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# GENERAL AGREEMENT ON TARIFFS AND TRADE

COUNCIL
21 July 1993

MINUTES OF MEETING

Held in the Centre William Rappard
on 21 July 1993

Chairman: Mr. A. Szepesi (Hungary)

Subjects discussed: Page

Prior to adoption of the Agenda, the Chairman, on behalf of the Council, welcomed Belize, Guyana, Suriname and St. Vincent and the Grenadines as members, following their request for membership.

1. Accession of Saudi Arabia
- Communication from Saudi Arabia (L/7248)

The Chairman drew attention to the communication from Saudi Arabia concerning its interest in acceding to the General Agreement pursuant to Article XXXIII.

The representative of Saudi Arabia, speaking as an observer, said that Saudi Arabia had been an observer in the GATT for many years, and had carefully examined and consistently applied its rules and principles. Saudi Arabia had also been a member of the International Monetary Fund and the World Bank for many years, and an active member of many other regional and international institutions in which it had always promoted free-trade and market-oriented policies. Saudi Arabia's economy was one of the most open in the world. Other than a few goods banned for religious or health reasons, Saudi Arabia had no quantitative restrictions, and customs duties were very low. Furthermore, the riyal was fully convertible and there were no restrictions on current payments. It was therefore only logical that Saudi Arabia applied for accession to the General Agreement. Saudi Arabia was aware of GATT's important rôle in liberalizing and strengthening the multilateral trading system. It shared the GATT's objectives and believed that, through its membership, it could contribute to their realization. Saudi Arabia also believed that its accession to the General Agreement would be in the interest of both Saudi Arabia and its trading partners, and it was prepared for a constructive dialogue during its

accession process. Saudi Arabia hoped that its application would be considered positively by the Council.

The representatives of Pakistan, Tunisia, Morocco, Egypt, Senegal, Singapore on behalf of the ASEAN contracting parties, Tanzania, the European Communities, Canada, Japan, Sweden on behalf of the Nordic countries, Korea and Argentina welcomed and supported Saudi Arabia's request for accession. he representatives of Antigua and Barbuda, Australia, Austria, Bangladesh, Bolivia, Brazil, Cameroon, Chile, Colombia, Cuba, Dominica, El Salvador, Ghana, Hong Kong, Hungary, India, Jamaica, Kuwait, Madagascar, Malta, Mexico, Myanmar, New Zealand, Nigeria, Paraguay, Peru, Sri Lanka, St. Lucia, St. Vincent and the Grenadines, Switzerland, Trinidad and Tobago, Turkey, the United States, Uruguay, Venezuela and Zambia, among others, wished to be placed on record as also supporting and welcoming Saudi Arabia's request.

The representatives of Morocco and Japan said that Saudi Arabia's accession would strengthen the multilateral trading system. The representatives of Pakistan, Morocco and Egypt said that it would also be an important step towards the universalization of the GATT. The representative of Morocco said this would increase the credibility of the GATT.

The representatives of Pakistan, Morocco, Senegal, Tanzania, Japan and Sweden on behalf of the Nordic countries supported the establishment of a working party to examine this request. The representatives of Pakistan, Senegal, Singapore on behalf of the ASEAN contracting parties, the European Communities, Canada and Japan said that their Governments looked forward to participating actively in the working party process.

The representative of Pakistan hoped that the working party to be established would be able to conclude its deliberation in the shortest possible time, given that Saudi Arabia's economy was the most open in the world.

The representative of Tunisia said that Saudi Arabia's external trade system was in harmony with the spirit of the General Agreement and as such would help in tariff negotiations with interested contracting parties. Tunisia hoped that these negotiations would lead to commitments compatible with the economic development of Saudi Arabia.

The representative of the European Communities said that the Community looked forward to receiving a detailed memorandum on Saudi Arabia's foreign trade régime.

The Council took note of the statements and agreed to establish a working party with the following terms of reference and composition:

Terms of reference

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

Membership

Membership would be open to all contracting parties indicating their wish to serve on the Working Party.

The Council authorized its Chairman to designate the Chairman of the Working Party in consultation with representatives of contracting parties and with the representative of Saudi Arabia.

2. United States and European Economic Community wheat export subsidies - Communication from Canada (L/7265)

The Chairman drew attention to the communication from Canada in L/7265.

The representative of Canada recalled that at the Council meeting on 29 September-1 October 1992, Canada had noted the devastating effect of the on-going subsidy war between the United States and the European Economic Community on Canada's grain producers and on their survival. It was ironic and discouraging that as all seemed to be making progress in the Uruguay Round, it had again become necessary to raise this issue in the Council. Canada had been forced to do so by the United States' decision to increase the size of its Export Enhancement Programme (EEP) in 1993-1994 to 32 million tonnes and its scope to 30 countries or regions. This announcement was particularly regrettable as the allocation of 1.4 million tonnes to Mexico specifically targeted Canada. Canada and the United States were the only countries that exported significant amounts of wheat to Mexico, accounting, in the past five years, for between 95 and 98 per cent of total wheat exported to that country. The United States' allocation for Mexico exceeded that country's projected imports of 1.3 million tonnes, and its subsidy programme was thus being used to create monopoly in Mexico and thereby completely shut Canada out of one of its traditional markets. Even if Canada were able to sell to Mexico, the EEP would have a price-depressing effect on any such sales, and be detrimental to Canada's export interests. Indeed, Canada understood that Mexico's flour milling industry had been withholding large purchases in anticipation of the price depression that would result from the EEP announcement.

The United States was not alone in using export subsidies to increase its share of world export trade. The on-going use of massive export subsidies by the Community was also a source of great concern, and had resulted in an increased grain production in the Community from about 100 million tonnes in the early 1970s to over 160 million tonnes in the 1990s. From being a net importer of 22 million tonnes in 1970-1971, the Community had become the second largest exporter of cereals in 1991, with net grain exports of 27 million tonnes -- a situation clearly brought about by the high level of export restitutions which had reached Canadian $ 200 per tonne a year earlier. Wheat flour exports had also substantially benefited from the Community's export restitutions to the detriment of other exporters, including Canada. The Community's wheat flour exports had increased from 25 per cent of world exports at its creation to 73 per cent today, while Canada's share had dropped from nearly 20 per cent to 3 per cent. These changes were a reflection of the massive subsidies provided by the Community, which, for the period 1985-1991, constituted Canadian $ 23 billion for cereals alone. While the Community had taken a step in the right direction with its Common Agricultural Policy (CAP) reforms, much remained to be done.

At the June Council meeting, Australia had requested the Council Chairman to resume his consultation process to try to find an interim solution to this problem. Canada wished to echo that request. The only workable and permanent solution to this iniquitous situation was an early and successful conclusion to the Uruguay Round. Canada was ready to do its part in the coming weeks to make the resumed negotiations successful, and expected its trading partners to do the

same so as to end these predatory practices. In the interim, Canada called on the United States to reverse its decision to target Mexico, and on the Community to exercise greater restraint in the use of its export restitutions.

The representative of Chile supported Canada's statement and said that an early conclusion to the Uruguay Round would help to find a solution with respect to the problem of subsidies applied by the United States and the Community, which also affected Chile in the area of canned peaches.[1]

The representative of Brazil said his delegation had listened carefully and with concern to Canada's statement, and regretted the rising trend in subsidization policies in the United States and the Community despite the efforts and the preliminary commitments agreed upon in the context of the Uruguay Round. Such actions had a detrimental effect not only on exports of competitive trading countries, but also on the importing countries, in which domestic production was thereby exposed to artificially low prices and unfair competition. Furthermore, this negative and distorting tendency in agricultural trade could trigger protectionist reactions in the affected countries. If the Uruguay Round was to succeed, especially in the agricultural sector, the major trading partners should set an example. If export subsidies were not to be reduced before the implementation of commitments, they should at least not be increased in the interim.

