation of GATT principles and rules, and be of universal application to all, then his delegation would certainly have some strong arguments in his Capital about the dispute at hand. In the absence of such an understanding among contracting parties, he would note that, in the United States' view, this report was not on the agenda of the Council for adoption at the present meeting, and that there would be no support from his delegation for adoption.

The representative of the European Communities said that the purpose of the debate at the present meeting had not been to define whether or not a third party had the right to request adoption of a panel report, and that the Community was not asking to innovate in this sense. Indeed, the reasons why the Community had had recourse to its own Article XXIII:1 proceedings was precisely because this was an area where there was perhaps some doubt. That in no sense invalidated the political interest in this particular case, on the one hand because it touched on the principles that had already been discussed, and on the other because it overlooked entirely the fact that other contracting parties were directly involved. Other

parties were suffering as a result of the United States' action, and could not abdicate their responsibility to ask that action be taken to correct this. If other contracting parties pressed for adoption of this report, it did not mean that they assigned to themselves a new right. They simply asked that what was self-evident should be taken into account by the two parties to this dispute.

The Chairman proposed that the Council take note of the statements and agree to revert to this matter at its next meeting, prior to which he would undertake informal consultations to determine how this matter could be dealt with then.

The Council so agreed.

3. EEC - Trade measures taken for non-economic reasons
- Recourse to Article XXIII:2 by Yugoslavia (DS27/2)

The Chairman recalled that at its meeting in February, the Council had considered the request by Yugoslavia for the establishment of a panel to examine its complaint (DS27/2), and had agreed to revert to it at the present meeting.

The representative of Yugoslavia said that the reasons for which Yugoslavia had requested the establishment of a panel had not changed, and had been clearly spelled out in its communication (DS27/2). On the other hand, the non-economic reasons that had formed the basis of the European Community's trade measures against Yugoslavia had completely changed. The peace process in Yugoslavia was proceeding well and all parties were contributing to the fullest extent. It was therefore very wrong to single out one region in the country and treat it in a discriminatory manner. Yugoslavia had hoped that as a result of the changed situation the Community's trade measures would already have been lifted. That, unfortunately, had not happened. Since the February Council meeting, Yugoslavia had held consultations with the Community without prejudice to its request for the establishment of a panel, but no solution had been found. Yugoslavia believed that lifting the measures against it would help the peace process, the interests of its business community and its trade partners. Yugoslavia's request for the establishment of the panel should be seen as an effort to examine these measures in light of the relevant GATT provisions.

The representative of the European Communities said that while he recognized Yugoslavia's right to request the establishment of a panel, it was regrettable that Yugoslavia should do so at the present meeting. The Community believed that the timing was not opportune. The measures in question had been taken for non-economic reasons, and the Community believed that this fact should have a bearing on the manner in which the Council dealt with this case. As all were aware, there was an ongoing peace process in which the Community was deeply involved. The Community could not see how a panel established at the present time could aid that process. Indeed, it would only complicate the issue. Under the circumstances, if the Council agreed at the present meeting to establish a

panel in principle, it would be going a long way. The Community recognized that under the April 1989 improvements to the GATT dispute settlement rules and procedures (BISD 36S/61), a panel had to be established at the second Council meeting at which it was requested, unless at that meeting the Council decided otherwise. Clearly, however, the rules were silent on the question of whether, in situations where measures taken for non-economic reasons were involved, a different course could be taken such as, for example, agreeing to establish a panel in principle but delaying its activation subject to further clarity in the situation. Whatever the course of action taken at the present meeting, the Community reserved its rights as to what constituted standard terms of reference for a panel which dealt with measures taken for non-economic reasons. It believed this was a matter that deserved further consideration. The Community urged contracting parties to reflect further on the wisdom of pressing for the establishment of a panel at the present meeting. If a panel were indeed established, the Community would be bound to accept that decision. However, it would do so with regret and would consider that the establishment of a panel now did not imply that it should begin work immediately.

The representative of Yugoslavia said he had listened carefully to the Community's statement. He recalled that the measures in question had been in effect since November 1991 and had been causing considerable damage. Yugoslavia believed it was difficult to justify these measures and to explain the delay in removing them. In view of the situation, Yugoslavia maintained its request that the Council establish a panel at the present meeting to examine its complaint.