The representative of Australia said it was not necessary for him to reiterate in detail Australia's position on the use of export subsidies for wheat and other agricultural commodities, except to say that it remained one of strong opposition. As Australia had repeatedly stated, there were increasingly fewer markets not affected by export subsidies, and Australia was particularly concerned to ensure that such subsidies were not extended to new markets, particularly in the Asia/Pacific region. Like Canada, Australia continued to believe that the Council Chairman's informal consultations on this matter could have an important rôle to play in seeking moderation in subsidized wheat trade, pending a Uruguay Round outcome and the introduction of binding disciplines on these practices.

The representative of Venezuela supported Canada's statement. Although Venezuela was not a wheat producer, it was nevertheless affected by subsidized wheat exports since these had shifted consumption from other cereal substitutes produced domestically and had caused serious damage to the whole cereal market in Venezuela. It was therefore becoming even more imperative to reach a prompt conclusion to the Uruguay Round, which would bring about a reduction in export subsidies in the agricultural sector.

The representative of Argentina supported the concerns expressed by the previous speakers. Argentina was particularly concerned that the Uruguay Round was being used as an excuse to continue the use of export subsidies and thereby to continue to exacerbate price distortions, and the negative diversification in products on international markets. This was not in the spirit of what was being discussed in the GATT, much less in the Uruguay Round. Like Australia, Argentina believed that one needed to work towards declaring a truce in this type of subsidy and its level until the conclusion of the Uruguay Round.

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[1]See C/M/259, item 17.

The representative of the United States said that the announcement of the 1993-1994 multi-country wheat EEP by the Secretary of Agriculture on 24 June 1993 had been clearly intended to send a strong message to the Community and other subsidizers to encourage movements towards international trade reforms, and would provide clear evidence that the United States intended to remain competitive in world wheat trade. The United States had designed this initiative as carefully as possible to allow room for non-subsidizing exporters to continue their sales to the affected markets at historic levels. In markets where non-subsidizers had been traditional sellers, the United States would continue to obtain assurance for their sales, where feasible. By contrast, the Community and other subsidizers made no attempt to safeguard non-subsidizers' market share. Unsubsidized Community wheat prices were about US$ 167 per tonne. However, recent sales indicated that the subsidized export price of Community wheat was about US$ 100 per tonne. Thus, current Community export subsidies were roughly US$ 67 per tonne. He added that Canada also engaged in the use of wheat export subsidies, and that its wheat exports benefited from direct export subsidies under the Western Grain Transportation Act and other internal farm subsidies. However, the United States agreed with Canada that the key to resolving concerns in this area was to reduce and eliminate trade-distorting policies through the Uruguay Round.

The representative of the European Communities expressed surprise that in its communication (L/7265) Canada had chosen to criticize the Community's wheat export subsidy practices. He underlined that with respect to export subsidies, there were direct and indirect ways of subsidizing and that, as the United States had noted, Canada was not blameless in this regard since it engaged in direct export subsidy practices. Canada, furthermore, exported a much higher share of its wheat production than the Community. The Community, for its part, was engaged in the process of reforming its agricultural policy, especially in the cereals sector, which had already had a substantial impact on production and as a result of which internal prices would also be reduced. He added that while the United States had always claimed that the EEP was targeted at countries that were traditionally supplied by the Community, the countries mentioned in Canada's communication -- especially Mexico -- to which the 1993-1994 EEP had been extended, had never been destinations to which the Community had exported representative quantities of wheat.

The representative of Mexico said that he had listened with attention to the information provided by Canada as well as other delegations. Mexico was firmly convinced that export subsidies in general, and in the agricultural sector in particular, were extremely harmful to international trade, and had therefore recommended the greatest possible reductions in their levels in numerous formal proposals in the Uruguay Round. Mexico supported all those who called for the Uruguay Round to be concluded successfully as soon as possible.

The representative of Canada expressed disappointment that the United States and the Community -- which were clearly at the origin of the wheat export subsidy war -- had tried to lay the blame elsewhere for these actions. The United States' claim of export subsidies and unfair pricing by Canada were without foundation. The United States was, on the one hand, announcing subsidies for wheat exports to Mexico totalling more than 100 per cent of Mexico's wheat needs, while at the same time saying that the EEP had been carefully designed to allow other exporters to continue their sales to the affected markets at historic levels. The EEP announcement called into question the United States' commitment to make trade free of export subsidies. Canada hoped that the United States would reverse its decision to target Mexico and that the Community would use greater restraint in the use of its restitution programme.

The Chairman said that, at the request of a number of delegations, he intended to resume the broader informal consultations on the wheat export subsidy issue that had been started earlier.

The Council took note of the statements.

3. EEC - Restrictions on imports of preserved sardines and tuna
- Communication from Singapore on behalf of the ASEAN contracting parties (L/7264 and Corr.1)

The Chairman drew attention to the communication from Singapore on behalf of the ASEAN contracting parties in document L/7264 and Corr.1.

The representative of Singapore, speaking on behalf of the ASEAN contracting parties, expressed concern at a quota régime adopted on 1 January 1993 by the European Economic Community on imports of preserved tuna and sardines. These quantitative restrictions constituted increased barriers to the imports of these products, of which the ASEAN countries were a major supplier. These measures, which had been portrayed by the Community as exceptions to the tariff-only principle, were inconsistent with GATT provisions, in particular Articles XI and II. They were also at variance with the Community's standstill and rollback commitments in the Uruguay Round. Furthermore, by the unilateral imposition of such measures, as contained in Regulation (EEC) No. 3759/92, the Community had not complied with the notification requirement of the 1979 Understanding Regarding Notification, Consultation, Dispute Settlement and Surveillance (BISD 26S/210). While the Community's new quota régime had adversely affected the ASEAN countries' exports, they believed that this trade restrictive régime would also affect other countries exporting canned tuna and sardines. The ASEAN contracting parties had held, and would continue to hold, informal consultations with the Community on the measures in question, and reserved their right to resort to the GATT dispute settlement procedures if circumstances so warranted.

The representative of the United States said that the recent imposition by the Community of an unjustified and unilateral import quota on canned tuna and sardines might potentially restrict US exports, and distort the world market, thereby affecting the interests of other countries. The United States had serious questions regarding the GATT consistency of the Community's unilateral measures. It supported the ASEAN contracting parties' concerns and urged the Community to alter this unilateral programme so that it did not restrict trade.

The representative of Australia supported the ASEAN contracting parties' concerns. Australia considered the Community's measure to be a detrimental development, in particular at this stage of the Uruguay Round negotiations. Australia encouraged the Community to continue bilateral discussions with the ASEAN contracting parties in an effort to resolve this matter satisfactorily.

The representative of Japan said he had listened carefully to the ASEAN contracting parties' concerns. It was Japan's understanding that the European single market should not result in any trade restrictive measures, and it would therefore monitor this case closely.

The representative of Colombia said that this dispute once again showed that the European single market was being consolidated on the basis of restrictions that were contrary to the GATT and were a source of concern not only with respect to the direction taken by the Community's trade policy but also its impact on the GATT. Colombia urged the parties to reach a satisfactory solution, and urged the Community in particular to bring its régime into GATT conformity.

The representative of Korea expressed his Government's concern at the Community's new régime on tuna and sardine imports. Korea's concern derived from the fact that in cases like this, the introduction of a Community-wide régime resulted in a step backward, not an improvement, in access to the Community's market in the sense that imports into member States that had thus far been free from restrictions also became subject to quantitative restrictions under the new régime.

The representative of the European Communities said that he had noted the concerns expressed on this matter. The Community wished to reassure all contracting parties that this régime was temporary -- it would be in place for four years -- and had as its objective the full liberalization of trade in these products. He added that the import volumes permitted under this régime had been set at a generous level, and that the countries in question were aware of this. However, the existence of certain statistical irregularities had interfered with the establishment of the global quota, and the aim of bilateral consultations -- a series of which had already been held -- was to resolve this problem. The problem, however, was temporary, and the Community believed that all exporters of these products would benefit from the common régime as a result of easier access to the entire Community market. The Community intended to reach a satisfactory bilateral solution to this matter as soon as possible.