The representative of the United States reiterated his Government's strong support for continued efforts to achieve a political solution to the problems in Yugoslavia. It was in support of these goals that the Community had announced economic sanctions. In the United States' view, any contracting party had the right to request a panel. However, it was clear that the problems that had given rise to the Community's measures would not be capable of resolution by the Council. All parties needed to reaffirm their determination to seek a peaceful solution to the political difficulties in Yugoslavia.

The representative of Canada said that, like others, Canada believed that under the April 1989 rules Yugoslavia had a right to the establishment of a panel at the present meeting if it so wished. However, some disputes did not readily lend themselves to a resolution through the panel process. Canada therefore urged the parties concerned to pursue further consultations aimed at reaching a mutually satisfactory solution to this matter.

The representative of India said that having listened carefully to the Community's and Yugoslavia's statements, and bearing in mind the provisions of the April 1989 rules, his delegation was of the view that the Council should establish a panel at the present meeting and that its terms of reference and timing should be settled through informal consultations to be conducted by the Council Chairman.

The representative of New Zealand said he had listened carefully to the previous statements, and noted with satisfaction that the peace process was continuing and that consultations had been intensified. While the GATT process and the April 1989 rules needed to be observed, New Zealand believed that the trends in the political situation should be ascertained before any GATT consideration of the measures in question.

The representative of Pakistan said that one of the objectives of the GATT dispute settlement mechanism was to resolve disputes through consultation and conciliation. An additional purpose was to contribute to reducing trade friction between contracting parties, thereby promoting peace and harmony among nations. It was in that light that Pakistan had hoped that the Community's readiness to consult with Yugoslavia would serve to advance the objectives and principles of GATT. Pakistan was disappointed that the parties directly involved had been unable to secure a mutually acceptable solution. Referring to the Community's statement that the measures in question had been taken for non-economic reasons, he recalled that pursuant to the 1982 Ministerial Declaration (BISD 29S/9), contracting parties had undertaken to abstain from taking restrictive trade measures of a non-economic character not consistent with the General Agreement. Having said this, Pakistan believed that Yugoslavia's request was covered by GATT provisions and supported its efforts to seek recourse thereto. Pakistan hoped that this would contribute to the peace process and to avoiding trade friction between the parties concerned. Pakistan was of the view that the Council should establish a panel and authorize its Chairman to hold consultations on the related procedural questions.

The representative of Argentina expressed his Government's support for the peace process in Yugoslavia and for the United Nations' efforts in this regard. Argentina agreed with the previous speakers who had underlined the need for a political solution to the problem in Yugoslavia, and believed this was of paramount importance. Argentina agreed that under the 1989 rules, a contracting party had the right, at the second meeting of the Council at which the request had been formally included on the agenda, to have a panel established to examine any question relating to the application of GATT provisions. In the case at hand, one was speaking of measures taken for non-economic reasons and invoked under Article XXI. Yugoslavia therefore had the right to request establishment of a panel to examine this problem. Argentina noted that under the present rules, parties to a dispute could agree to other than the standard terms of reference in the twenty days that followed the establishment of a panel, but that if there was a divergence then the standard terms would prevail. As regards the time in which a panel should complete its work, this was clearly established in the April 1989 rules. Argentina believed it important to ensure strict compliance with these rules.

The representative of Chile said that while Chile supported Yugoslavia's request for a panel, it considered that the intensification of consultations between the parties concerned was important.

The representative of Peru said his delegation was encouraged to hear that progress was being made in the peace efforts in Yugoslavia. Peru supported the right of any contracting party to request the establishment

of a panel in accordance with the April 1989 rules, and therefore supported Yugoslavia's request.

The representative of Cuba said that his Government supported Yugoslavia's request on the basis that every contracting party had the right to request establishment of a panel. Cuba supported a decision which would authorize the Council Chairman to initiate consultations to decide on the terms of reference of the panel, without prejudice to any bilateral consultations which Yugoslavia and the Community would be undertaking.

The representative of Mexico said that the events in Yugoslavia were regrettable and hoped that the multilateral efforts already underway would help to restore peace to that country. Nevertheless, the GATT was perhaps not the most appropriate forum to discuss those issues, much less to solve them. In this context, Mexico wished to reiterate its position against trade measures taken for non-economic reasons. Mexico supported Yugoslavia's right to the establishment of a panel at the present meeting, but would urge the parties involved to continue their efforts and consultations in order to reach a peaceful solution as soon as possible.

The representative of Japan said that Yugoslavia was fully within its rights to request the establishment of a panel. At the same time, Japan noted that the circumstances which had led to the measures in question were rather unique, as all were aware. Japan was fully supportive of the peace process in Yugoslavia and looked forward to peace being restored very soon. Japan's preferred approach in this particular case was for the parties to engage in further dialogue to seek a mutually satisfactory solution.

The representative of Venezuela expressed support for the peace process currently underway in Yugoslavia, and for that Government's request for the establishment of a panel on the principle that every contracting party had the right to a panel.

The representative of Tanzania said his Government fully understood the difficulties in this complex situation. It had every confidence that both the Community and Yugoslavia would wish to continue and intensify their contacts in this rather unique situation without, of course, in any sense derogating from Yugoslavia's right to request a panel. A dispute settlement panel was a means to an end, and all knew that in this particular case the end was really a peaceful solution to the current situation in Yugoslavia. Tanzania hoped that those directly concerned and those wishing to assist would not want to see that end defeated in any way in the course of the operation of the GATT dispute settlement rules and procedures.

The Chairman said that the Council now had to decide on this matter in light of the April 1989 rules. He recalled that on an earlier occasion, when another contracting party's request for a panel had been before the Council for a second time[3], it had been understood that, under the April

[3]See C/M/249, Item 10.

1989 rules, a contracting party had the right to a panel at the second Council meeting following that at which the request first appeared as an item on the Council's regular agenda, unless at that meeting the Council decided otherwise. This had been the subject of further debate[4], and it had been felt that there would be two circumstances in which the Council's decision would be otherwise: (a) if there was a consensus not to establish a panel at the second Council meeting, and (b) if there was a consensus to postpone consideration of the request for a panel. In light of the discussion at the present meeting, and since Yugoslavia maintained its request for a panel, he proposed that the Council take note of the statements and agree to establish a panel with the standard terms of reference unless, as provided for in the Decision of 12 April 1989 (BISD 36S/61), the parties agreed to other terms of reference within the next twenty days. He also proposed that the Council authorize him to designate the chairman and members of the panel in consultation with the parties concerned.

The representative of the European Communities said that the discussion at the present meeting showed there was a strong body of opinion which agreed that Yugoslavia's right to a panel existed, but which questioned whether that was in the best interests of all concerned. The Community was very clear that the peace process would not be aided by the formal establishment of a panel at the present meeting, and therefore requested that a decision thereon not be so formulated as to have a panel take effect immediately. With regard to the terms of reference, the Community believed that not all eventualities had been foreseen in the April 1989 Decision -- a sound Decision in itself and one which the Community had approved. The Community therefore wished to reserve its position and to reflect further on what should be the standard terms of reference in the present case, where measures taken for non-economic reasons were involved.

The representative of Yugoslavia said that his delegation could accept the Chairman's proposal. Yugoslavia believed that removal of the Community's measures would be an important contribution to the peace process. It also believed that the establishment of a panel would signal a positive contribution from the GATT to that process.

The Council took note of the statements and agreed to establish a panel with the standard terms of reference unless, as provided for in the Decision of 12 April 1989 (BISD 36S/61), the parties agreed on other terms within the following twenty days.

The Council authorized its Chairman to designate the Chairman and members of the Panel in consultation with the parties concerned.

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[4]See C/M/250, Item 16; C/M/251, Item 19 and C/M/252, Item 17.

4. Roster of non-governmental panelists
- Proposed nomination by Austria (C/W/696)

The Chairman drew attention to document C/W/696 containing a proposal by Austria for nomination to the roster of non-governmental panelists.

The Council approved the proposed nomination.

5. Egypt - Renegotiation of Schedule LXIII
- Request for a waiver under Article XXV:5 (C/W/697, L/6986)

The Chairman drew attention to the request by Egypt in L/6986 for a waiver from the provisions of Article II of the General Agreement, and to the draft decision in C/W/697 which had been circulated to facilitate the Council's consideration of this matter.