The representative of Singapore, speaking on behalf of the ASEAN contracting parties, welcomed the Community's conciliatory approach, and said that the ASEAN contracting parties wished to have some assurance that these so-called temporary measures would not be made permanent.

The Council took note of the statements.

4. EEC - Member States' import régimes for bananas
- Panel report (DS 32/R)

The Chairman recalled that at its meeting in February, the Council had established a panel at the request of the Governments of Colombia, Costa Rica, Guatemala, Nicaragua and Venezuela to examine this matter in accordance with the requirements of the 1966 Decision on Procedures under Article XXIII (BISD 14S/18). At its meeting in June, the Council had considered the report of the Panel and had agreed to revert to it at the present meeting.

The representative of Costa Rica, speaking also on behalf of Colombia, Guatemala, Nicaragua and Venezuela, noted that the provisions of the 1966 Decision established shorter time-periods for the examination of disputes brought by developing contracting parties against developed contracting parties, and had set a sixty-day period for a panel to submit its report, thereby responding to the needs of weaker parties to have a solution to a dispute in the shortest possible time. Unfortunately, however, in contradiction of the objectives of the 1966 Decision, this Panel report had not been adopted at the June Council meeting. Their Governments believed it was vital to adopt the report at the present meeting. The GATT multilateral trading system called on all parties to comply with the obligations they had assumed freely in the past. The dispute settlement mechanism was a cornerstone of this system, and provided security and predictability in international trade relations; the lack of respect for the results of this mechanism would inevitably weaken the whole structure of the trading system. Consequently, the Council should adopt this Panel report at its present meeting and the Community should take immediate steps to bring the régimes in question into conformity with its GATT obligations. In taking such a decision, the Community should take into account not only the enormous injury that had been caused to the weak economies of the five complainant countries, but also that the GATT system

would lose all credibility and invite a permanent lack of respect for its rules if the dispute settlement mechanism was not seen to be effective.

The representative of Colombia said that the credibility of the GATT was at stake in this dispute, and that non-adoption of the Panel report would rapidly make a mockery of the spirit of the 1966 procedures, which had been resorted to for the first time. The import régimes examined by the Panel penalized banana exports from the five countries concerned -- paradoxically, because they were competitive -- and the Panel had recommended that the Community bring these régimes into GATT conformity. The Panel's analysis and conclusions had been presented with the legal precision that had been required in a case as complex as this. The Panel had reiterated clearly the contractual obligations of contracting parties and the relationship between these obligations and those under other trade agreements. With respect to the essence of the dispute settlement system as defined by the CONTRACTING PARTIES -- namely that the dispute settlement process "cannot add to or diminish the rights and obligations provided in the General Agreement"[2] -- and the inalienable right of every contracting party to have recourse to the dispute settlement system, the Panel had examined and reiterated the relationship between Articles I and XXIV. In this context, the Panel had stated, in paragraph 367, that if preferences granted under any agreement for which Article XXIV had been invoked could not be investigated under Article XXIII, any contracting party, merely by invoking Article XXIV, could deprive other contracting parties of their rights under Article XXIII. Colombia believed that the GATT system, without any doubt, would be enriched as a result of the Panel's findings.

As his delegation had stated at the February Council meeting, the Latin-American banana exporting countries had been waiting thirty-one years for the Community to honour its commitment, undertaken at the end of the Dillon Round, to bind, without any reservations, its tariff on bananas at 20 per cent. In spite of the Community's rhetoric regarding its contribution to the improvement of the multilateral trading system, it had, far from taking steps to bring itself into line with its obligations, moved in the exact opposite direction. It was vital for the Latin-American countries concerned that the Community restore its tariff to the bound level of 20 per cent without reservations, before the measures already adopted by the Community caused further problems for their economies. He reiterated that the Community should agree to the adoption of the Panel report and bring its banana import régimes into GATT conformity.

The representative of the European Communities said that no-one could expect the Community to congratulate the Panel and applaud its work, however thorough its reasoning and recommendations. The Community felt a sense of sadness and apprehension for the future because on the eve of the conclusion of the Uruguay Round, which would install a sophisticated and almost automatic and unique mechanism for the settlement of disputes -- an indispensable mechanism to combat protectionism and unilateralism and to identify violators and bad losers -- the Panel and its instigators had lost the opportunity to confer the seal of approval on the mechanism being developed. Even worse, the instigators had revived the concerns and fears of those who had doubts about a peremptory jurisdictional mechanism, removed from the nuances and realities that were sometimes without logic but were highly sensitive and political -- in other words, a mechanism which would set up a "government of panelists" without rights or obligations, but bureaucratized and depriving contracting parties of their principal vocation to negotiate and reach compromises. In the last analysis, such a blindly jurisdictional trend might even encourage disillusion with the multilateral system. In any event, this tendency, which was

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[2]1982 Ministerial Declaration (BISD 29S/13, paragraph X).

now apparent, would undoubtedly complicate the final negotiations in the Uruguay Round. He hoped his statement would provoke a reaction and a collective realization of the situation.

He recalled that the Panel had made two recommendations. The first, in paragraph 374, had been overtaken by events, because the measures cited had been abolished and no longer existed. The second recommendation, in paragraph 375, had called on the Community to bring the tariff preferences it accorded to imports of bananas originating in the ACP countries into GATT conformity, unless the Community were authorized to maintain this preference under Article XXV. The Community believed that this touched upon a particularly sensitive and historic aspect going back to the very foundation of the Community, namely Part Four of the Treaty of Rome, which had resulted in the first Association Agreement with Overseas Countries and Territories, and to which the Protocol on bananas had been added. Part Four of the Treaty of Rome had subsequently resulted in the two Yaoundé Conventions and the various Lomé Conventions following the first enlargement of the Community. These preferences formed part of a global and contractual structure which had been regularly notified to the GATT for forty-five years. The Community could not and would not alter one element of this structure without the prior and explicit agreement of its associated partners. To deny the GATT conformity of the Community's various association agreements that had succeeded one another since 1958 would be equivalent to denying the very identity of the Community, and would also be a denial of a contractual policy on development with a large number of partners in the Third World. Quite simply, this was politically unacceptable and inconceivable. Political sense as well as simple common sense called for the rejection of this hypothesis.

That being said, he wished to throw further light on the incompatibility mentioned by the Panel concerning the reverse preferences not observed in the various Yaoundé and Lomé Agreements. Originally, the first Convention under Part Four of the Treaty of Rome had contained reverse preferences, giving the Community and its member States trade advantages in the markets of its Overseas Countries and Territories, and subsequently in those of the African countries and Madagascar to the detriment of its trading partners. However, it had become clear subsequently that these countries, and later the African, Caribbean and Pacific countries, were not able to bear the reverse preferences in favour of the Community. The history of this debate could be found in the reports of the working parties that had been established to review the various agreements. Having taken into account pressures from its industrialized trading partners, the Community had finally told the associated States that it did not expect to receive preferences from them. That was the story. It would be inappropriate to blame the Community and its member States for having agreed to this sacrifice, particularly for a simple question of conformity. This was an important moment for the Council, since it would have to take a decision regarding this Panel report. This was also an important moment for the ACP countries, which had found themselves in the same boat as the Community in the same storm, and who risked being the main losers. He hoped that the Council would show the wisdom necessary in order to preserve this institution.

The representative of Jamaica, speaking on behalf of the ACP contracting parties, said that their Governments maintained the view that serious errors had been made which had resulted in faulty conclusions in the Panel report, and believed that its adoption would do a grave injustice to the countries directly affected by its mistaken conclusions, and cause irreparable damage to the integrity of the GATT system. They were firmly convinced that the Panel had far exceeded its terms of reference in its consideration of Articles I, XXIV and Part IV, by engaging in a review of the provisions of the Lomé Convention. These issues fell outside the prescribed areas that were to be examined by the Panel and effectively expanded on its terms of reference. The consideration and in-depth examination of the Lomé Convention's provisions caused serious

prejudice to the conclusions of the Panel, and made it clear that its report, from the commencement of the dispute, was based on a faulty premise.

The Panel had also concluded that the burden of proof regarding Article XI:2(c) and the existing legislation clause had not been sustained by the Community. In its arguments, the Panel had stated that it was the Community's responsibility to rebut the assumption of the complaining parties that there was a "prima facie case of nullification and impairment" and had cited as the basis for its approach the 1979 Understanding Regarding Notification, Consultation, Dispute Settlement and Surveillance (BISD 26S/210). In relying on this approach, however, the Panel had failed to address whether there actually had been nullification and impairment, and in so doing, had rendered its conclusions regarding Article XXIII:1(a) and (b) unacceptable. In refusing to address this issue, the Panel had deliberately ignored the fact that this was essential to the arguments of several contracting parties which had made submissions to it. As such, the Panel had failed in its responsibility to give equal and balanced consideration to the arguments made by the contracting parties directly concerned.

The fact that there had been no analysis of the data presented on the question of nullification and impairment confirmed that in failing to conduct a complete and exhaustive analysis of this crucial issue, the Panel had reneged on its duty to the participants and prejudiced the outcome of its report. Had the Panel deigned to analyze the claim of nullification and impairment, it would have found, from the information contained in its own report, the following: (i) a dramatic increase in the market share of the five complainants in the markets of France, Italy, Portugal, Spain and the United Kingdom, while the share of the ACP countries had declined; (ii) the production of bananas in the Latin American countries concerned had grown in 1991 by 12.78 per cent compared to 6.19 per cent in the ACP countries. Their increased production alone in 1992 had accounted for almost one-half of the total production of ACP banana-exporting countries; (iii) whereas banana exports accounted for 33 per cent of Costa Rica's export earnings, with 10 per cent for Colombia, Guatemala and Nicaragua and 0.1 per cent for Venezuela, it accounted for 55.6 per cent of the export earnings of Dominica, with 54 per cent for St. Lucia, 49.7 per cent for St. Vincent and the Grenadines, and 19.5 per cent for Grenada; and (iv) the twelve Community member States accounted for 49 per cent of the banana exports of Colombia and Costa Rica and 6 per cent of Guatemala's as compared to 100 per cent for the ACP banana-exporting countries.

While contending "that it was not necessary to examine the claim that the measures nullified or impaired benefits accruing under the General Agreement" and therefore refusing to examine this fundamental issue, the Panel had proceeded to make recommendations for major changes which would be inimical not only to the interests of those that maintained the measures, but also to ACP interests. One of the foundation stones of the General Agreement as envisaged at its inception was the security and predictability of trade relations, which necessitated a balancing of interests in a manner that promoted and encouraged this objective. The Panel had found that the banana import régimes of the Community's member States had been in operation for a long period and in all cases had pre-dated the countries' entry into the General Agreement. The Panel had been informed that these régimes had merely been formalized in the Banana Protocol of the Lomé Convention, providing the security and stability needed for ACP suppliers. The conclusions to be drawn from this information were self-evident. The complainants had been increasing their market share -- rapidly in the past three years -- at the expense of the ACP and Community producers. The complainants could by no means claim nullification and impairment. If these facts were seriously considered, the question arose as to why the Panel had avoided a proper assessment of this issue.

Furthermore, the Panel had failed to apply properly the "existing legislation" clause as it had been interpreted by a panel on Norway's restrictions on imports of apples and pears (BISD 36S/306), adopted in 1989. On the basis of this report, for legislation to be considered to fall under the "existing legislation" clause, it had to: (i) be legislation in a formal sense; (ii) predate the Protocol of Provisional Application; and (iii) be mandatory in character by its terms or expressed intent. The Panel, however, had not considered the first two elements, and had only given consideration to whether the legislation was mandatory, and had unnecessarily considered the "context, object and purpose" of this clause. The 1989 Panel's interpretation had obviated the need for such a broad analysis, particularly of the policy which underpinned the clause, but not the need to establish existence of the legislation concerned. Additionally, in focusing on the question of whether the legislation applied was mandatory, the Panel had not examined in their entirety the two conditions that the legislation should be mandatory either by its "terms" or by its "expressed intent". Instead, the Panel had only considered the first possibility while completely ignoring the second, and had thus failed to apply the full test to the legislation in question. This was clearly reflected in the Panel's consideration of the United Kingdom Import, Export and Customs Powers (Defence) Act of 1939 and the Ottawa Agreements Act of 1932. This incomplete legal analysis was another major weakness in the Panel report.

Regarding acquiescence, estoppel and subsequent practice, the Panel had not followed established GATT legal practice that placed value on the certainty and stability of the trading relationships of contracting parties by foreclosing the exercise of rights and privileges under certain circumstances, such as when complaining parties had acquiesced in the conduct at issue. In its brief coverage of this important issue, the Panel appeared to have inappropriately combined the questions of acquiescence and estoppel -- an improper approach which called into question the conclusions arrived at. All information presented to the Panel had established beyond doubt that the Latin American banana exporters had, for a very long period, acquiesced in the banana import régimes of the Community's member States. Additionally, the arrangements for trade in bananas between the ACP and the Community had been notified to the GATT on three separate occasions and had been the subject of examination by working parties[3]. At no time had any of the complaining parties used these opportunities to question the arrangements or object to their continuation. On the contrary, the Latin American countries concerned had had no reason to object because they had steadily and substantially increased their volume of exports and their share of the banana market in the Community as a whole. There was also evidence of an extremely rapid increase of their market share in anticipation of the Community's Single Market in 1992.

The acquiescence, the passage of time and the reliance of all parties on the Community's banana trading arrangements, and the consequent actions and expectations of ACP exporters required very careful consideration of estoppel, which the Panel had failed to do in a comprehensive manner. A conclusion on subsequent practice should not be based on whether a party intended to acquiesce or not but on a pattern of action which, by its very nature, sanctioned a measure that was being contested. The Panel had not considered these relevant factors in reaching its conclusions on this issue, and had addressed only the narrow question of silence following the notification, while it had in fact been presented with evidence of a series of actions and inactions which should have been considered as a whole in deciding on this question.

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[3]July 1975 (L/4193, L/4198); January 1981 (L/5098); and December 1986 (L/6109 and Add.1). The reports of the Working Parties established to examine the Lomé Convention arrangements are contained in BISD 23S/46, BISD 29S/119 and BISD 35S/321, respectively.

Finally, the Panel had undertaken an examination and ruled on a matter in which it had no competence. It had determined for itself that an Agreement -- the Lomé Convention -- did not prima facie fall within Article XXIV and had then used that conclusion to exceed the mandate it had been given. This was perhaps the major flaw in the report. Article XXIV:7(b) provided for a specific procedure for examination of a free-trade agreement, and it was therefore not within the competence of the Panel to examine or to draw conclusions regarding the compatibility of the Lomé Convention with Article XXIV. As if this were not enough, the Panel, in addition to conducting an examination for which it had no competence, had made an incomplete analysis. The Panel had failed to take due account of the principle of non-reciprocity between developed and developing contracting parties enshrined in Article XXXVI:8 and in the provisions of the Enabling Clause.[4] An assessment of the consistency of the Lomé Convention with Article XXIV should take these integral factors into account.

The Panel had also failed to demonstrate adequately why a free-trade area between developed and developing countries, without reciprocity being granted by the latter, would not conform to the General Agreement. An application of this implied view would be inconsistent with the provisions of Part IV and it was important to note that previous examinations of this issue in working parties had not led to that conclusion. The failure of the Panel to accept the submission that the provisions of the Lomé Convention were justified by its status as a free-trade area and the fact that the Panel had arrogated to itself the examination and determination of the GATT compatibility of these trading arrangements -- a right which belonged only to the CONTRACTING PARTIES themselves -- negated any validity which could be attached to the Panel's conclusions.