The representative of Egypt said his Government's request was aimed at enabling the renegotiation of Egypt's schedule in accordance with Article XXVIII. The need for modifying the schedule was related to the implementation of Egypt's economic reform programme which had been carried out since the mid 1980s with a view to transforming its relatively planned economy to a market-based economy. The modification of the schedule was aimed at narrowing the gap between maximum and minimum tariff rates in order to achieve a more balanced schedule which would be beneficial both to Egypt's economy and its trading partners. The reform of the tariff system also involved the adoption of the Harmonized Commodity Description and Coding System (HS), which would be implemented as from 1 January 1993. Egypt was also seeking to achieve a proper balance of its budget. As had been noted in the Director-General's recent annual report on developments in international trade and the trading system (C/RM/OV/3), Egypt had reduced its tariffs across-the-board by 50 per cent in 1986 and by 30 per cent in 1989. These reductions had been in addition to other autonomous trade liberalization measures. His Government firmly believed in the principle of free trade, and was pursuing a macro-economic policy aimed at eliminating import-substitution and other forms of trade distortion. His delegation hoped that a list of the main tariff items to be subject to modification, which had recently been transmitted to the Secretariat, would enable interested contracting parties in assessing the grounds for this waiver request. He underlined Egypt's intention to carry out the process of modification of the schedule in as transparent a manner as possible, for the benefit of all contracting parties concerned and in the interests of maintaining a credible multilateral trading system.

The representatives of Morocco, Tunisia, India, Pakistan, Senegal, Peru, Sri Lanka, Venezuela and Uruguay expressed support for Egypt's ongoing reform programme aimed at liberalizing its trade régime. They appreciated the arguments underlying the request and noted that the waiver would cover a limited number of items. They also noted Egypt's readiness to follow Article XXVIII procedures in a transparent manner, and indicated that they were prepared to support its request.

The representative of the United States said that his delegation was not in a position to agree with Egypt's request at the present meeting. This was without prejudice to a consideration of the request at the next Council meeting on the basis of more complete information which would allow his delegation to support the request. Such information should first relate to the scope of the waiver request and the nature of tariff increases. According to preliminary information, the tariff increases appeared to affect most of Egypt's current bindings. Second, it was unclear whether the request was related to Egypt's HS implementation or to the need to make unspecified tariff increases. His Government fully supported Egypt's efforts to liberalize and rationalize its trade régime, and wished to see these measures bound in GATT so that Egypt could get full credit in the Uruguay Round for such trade liberalization. His delegation hoped that Egypt would provide further documentation in the very near future. The United States was interested in discussing with Egypt the exact nature of the waiver, the extent to which it would involve tariff increases and the effect on the United States' export interests, so that it could act favourably on the request.

The representatives of the European Communities, New Zealand and Sweden on behalf of the Nordic countries said that in principle they would consider favourably Egypt's request. The representatives of the European Communities, New Zealand, Canada, Australia, Austria, Sweden on behalf of the Nordic countries and Japan shared the view that further information was needed in regard to the scope and coverage of Egypt's request, and hoped that a decision thereon would be possible at the next Council meeting. The representatives of Canada, Australia and Austria also noted Egypt's readiness to follow Article XXVIII procedures.

The representative of the European Communities also said that tariff concessions should be kept separate from internal revenue considerations and that tariff increases should not go beyond commercially viable rates. He hoped that further information to be provided by Egypt would dispel such concerns.

The representative of Egypt expressed appreciation to those that had supported his country's request. He observed that the waiver would not affect most current bindings but only sixty items. Moreover, the proposed modifications of the schedule were not aimed at increasing budget earnings. Egypt was prepared to offer appropriate compensatory adjustments in the process of consultations with its main trading partners in the form of reductions of certain high tariffs and additional tariff bindings. He understood the interest of certain delegations for further consultations before reverting to Egypt's request at the next Council meeting, and hoped that a positive decision thereon would be taken at that meeting.

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

6. EFTA - Turkey Free-Trade Agreement
- Communication from Iceland on behalf of the EFTA countries and Turkey (L/6989 and Add.1)

The Chairman recalled that at its meeting in February, Iceland had informed the Council under "Other Business" that a free-trade agreement between the EFTA countries and Turkey, which would enter into force on 1 April 1992, had recently been signed, and that information thereon would be provided to contracting parties in due course. He drew attention to a communication from Iceland on behalf of the EFTA countries and Turkey (L/6989 and Add.1).

The representative of Iceland, on behalf of the EFTA countries, said that in accordance with Article XXIV:7(a) and the Council Decision of 25 October 1972 (BISD 19S/13), his country, on behalf of the EFTA countries and Turkey, had recently communicated to contracting parties the text of the EFTA - Turkey Free-Trade Agreement and other relevant documentation (L/6989 and Add.1). The parties to the Agreement stood ready to provide further information and to consult with contracting parties on this matter.

The representative of Turkey said that this Agreement, which aimed to promote, through the expansion of trade, the harmonious development of economic relations between Turkey and the EFTA countries and to provide fair conditions of competition, was based on the relevant GATT Articles. The Agreement also aimed to contribute to the development and the expansion of world trade by removing barriers and enhancing cooperation. It demonstrated Turkey's and the EFTA countries' willingness to participate actively in the process of economic integration in Europe. Accordingly, it took into account the progress achieved thus far among the EFTA countries, as well as the agreement existing between the EFTA and the European Community on the one hand, and those between Turkey and the latter on the other. He recalled the salient features of the Agreement, as had been indicated to the Council at its February meeting. In practical terms, Turkey would apply to the EFTA countries the same level of reductions that it effectively applied to the Community pursuant to its association agreement therewith. The ratification process was under way and the Agreement would enter into force shortly. The free-trade area created by the Agreement would contribute to the economic growth of the countries parties thereto, which would also benefit other countries since the Agreement did not raise barriers to trade with them. Like its EFTA partners, Turkey also stood ready to consult and to provide further information with regard to the Agreement. Turkey believed the Agreement to be in full conformity with Article XXIV.

The Chairman said it had been brought to his attention that several other free-trade agreements between the EFTA member States and other countries were in the offing, and noted that under "Other Business" at the present meeting the European Community would be providing further information in respect of three recently concluded association agreements. He would be giving some thought to the logistical aspects of this matter, and suggested that representatives might want to take this into account in their discussion.

The representatives of the United States, Japan and Australia expressed gratitude to the EFTA countries and Turkey for having notified this Agreement to the GATT.

The representative of the United States said that his Government sought the establishment of a working party under the provisions of Article XXIV to examine the Agreement and to make the necessary recommendations. However, in light of the Chairman's comments regarding the logistical problems posed by the large number of regional arrangements that were being notified to the GATT, the United States would be flexible as to the process for their examination. He suggested that several of these arrangements could perhaps be grouped together in a single exercise for that purpose.

The representative of Japan welcomed the readiness of the parties to the Agreement to enter into consultations. His Government also believed a working party should be established to examine this Agreement, bearing in mind the logistical questions mentioned by the Chairman.

The representative of Australia said that while his Government also wished to see this Agreement subject to appropriate examination, it would not prejudge or pre-empt the process that the Chairman might have in mind.

The Chairman proposed that the Council take note of the statements, agree to revert to this matter at its next meeting, and also agree that the Chairman would hold consultations in the meantime to see how the several regional agreements likely to come up for examination in the near future could be dealt with.

The Council so agreed.

7. United States Agricultural Adjustment Act
- Thirty-third and thirty-fourth annual reports by the United States Government under the Decision of 5 March 1955 (L/6975)

The Chairman recalled that under the Decision of 5 March 1955 (BISD 3S/32), the CONTRACTING PARTIES were required to make an annual review of any action taken by the United States under the Decision, on the basis of a report to be furnished by the United States. He also recalled that at its meetings in April and May 1990, the Council had considered the thirty-first and thirty-second annual reports by the United States, as well as the report of a Working Party established to examine the twenty-ninth and thirtieth annual reports. At its meeting in May 1990, the Council had agreed to revert to these two matters at a future meeting. He then drew attention to the thirty-third and thirty-fourth annual reports which were before the Council in document L/6975.

The representative of the United States said that the reports by his Government in L/6975 were self-explanatory and conformed with the requirements set out in the Waiver Decision.

The representative of Canada recalled that during the Council's consideration in May 1990 of earlier annual reports by the United States under the Waiver, his delegation had stated that there did not seem to be much utility in discussing those issues at that point in time. He had also suggested that delegations were perhaps of the view that their time could be better spent on efforts to eliminate the Waiver through a successful conclusion of the Uruguay Round, than on conducting an examination of how the United States had been applying the Waiver. That had been good advice then, and remained so now. He suggested that the Council revert to this matter after the conclusion of the Uruguay Round. If this Waiver -- which was supposed to have been temporary but had now been in place for over 35 years -- was still in place at the end of the Round, Canada would revisit this issue to see whether the exceptional circumstances that had been invoked to justify granting the Waiver still existed and justified its maintenance.

The representative of the European Communities said that the Community shared Canada's view to a large extent, and that its position on this matter remained unchanged. The examination of the US Waiver in working parties had had a long and frustrating history, because the experience had shown that working parties which did not agree on recommendations, as had often been the case, were rather useless. The Community wished to wait until the conclusion of the Uruguay Round to see whether the Waiver could be terminated as part of the results thereof.