Jamaica and the ACP countries were therefore not in a position to agree to the adoption of this Panel report. Its conclusions and recommendations could destroy the future of sixty-nine developing countries, a result that would be contrary to the letter and the spirit of the GATT.

The representative of Mexico expressed full support for the Latin American countries' request that the Panel report be adopted at the present meeting. Mexico was fully aware of the various issues raised by the report, but believed that it was pertinent to adopt the report for reasons it had set out at the June Council meeting. Mexico believed that adoption of this report was crucial for the very health of the dispute settlement system that formed the basis of the General Agreement.

The representative of Argentina said that no-one should underestimate the importance of the banana issue for the multilateral trading system and the greater importance of finding a solution to it. Argentina shared the conclusions of the Panel, in paragraphs 374 and 375 of its report, and supported its adoption without any reservations. Argentina believed that the GATT could not function credibly, now or in the future, if illegal measures adopted by contracting parties could not be brought into conformity with the contractual obligations that all had collectively undertaken. Argentina shared the Community's sense of sadness and apprehension concerning the future, because there would be no future unless all collectively resolved the problems that were at the very essence of the multilateral trading system. Argentina's position regarding the Panel report did not affect its conviction that the legitimate socio-economic claims of the ACP countries should be adequately attended to by the Community. The only solution that

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

would not indirectly affect the system in general would be the use of direct support measures which would be completely neutral from the trade point of view. It was not the GATT's task to solve socio-economic problems by providing for growth in market shares, nor was it its task to solve the problems resulting from the greater competitiveness of some countries as compared to others.

The representative of Malaysia, speaking on behalf of the ASEAN contracting parties, said that they had followed carefully the deliberations in the Council on this Panel report, and recognized that this was not an easy matter. The concerns expressed by the affected parties from the ACP countries as well as those by the non-ACP countries were understandable. Some of the ASEAN member countries also exported bananas -- although not to the Community as yet -- and had already begun to feel the impact of this dispute through the displacement effect it had had in some of their markets elsewhere, which was causing them concern. The ASEAN contracting parties fully supported developmental assistance, and appreciated its importance and its contribution to the development of the recipient countries. Needless to say, they attached great value to non-reciprocal trade advantages awarded by developed countries to developing countries. Nevertheless, they wished to stress the central and critical rôle of the GATT in the multilateral trading system. All contracting parties had the duty of ensuring conformity with GATT rules and disciplines, and should not allow its credibility to be undermined. In this particular instance, they were referring to the dispute settlement mechanism, which formed the basis of this credibility. The ASEAN contracting parties therefore urged the contracting parties concerned to demonstrate their respect for the multilateral trading rules by agreeing to the adoption of this Panel report.

The representative of Saint Lucia said that a close examination of the Panel report revealed serious flaws in its reasoning and conclusions. The Panel, without satisfactorily explaining how it had arrived at its position, had rejected the Community's argument that the subsequent practice of the CONTRACTING PARTIES, or of the parties to the dispute, had resulted in a modification of the rights and obligations under Part II. This finding was central to the overall ruling, for had the Panel found otherwise, the complainants' case would have collapsed. Such a conclusion, however, was neither supported by the rules of international law nor by the established legal framework and practice under the General Agreement to foreclose the exercise of rights under certain circumstances when there had been acquiescence. The Panel had suggested that there had not been acquiescence because the mere failure to make a request for action on the Community's measures could not be interpreted as a decision to abandon the right to make such a request, and that the mere inaction of the CONTRACTING PARTIES could not in good faith be interpreted as the expression of their consent to release the Community from its obligations under Part II. However, at issue was not the "mere failure to make such a request" but rather the consistent practice or inaction by the complaining parties over many years in the face of actual knowledge of facts which related to vital national economic interests. Moreover, the logic of the Panel's reasoning was open to question. How was the "mere inaction" of the CONTRACTING PARTIES related to the "mere failure" of the complaining parties to make a request for action? The inaction of the CONTRACTING PARTIES had a life of its own; the Panel could not, with a simple linguistic twist, ignore or discount the fact that, faced with the successive notifications of the various Lomé Conventions, no complaint had been made or action taken.

The Panel had also concluded that the requirements of Article XXIV were not modified by the provisions of Part IV and, consequently, that the legal justification claimed by the Community for the preferences it awarded could not emerge from an application of Article XXIV. In the Panel's view, therefore, the Lomé arrangements could not be accepted as a free-trade arrangement because the ACP countries did not offer reciprocity to the Community. On this issue the Panel

had erred on two grounds. First, it had ruled on a matter on which it had no competence. Article XXIV:7(b) stipulated a specific procedure for undertaking such an examination, which required the involvement of the CONTRACTING PARTIES themselves. Since it was not within the Panel's competence to examine or to draw conclusions regarding the compatibility of the Lomé Convention with the provisions of Article XXIV, the Panel should have declined such consideration. However, in clear violation of the prescriptions of Article XXIV:7(b), it had improperly arrogated to itself exclusive rights vested in the CONTRACTING PARTIES.

Second, the Panel had relied on an analysis which was incomplete and unsatisfactory. It had not given adequate regard to the content of the Enabling Clause, which explicitly authorized contracting parties to provide differential treatment to developing countries. The principle of non-reciprocity in trade negotiations between developed and developing contracting parties, as provided in Article XXXVI:8 and in the provisions of the Enabling Clause, were relevant to the assessment of the qualification of the Lomé arrangement under Article XXIV, but the Panel had omitted to recognize it. Indeed, the Panel had not adequately demonstrated why a free-trade area between developed and developing countries without reverse preferences granted by the latter would not conform to the General Agreement. If the Panel's implied view were accepted and reverse preferences were therefore required among all the parties in a free-trade area, regardless of their relative levels of economic development, then such arrangements would be rendered virtually impossible between developed and developing countries, particularly when the differences in levels of economic development were as great as between the Community and the ACP countries. It would also present a logical inconsistency in the application of the Part IV provisions and the closer cooperation between developed and developing contracting parties. If the Panel's vision were to be applicable, developed countries would be able to make demands for reciprocity within such a free-trade zone despite the clear provisions of Article XXXVI:8. In this regard, it was appropriate to note that previous examinations of the trading arrangements of the successive Lomé Conventions under Article XXIV:7 had not resulted in the conclusion arrived at by the Panel. The Panel's narrow definition of a free-trade area was due to its static interpretation of GATT provisions. The world had been very different in 1948, when the General Agreement had entered into force. There had been no régimes such as those established by Lomé providing institutionalized development assistance. Circumstances had evolved, however, and the provisions of Article XXIV should be interpreted in a dynamic way to take account of those changes, including new types of international agreements based on, but not necessarily replicating, the free-trade agreements defined in 1948. The differential treatment of developing countries was well recognized by the international community and was by no means a unique feature in trading arrangements. For these reasons, the proposition of the Panel that the trading arrangements of the Lomé Convention did not constitute a free-trade area and hence did not justify the banana tariff preferences was not sustainable and had to be rejected.

Third, the Panel had completely ignored the undeniable reality that, without the preferences, ACP suppliers would not have been able to conduct their traditional trade in bananas. These measures had not been taken to endow the ACP countries with an unfair advantage, but rather to provide some degree of equitable participation in the market for all suppliers. Ironically, the rationale for these measures had been underlined by the complainants themselves, which had stated that in the absence of the restrictions their share of the Community's markets in question would have been the same as in its unrestricted markets, namely 94.2 per cent in 1991. The realization of such an objective would clearly entail the ACP countries being driven out of the Community market.

The fundamental problem with the work of the Panel was that its focus had been too narrow and had not reflected an appreciation of how far the world had moved since 1948. Subsequently, accepted universal norms and principles could not be ignored or excluded from an interpretation of the rules governing relations among countries. The Panel report was legally and conceptually flawed, and so rife with misinterpretation and selective omissions that it could not be accepted as an interpretation of GATT rights and obligations. The ACP countries would never acquiesce in the attempt, behind flimsy legal and technical arguments, to abrogate unjustly their GATT rights. Because this report could serve neither as a prescription for action by the international trading community nor as a guide in the interpretation of GATT rules, Saint Lucia called for its rejection by the Council.