The representative of Japan noted that the Waiver had been granted in 1955 -- indeed a very long while ago. Japan was disappointed that the Waiver had not yet been terminated, and would revert to this matter at an appropriate time.

The representative of Brazil regretted that this Waiver -- a relic from the past -- still remained in place. Brazil was optimistic that with the conclusion of the Uruguay Round, this Waiver issue would be removed permanently from the Council's agenda.

The representative of Chile recalled that in the 1955 Decision the CONTRACTING PARTIES had noted the United States' intention "promptly to terminate any restrictions imposed when it finds that circumstances requiring the action no longer exist, and to modify restrictions whenever changed circumstances warrant such modification." More than 35 years later, this had not been complied with. Nevertheless, Chile noted with satisfaction that the United States was ready to renounce this Waiver in the context of the Uruguay Round. Chile would follow this issue closely.

The representative of Colombia associated his delegation with those that had expressed concern over the length of time this Waiver had been in force. Colombia believed it best to await the conclusion of the Uruguay Round to take a decision on this Waiver.

The representative of Uruguay expressed concern that a Waiver that had been granted as a temporary measure had existed for almost as long as the GATT. His delegation hoped that at the end of the Uruguay Round the Waiver would be terminated.

The representative of Australia associated his delegation with others that had expressed the hope that this would be the last occasion on which the Council would consider this Agenda item.

The representative of Korea expressed the hope that contracting parties would not be proved mistaken in their belief that the United States did not intend to maintain this Waiver after the Uruguay Round.

The representative of the United States recalled that his Government had indicated in the Uruguay Round a strong desire to achieve a much more universal and comprehensive system relating to reform of agriculture and measures relating to agriculture imports. It had indicated its strong support for the provisions in the Draft Final Act of the Uruguay Round (MTN.TNC/W/FA) on universal tariffication of non-tariff measures. However, the governments of many representatives that had spoken on this Agenda item -- and who represented significant players in the Uruguay Round -- had not been able to agree to the provisions of that text or to indicate support for this principle. The United States strongly believed that tariffication was one of the necessary keys to initiating a lasting reform of agricultural policies which distorted trade. However, one could not expect the United States to take steps towards tariffication unless others were willing to do the same. The US Waiver presented a very convenient opportunity for contracting parties to flag a practice that had been around for a long time and which was a waiver from GATT obligations. However, this should not mask the fact that many other contracting parties maintained similarly restrictive -- and in many cases more restrictive -- policies which acted to unbalance the playing field for agricultural trade. It could be that the United States might face pressure in the future in the Council to eliminate its Waiver. In the absence of a successful outcome in the Uruguay Round, that would be a bitter battle. The United States believed that the appropriate solution to the problem of ensuring that all were playing on a more level ground with respect to the use of agricultural restrictions would be to agree to the very sensible approach of the Uruguay Round Draft Final Act text on agriculture. That would undoubtedly eliminate the need for future discussions of this sort.

The representative of Argentina said that his Government shared many of the United States' concerns. While all were clearly seeking an end to the US Waiver, it was also important to seek an end to those exceptions relating to agricultural products -- such as export subsidies, import prohibitions and other non-tariff measures -- which were also being used by the governments of many of the previous speakers to protect their own agricultural sectors. Argentina hoped that the Uruguay Round would resolve the question of agricultural protection definitively.

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

## 8. US/Japan automotive arrangements

The representative of Australia, speaking under "Other Business", recalled that at the February Council meeting, he had drawn attention to official statements by Japan and the United States endorsing arrangements

to greatly increase Japan's purchase of US auto parts by 1995. These arrangements, because they appeared to have been endorsed at Government level, fell into the category of grey-area measures. Australia had expressed its concern at that meeting that these arrangements had the potential to discriminate against other automotive parts suppliers. That concern had certainly not diminished; if anything, it had increased. Australia was concerned that government endorsement of or intervention in inter-industry arrangements should not impact on m.f.n. or other GATT rights and obligations, as well as on the interests of third-country suppliers. He hoped that the United States and Japan would be in a position to clarify, at the present meeting, the extent of their respective governments' rôles in the arrangements in question and, in particular, of the governmental endorsement in the global partnership plan, that "special consideration will be given to the United States' parts industry". Australia also sought clarification as to whether the specific action measures by Japan's Government -- such as provision of design-in training, further improvements in tax and financial incentives, standards, budgetary allocations, and expansion of its research and development centres in the United States -- would be available to other contracting parties on an m.f.n. basis.

The representative of Japan said that in January his authorities had made an announcement to which Australia had referred as the global partnership plan. In regard to auto parts, the announcement had referred to undertakings "made voluntarily by the Japanese automobile manufacturers". Press releases issued by various automobile companies had been attached to the announcement. This was not an inter-governmental arrangement on specific purchase goals, but represented a compilation of target figures which private companies intended to accomplish. The second part of the announcement had referred to governmental measures in relation to automobiles. These measures, as pointed out by Australia, included tax incentives to promote imports and investment in Japan, and certain initiatives with regard to standards. All these governmental measures were being applied on an m.f.n. basis.

The representative of the United States said that bilateral discussions between the United States and Japan and any arrangements resulting therefrom would not lead to a denial of m.f.n. treatment. He underlined that efforts made by the United States to secure more open and transparent purchasing practices on the part of some companies in Japan were aimed at expanding opportunities for all foreign suppliers. The United States had dealt extensively with this matter during the recent review of its trade policy under the Trade Policy Review Mechanism[5]. He recalled that with regard to the United States' recent discussions with Japan, his delegation had stated during the review that "the voluntary actions of Japanese auto companies -- not the Government -- to increase their purchases of foreign-made parts can only serve to create future trade opportunities for the tens of thousands of firms that produce auto parts worldwide. Furthermore, these discussions serve a useful purpose in

[5]See C/RM/M/23.

changing the Japanese system from one based largely on private business relationships to one based more on price, quality, and delivery."

The representative of Canada welcomed the information provided by Japan and the United States, and particularly the reassurances that the outcome of their bilateral discussions would be implemented in a transparent and GATT-consistent manner. Canada could not determine at the present time whether these requirements had indeed been met. Canada's parts suppliers had indicated that their customers in Japanese "transplants" located in Canada had informed them that they had to buy elsewhere or at least to refer to Japan before concluding orders which had previously been a normal course of business. Canada was seeking to verify this information, and reserved its right to revert to this matter at a future Council meeting.

The representative of Australia expressed appreciation for the information provided by Japan and the United States. Australia wished to keep the matter under review and reserved its right to revert to it in the future. It would notify the parties concerned in advance of such an intention.

The Council took note of the statements.

9. Agreements among Argentina, Brazil, Paraguay and Uruguay (L/6985)

The representative of the United States, speaking under "Other Business", recalled that at its meeting in February, Brazil had informed the Council, also on behalf of Argentina and Uruguay, of a notification made to GATT regarding the Treaty establishing the Southern Cone Common Market (MERCOSUR), and had indicated their willingness to have it examined in the Committee on Trade and Development. The MERCOSUR Treaty had been signed almost a year ago, committing Argentina, Brazil, Paraguay and Uruguay to the formation of a common market by 31 December 1994 with an additional year for Paraguay and Uruguay to phase out tariff exceptions. The United States understood that this common market foresaw the elimination of all tariff and non-tariff barriers among the four countries and the establishment of a common external tariff. When formed, this common market would comprise 200 million people and nearly half a trillion US dollars in gross domestic product and would obviously have significant trade and economic implications for Latin America and the rest of the world. The United States welcomed the strong trend towards trade liberalization and expansion in all countries participating in the MERCOSUR. It had had discussions with these countries about the exact nature of the Treaty and the implications for its exports, and would pursue these discussions in a constructive and cooperative manner. The United States also attached great importance to Article XXIV which contained rules governing the examination of customs unions. Although the Enabling Clause[6] addressed trade preferences among developing countries, it could not be

[6]Differential and More Favourable Treatment, Reciprocity and Fuller Participation of Developing Countries (BISD 26S/203).

considered a substitute for the provisions of Article XXIV. While the United States did not question the applicability of the Enabling Clause to preferential arrangements among developing countries covering individual items or sectors, it believed that there should be some reference to Article XXIV in the examination of customs unions. Given the significance of the MERCOSUR, it was important that contracting parties follow Article XXIV procedures. The United States did not suggest initiating an extensive discussion on the matter at the present meeting but merely wished to raise its concerns, and to reserve the right to have a more substantive discussion thereon at a future Council meeting.