The representative of St. Vincent and the Grenadines associated his delegation with Jamaica's statement. It had not been disputed that the complainants had been aware that the member States of the Community in question had applied restrictions on imports of bananas from Latin America and that these restrictions had been communicated to the GATT. Nor had it been disputed that the complainants had known of the preferences accorded by the Community's member States to imports of bananas originating in ACP countries. Further, although the preferences had been well-known to the complainants, they had voiced no previous objection. However, the Panel, in paragraph 362 of its report, stated that "The decision of a contracting party not to invoke a right vis-à-vis another contracting party at a particular point in time can therefore, by itself, not reasonably be assumed to be a decision to release that other contracting party from its obligations". The Panel had not explained what it had meant by the phrase "by itself". It seemed to suggest that there were circumstances that might operate to nullify that right. In the same paragraph, the Panel had given two examples as to why a contracting party might not wish to invoke a right, namely, "pending an assessment of the trade effects of a measure" or "pending the outcome of a multilateral trade negotiation".

These two examples were not in the same category as the matter under dispute, which was a form of trading that had been in existence for a very long period of time and that had been known by the complainants to be so. In paragraph 363, the Panel stated that "mere inaction of the CONTRACTING PARTIES could not in good faith be interpreted as the expression of their consent to release the EEC from its obligations". The Panel had not, however, explained what "in good faith" meant. Could it be regarded as "good faith" for a contracting party to know or reasonably believe that a manner of trading between some contracting parties was in breach of GATT and not bring it to the attention of the GATT within a reasonable period of time, especially when that manner of trading affected its own trading position? Could it be described as "good faith" to allow such a situation to continue for a very long period and then to choose to make an objection when the consequence thereof would certainly ruin the economy of one or more contracting parties? St. Vincent and the Grenadines believed that such actions could not be described as "good faith".

Furthermore, contrary to the Panel's statement, in paragraph 362, that "not to invoke a right ... can therefore, by itself, not reasonably be assumed to be a decision to release the other contracting party from its obligations..." there were clear rules in international law which supported a different view, namely that tolerance of the practice of other contracting parties could modify the rights and obligations of parties under the treaty. Tolerance of a practice need not be formally expressed, a view that had been clearly stated by the Community in paragraphs 124-127 of the report. The complainants in this dispute had, in full knowledge of the facts, allowed the situation to continue without voicing any objections. Given the circumstances, and the complainants' acquiescence, the rule of international law referred to above should be applied.

A basic aim of the GATT was the security and predictability of trade relations. St. Vincent and the Grenadines, like other ACP traditional suppliers of bananas, had believed in the security offered by the régimes of the Community's member States, and had engaged in planning its economy around the production of bananas. The Lomé IV Convention had reinforced that belief. The provisions of that Convention, of which the Banana Protocol was an integral part, had been communicated to GATT[5], as had the earlier banana import régimes of the Community's member States. Trade should not be an end in itself, but should serve higher values. The complainants in this dispute accounted for more than two-thirds of the Community's market in bananas. In the past three years, their share of the banana market had increased while that of the ACP countries had fallen. To accept the Panel's report would lead to economic and social chaos in the latter countries, whose economies had been planned in reliance on the preferences accorded by Community member States over a long period of time. Given the history of this matter, St. Vincent and the Grenadines believed that the Panel report was legally and conceptually flawed, and called on the Council to reject its adoption.

The representative of El Salvador expressed support for the statement by Costa Rica on behalf of the Latin American banana-exporting countries concerned. El Salvador urged the Community to agree to the adoption of the Panel report and to take the measures necessary to fulfil its contractual obligations under GATT. El Salvador valued the preferences granted by developed countries to developing countries. These were valid instruments and assisted the economic development of developing countries. Nevertheless, such preferential trading régimes should conform to the provisions of the General Agreement.

The representative of Cuba said that his Government recognized the importance and the complexity of this issue. Cuba regretted that neither the consultations that had taken place nor the good offices of the Director-General had allowed a satisfactory solution to be reached, because Cuba had always considered that consultations and the search for an agreement should guide the work on this issue. Consequently, since the Community's restrictions did not conform to its GATT obligations and at the same time prejudiced the rights of the Latin American banana-exporting countries, thereby causing serious economic damage, Cuba supported the recommendations of the Panel and the adoption of its report. Adoption of the Panel report would prevent the undermining of the credibility of the GATT system, especially the present dispute settlement mechanism. Cuba shared the views expressed by Costa Rica.

The representative of Canada said that his delegation had not spoken previously on this subject as Canada had no direct commercial interest in the production or export of bananas, nor did it maintain any barriers to imports thereof. Canada had chosen to comment on the Panel report because it addressed a number of issues of importance to the GATT system and to Canada. Canada had carefully examined the Panel's findings with respect to Article XI:2(c)(i); grandfathering; the relation of Articles XI and XXIV; subsequent practice; acquiescence and estoppel; and the relationship between GATT obligations and those assumed under other agreements. Canada considered these findings sound, and believed that in many cases they would assist contracting parties in interpreting certain terms and concepts. The basis for an effective multilateral trading system was the dispute settlement system, and Canada therefore considered that the Panel report should be adopted. Canada recognized the importance of trade in bananas for the parties involved and urged them also to seek a mutually-satisfactory solution to their problem.

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[5]L/7153 and Add.1.

The representative of Dominica expressed support for Jamaica's statement. The Panel report under consideration had recommended that the Community modify the quantitative restrictions maintained by some of its member States. In this regard, he noted that the Community's new import régime, which had entered into force on 1 July, had duly modified the so-called restrictions of its member States and therefore that there was no need to adopt this part of the report. The import régimes complained about no longer existed. The Panel had also recommended that the Community bring into GATT conformity the tariff preference accorded to imports of bananas originating in ACP countries. In this regard, he noted that this preference was a function of the Lomé IV Convention, which had been notified to the GATT and was currently being examined by a working party. If the Council were to adopt this recommendation, it would pre-empt both the working party as well as the panel established in June to examine the Community's new banana import régime. Therefore, any decision in that regard could only be arrived at when the reports of the working party and the panel had been circulated. Whatever the care taken by the Panel to examine the different régimes in the Community's member States, its report was now outdated inasmuch as the Community had adapted in this field, as in other trade related matters, to the principles and the consequences of the Single Market. It was thus irrelevant to pronounce judgement on and to seek to modify régimes which had ceased to exist. Its conclusion, furthermore, had gone beyond what had been required of it, and could not be adopted.

Yet, the establishment of the Panel, the work it had accomplished and its report which the Latin American countries and others were urging the Council to adopt, had focused attention on the heart of the problem. Indeed, the review of the import régimes then in force in the Community's member States could not adequately have been carried out without the examination of the broader issue of the Lomé Convention and, more generally, of development aid by developed countries to developing countries. The preferences granted by the Community and its member States to the sixty-nine ACP countries were part of the Community's development cooperation policy that had been consolidated in the 1970s with the adoption of the first Lomé Convention. This and subsequent Conventions, had been notified to contracting parties under the provisions of Article XXIV:7. The Working Party established in 1976[6] had not been able to decide whether the Lomé Convention should be considered to be in conformity with GATT principles as a free-trade area based on a non-reciprocity principle. Since then, the CONTRACTING PARTIES' confirmation or otherwise of the compatibility of the Lomé Conventions with GATT principles had not been expressly stated. It was therefore inappropriate for the Panel, the mandate of which had been limited to the review of the GATT compatibility of certain régimes, to take a position on a matter that not only had not been included in its terms of reference, but was exclusively reserved to the CONTRACTING PARTIES to decide upon. For this reason, which was of importance for the future of development cooperation policy in developed countries, the Panel report should not be adopted.

The Lomé system constituted one of the most outstanding examples of integrated aid and trade development assistance programmes to developing countries. To adopt the Panel report would be tantamount to dismantling this whole system and to destroying completely the principle of development assistance envisaged in Part IV and in the Enabling Clause. Since the Lomé system was based on preferences accorded to the ACP countries, any contracting party would be entitled, if the Panel report were adopted, to request the modification of any or all of these preferences, leaving the ACP countries unable to access the Community market. The Enabling Clause acknowledged that discrimination could occur between contracting parties as long as third

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[6]BISD 23S/46.

parties were not harmed by measures taken in accordance therewith. However, it was precisely such a régime that the Panel had requested to be modified. The ACP countries enjoyed a preference that allowed them to survive, while the Latin American countries had always been able to increase their exports to the Community market. It could not be shown that this preference had ever deprived the Latin American banana producers of their market share. On the contrary, their share had steadily increased over the years. To suppress the preference would only allow the Latin American countries to force the ACP producers out of the Community market -- their sole market. For some ACP countries this would mean a loss of more than 90 per cent of their export earnings from agriculture and over 50 per cent of their total export earnings. Dominica hoped that these comments demonstrated the compelling reasons for setting aside the Panel's findings and conclusions.

The representative of Japan recalled that at the June Council meeting, his delegation had supported adoption of the Panel report. Japan believed that the report was legally well-reasoned. The Panel had examined the Community's member States' import régimes for bananas in the light of their obligations under the GATT, and had made clear its findings on the consistency of those régimes with GATT provisions. The report clearly fell within the Panel's terms of reference. An early adoption of the report, as well as the full implementation of its recommendations, was essential to restore the balance of interests among contracting parties, and also to preserve the credibility and the functioning of the multilateral trading system.

The representative of Cameroon recalled that at the Council meeting in June, her delegation had stated that the Panel's conclusions were unacceptable because they had questioned the tariff preferences granted by the Community to banana imports originating in the ACP countries. Further reflection had confirmed Cameroon's position and had led it to join those that believed that the report should be buried. Her delegation supported the arguments put forward by the Community and Jamaica, even more so since the disputed régimes were no longer applied as of 1 July 1993.

The representative of Côte d'Ivoire said that the Council was being asked to pronounce itself on a Panel report concerning banana import régimes that had been applied in the Community's member States prior to 1 July 1993. The Panel's conclusions had therefore become null and void since the Panel's mandate itself had become so and the measures complained against had been abolished. It should therefore be recognized that the Council did not need to pronounce itself on the Panel's conclusions. Indeed, Côte d'Ivoire called on the Council to reject the Panel's conclusions, since it appeared that no consensus would be likely thereon. These conclusions did not take into account the real market situation, the well-understood interests of a number of contracting parties, or, more particularly, the conclusions of the working parties that had examined the GATT conformity of the different Lomé Conventions.

The representative of the Dominican Republic expressed her delegation's solidarity with the previous speakers that had indicated they could not agree to adoption of the Panel report. The Dominican Republic considered the report onerous for the ACP countries since it clearly demonstrated that its objective was to undermine the Lomé Convention and the tariff preferences granted thereunder to these countries, an issue which the Panel was not competent to decide on. For these reasons, the Panel report was unacceptable and her delegation urged the Council to reject it.

The representative of Ecuador, speaking as an observer, said that as the world's largest exporter of bananas, Ecuador had been following closely this dispute, which had become a

symbolic question for the credibility of the multilateral trading system. Ecuador was in the process of acceding to the GATT and if, at this stage, a negative signal were perceived, disappointment with the GATT would be intense and the first question to be asked would be simply: why should Ecuador join an organization that did not function? In the dispute at hand, third countries had felt that they had been affected and it had been proposed that the conclusions of the Panel, although legally without reproach, should quite simply be set aside. This was of concern to Ecuador, because if the decision had gone against the Latin American countries, they would have had the privilege of doing likewise. Ecuador did not endorse this because it was not acceptable. This was obvious if one wished to be sincere in conforming to the rules of the game. There should be no doubt at all that the Council should adopt the Panel's recommendations because they provided a comprehensive solution to the banana problem, constituted a valid legal precedent for the work of the panel established in June to examine the Community's new banana import régime, and, finally, because they were clearly aimed at preserving the credibility of the letter and spirit of the General Agreement.

The Chairman said it appeared to him from the discussion that the Council would not be in a position at the present meeting to take a decision on the adoption of the Panel report. He suggested, therefore, that the Council agree to suspend the debate on this matter at the present meeting, and to revert to it at its next meeting.

The representative of the United States said he sympathized with the Chairman's desire to shorten the debate on this report at the present meeting, particularly since it seemed evident that the Panel report would not be adopted. However, if the Chairman was proposing that the Council revert to this at its next meeting, he wondered if it might be possible for the Chairman to undertake consultations in advance of that meeting to ensure that the next debate on this subject be more efficient.

The Chairman said that he was at the disposal of Council members, whenever requested, to organize informal consultations. If the Council so wished, he would certainly hold consultations prior to the next meeting on how best to organize the debate on this matter.

The representative of the European Communities asked whether the Panel report could be adopted by the Council given that several members had expressed reservations thereon at the present meeting. The Chairman himself had concluded that the report could not be adopted at the present meeting in the light of the debate thus far. Was the Chairman therefore trying to prolong agony through consultations on the Panel report?

The Chairman said it was his understanding that unless the Council agreed to adopt or to reject the Panel report, the report would remain before the Council. As the Community had noted, the Council at its present meeting was not in a position to pronounce itself with respect to adoption of the report. Therefore, before this issue was considered by the Council at its next meeting, the consultations proposed by the United States might be useful and might lead to certain understandings among the parties about how to conduct this debate.

The representative of Costa Rica, speaking also on behalf of Colombia, Guatemala, Nicaragua and Venezuela, said that he wished to respond to a number of points that had been made. He had understood from the Community's statement that even with the difficulties with the Panel report that the latter had referred to, it would not object to the adoption thereof. He asked if the Community could clarify this point. It would be unfortunate and a source of deep frustration for the Latin-American countries concerned if the Community were once again to hinder the adoption of the report. It was today, in the final stage of the dispute settlement

process, that the system should show its strength and its credibility as a guarantor of rights. This was also the time for contracting parties to show whether their support for the evolution of the dispute settlement rules in the international trading community was real. The Community should fulfil its rôle in the multilateral trading system and abide by its obligations under GATT. The only satisfaction one could gather from the Community's statement was the recognition of the clearly political nature of the problems regarding the Panel report. Such considerations, however, could not in any way vary or modify obligations arising from the General Agreement and could not lead anyone to conclusions different from those contained in the Panel report. Some members had referred to legal principles that had also been dealt with in the course of the Panel's work, and which had been simply reaffirmed by the Panel in its report. He would therefore not refer in detail to those principles. He would simply reiterate their Governments' insistence that it was appropriate for this report to be adopted and that its recommendations be complied with as soon as possible.

The representative of the European Communities said his statement could not have led to the conclusion that the Community did not oppose adoption of the Panel report. He had stated clearly that in this matter, which involved the problem of the Community's tariff preferences to the ACP countries, and particularly the question of reverse preferences, the countries that suffered were the developing countries that had an association agreement with the Community. He had shown a degree of tact and had left it up to them to intervene in the debate and to react and respond. As far as the Community was concerned, one way of bringing itself into conformity with the Panel's second recommendation would be to provide for reverse preferences in its trade arrangements with the ACP countries. Indeed, the Community would benefit from such a provision since it exported to these countries. The question, however, was whether these countries would be able to assume such a responsibility, and also what third countries that were competitors with the Community in those markets would have to say on this matter. This was not a matter of politics anymore but about export earnings. That was what it would amount to, because reverse preferences would favour the Community's member States' exports. If that was what all wanted, the Community would accept it.

The Chairman proposed that the Council take note of the statements and agree to revert to this item at its next meeting, prior to which he would hold informal consultations on how best to organize the discussion on this item.