The representative of Brazil recalled that the notification on the MERCOSUR had been circulated to contracting parties (L/6985) and had also been reflected in the Director-General's annual report on developments in international trade and the trading system (C/RM/OV/3). His delegation believed that the question of the applicability of Article XXIV or the Enabling Clause could not usefully and extensively be discussed at the present meeting because sufficient notice had not been provided to delegations that this issue would be raised. He wished, however, to emphasize that the MERCOSUR had been concluded under the Montevideo Treaty of 1980 establishing the Latin American Integration Association (LAIA), which had been notified under the Enabling Clause. This Clause offered some additional flexibility to developing countries in their economic integration efforts, and its provisions and procedures were part of the general balance of GATT rights and obligations. The MERCOSUR members did not intend to prevent contracting parties from having full information on this Treaty and were willing to share such information with them at the next meeting of the Committee on Trade and Development.

The representative of the European Communities said that regional agreements, as clear exceptions from the m.f.n. principle of the GATT, should be justified under the latter's relevant provisions such as Article XXIV or the Enabling Clause. The legal situation of such agreements vis-à-vis GATT obligations could not be ascertained until they were duly notified. This was now the case with the MERCOSUR. He was not sure, however, that the parties to this agreement had chosen the right procedure and believed, on a preliminary examination, that the MERCOSUR was an agreement falling under Article XXIV provisions. A final answer to this question would only be possible after an in-depth examination of the agreement had been carried out.

The Council took note of the statements.

## 10. EEC - Association Agreements with the Czech and Slovak Federal Republic, Hungary and Poland

The representative of the European Communities, speaking under "Other Business", recalled that his delegation had informed the Council at its meeting in February of agreements signed in December 1991 between the Community and the Czech and Slovak Federal Republic, Hungary and Poland. These so-called European Agreements had established an association between the European Community and its member States and each of the three

countries concerned. However, as these Agreements still needed to be ratified by the respective national parliaments, three interim agreements had also been signed to enable the trade provisions of the European Agreements to come into force on 1 March 1992. Owing to technical reasons, these interim agreements, which had come into force on that date, had not yet been notified to the GATT, although they would soon be. The object of the interim agreements was to gradually establish a free-trade area between the Community and each of the three countries in the sense of Article XXIV. These agreements would be implemented over a maximum period of ten years, at the end of which customs duties and other trade restrictive measures would have been eliminated on substantially all trade between the parties.

The Council took note of the statement.

11. Trade and environment - GATT's contribution to the UNCED
- Derestriction of the Secretariat's factual note on trade and environment (L/6896)

The Chairman, speaking under "Other Business", recalled that at its meeting in February, the Council had invited the Director-General to send to the United Nations Conference on Environment and Development (UNCED) the factual note contained in document L/6896, together with the chapter on trade and environment from the GATT annual report on International Trade 1990-1991, as the Secretariat's contribution thereto. In accordance with established procedures for the derestriction of documents, the note in L/6896 had been proposed to be derestricted on 13 April 1992. However, since this document would be made available to delegations at the UNCED preparatory meeting in New York before that date, he proposed that the Council agree to derestrict the document at the present meeting.

The Council so agreed.

12. ANDEAN Trade Preference Act
- Working Party terms of reference and modalities

The Chairman, speaking under "Other Business", recalled that at its meeting in February, the Council had agreed in principle to establish a working party on this matter after the waiver had been granted, and had authorized its Chairman to establish the modalities and terms of reference therefor through informal consultations. Having carried out these consultations, he informed the Council that agreement had been reached as follows:

"Terms of reference

The Working Party shall:

(a) examine the ANDEAN Trade Preference Act in the light of the relevant provisions of the General Agreement, and of the Waiver Decision in document L/6961;

(b) examine thereafter from time to time the annual reports to be submitted by the United States under paragraph 6 of the Waiver;

and report to the Council under (a) and (b) above.

Modalities

Contracting parties will be invited to address questions concerning the ANDEAN Trade Preference Act to the United States in writing. After the United States has responded to the questions and provided any other relevant information, the Working Party will meet to carry out an examination of the ANDEAN Trade Preference Act in accordance with its terms of reference. It shall submit its report and any conclusions or recommendations which it may have reached to the Council.

The Working Party shall also meet thereafter upon request of any contracting party, or on the basis of consultations carried out by the Chairman of the Working Party, to examine the annual reports to be submitted by the United States on the implementation of the trade-related provisions of the Act, for the purposes specified in paragraph 6 of the Decision contained in document L/6961.

Membership

The Working Party will be open to all contracting parties indicating their wish to serve on it."

The Council took note of this information.

The Chairman then proposed that the Council authorize him to designate the Chairman of the Working Party in consultation with interested contracting parties.

The Council so agreed.