The Council so agreed.

5. EEC - Restrictions on imports of apples
- Communication from Chile (DS39/2, DS41/2)

The Chairman recalled that the Council had considered the matter of the European Economic Community's import régime for apples at its meeting in March, May and June. He drew attention to the communication from Chile in document DS39/2 - DS41/2.

The representative of Chile[7] recalled that in a communication dated 17 June 1993 (DS41/1), Chile had requested Article XXIII:1 consultations with the Community, under the urgency procedure established in paragraph C.4 of the April 1989 Decision on improvements to

[7]The text of Chile's statement was subsequently circulated as C/COM/1.

the GATT dispute settlement rules and procedures (BISD 36S/61), to address the latter's application of countervailing charges on imports of apples from Chile. He recalled that under the urgency procedure, if consultations failed to settle a dispute within thirty days following the request, the complaining party could request establishment of a panel. The Community, unfortunately, had been unable to schedule the first consultation until three weeks following the request. Therefore, since Council meetings were convened by an airgram issued ten calendar days prior to a meeting, Chile had, on 8 July, requested that this item be inscribed on the Agenda of the present meeting so as to report on the results of these consultations and, in the absence of positive results, to request the establishment of a panel.

In consultations held on 14 July, the Community had stated that the objective of Community Regulation No. 846/93 and subsequent regulations was not to restrict imports but to maintain satisfactory market prices; that the system was automatic; that Regulation No. 1035/72 on the common market organization for fruits and vegetables had been in force for more than twenty years; and that it conformed to GATT rules and was a response to the serious problems affecting the Community's apple market. The Community had indicated that the expected conclusion of the Uruguay Round would lead to a solution to the problem raised by Chile. It had also indicated that it would be prepared to reach an ad hoc solution for the current export season, without specifying details. This response was not satisfactory to Chile, for reasons which he described. The Community had also refused to accept that this matter be dealt with under urgency procedures. Chile believed, however, that this case was urgent due to the perishable nature of apples, the serious damage suffered by its exporters during the current year, and the fact that without an effective solution this year, the marketing of apples in 1994 and beyond could be affected. He noted that Chile had requested, unsuccessfully, since February that the Community eliminate its restrictive measures and bring its apple import régime into GATT conformity.

As his delegation had indicated at the March Council meeting, Chile had also held consultations with the Community on the latter's special surveillance system for apple imports applied since February 1993 pursuant to Regulation No. 384/93. Indeed, Chile had raised this matter with the Community more than six months earlier. However, Chile continued to receive the same unsatisfactory reply from the Community. In the meantime, its exports continued to suffer, having fallen by more than 40 per cent in 1993 as a result of the compensatory charges applied by the Community. Chile, therefore, requested the establishment of a panel to examine whether the compensatory charges linked to reference prices, which caused the tariff level to be higher than that bound in the GATT, were compatible with the Community's GATT obligations, specifically Articles I, II, XI and XIII:1, as well as other relevant provisions. With regard to the surveillance system for apple imports, Chile considered that the consultations held on 22 March had failed. Accordingly, and at the same time, Chile also requested the establishment of a panel to examine the GATT compatibility of the surveillance system set up under Regulation No. 384/93, in particular with Articles II, VII and XI and any other relevant provisions. As these were aspects which concerned the same Community Regulation, No. 1035/72, which established the common market organization for fruits and vegetables, Chile requested that both the licensing system, as well as the countervailing charges, be examined by the same panel. Chile further requested that the panel follow the urgency procedures as contained in paragraph F(f)5 of the April 1989 Decision.

The representative of the European Communities said that although the Community had accepted Chile's request of 17 June for consultations, it had not accepted that an urgency procedure should be followed, given that the apple harvest in Chile for 1993 would soon be over, and that the measures complained of were temporary. The Community's measures, furthermore, were not causing loads of Chile's apple exports to perish at the Community's ports, as Chile

might have some believe. The Community and Chile had held a first round of consultations on 14 July, at which it had been agreed to hold a second meeting at a later date. The Community was therefore surprised that Chile had chosen to place this matter on the Agenda of the present meeting. He wondered what the purpose of consultations was if one did not believe in them. Chile's initiative had undermined the consultation process, and had served only to harden the Community's position because it believed that one was not entitled to prejudge the results of conciliation through consultations. The Community questioned the validity of the inscription of this item on the Agenda of the present meeting, and believed therefore that it was inappropriate for the Council to consider Chile's request for a panel.

As a personal commitment, he was ready to recommend to the relevant Community institutions that they endeavour to find an interim solution for the next season for Chile's apple exports, which would begin in March 1994. He understood the difficulty for developing countries such as Chile in confronting their economic problems. The two parties, therefore, should do the maximum to resolve this problem for the next season, without excluding the possibility of finding a more lasting solution. Clearly, however, he could not recommend that the Community undertake such an effort if a panel were to be established. One had to choose between a negotiated solution which would ensure that no party was injured, or a panel process. In this context, recourse to the GATT dispute settlement mechanism appeared to have become systematic, almost a reflex action. This, however, could not be justified, whether economically or politically, unless all other efforts at conciliation had first been exhausted. Systematic recourse to this mechanism soon led to sterile and unnecessary confrontation. He hoped that the matter raised by Chile would not be the cause of discord in this institution.

The representative of Argentina said that, as his delegation had stated at previous Council meetings on this matter, the import certificates and prior import deposits required by the Community in the framework of its regulation on the common market organization for fruits and vegetables not only limited trade, but seemed to be precursors of further restrictions. The Community had now applied countervailing charges on apple imports also from Argentina, the amount of which had varied progressively from ECUs 3.82 to 10.97 to 7.59 per 100 kilograms. Argentina supported the request for the establishment of a panel on an urgent basis, and wished to be considered as an interested third party in that panel. While negotiation and dialogue were useful, he noted that the Community's Regulation No. 1035/72 had nevertheless existed for twenty-one years and had repeatedly been used in a restrictive manner. He could not see, therefore, how further consultations would lead to better results.

The representative of the United States said that this was not the first time the United States and Chile had had problems with the Community's apple import régime. The United States had joined Chile in successfully challenging the Community's import quotas for apples in 1989[8] and it was not pleased to have a problem again with the Community. The Community's current import restrictions were different in character but similar in effect to those which had successfully been challenged several years earlier. The so-called countervailing charges recently imposed on apple imports from Chile and the United States were in clear violation of the Community's bound duties for apples. Accordingly, the United States supported Chile's request for the establishment of a panel, and reserved the right to participate as a third party in the panel's proceedings. As for

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[8]European Economic Community -
(a) Restrictions on imports of dessert apples (Complaint by Chile) (BISD 36S/93);
(b) Restrictions on imports of apples (Complaint by the United States) (BISD 36S/135).

the value of consultations with the Community on this type of question, Chile had no doubt had an experience parallel to the Unites States' and had therefore concluded that a panel proceeding was unavoidable.

The representative of Australia said his Government firmly believed that Chile had a legitimate complaint regarding the increasingly trade-restrictive and trade-protective effect of the Community's licensing system for and countervailing charges on apples during the 1993 southern hemisphere season. At previous Council meetings, Australia had supported Chile's concerns in this respect, and it now supported Chile's request for the establishment of a panel. As Australia also had a trade interest in this product, it registered its interest in making a third-party submission to the panel.

The representative of Brazil supported Chile's request. While there appeared to be a difference of perception between the Community and Chile with regard to the usefulness of the consultations held thus far, Chile certainly had the right to bring this matter to the Council and to request that a panel be established. Brazil also supported Chile's request that a panel also examine the compatibility of the Community's regulation establishing a surveillance system for apple imports from third countries, and reserved the right to participate in any panel related to the Community's apple import régime, even though it was not directly affected by the compensatory charges imposed by the Community's Regulation No. 846/93.

The representative of El Salvador supported Chile's request that a panel be established immediately under the urgency procedures of the April 1989 Decision.

The representative of Colombia said his Government supported Chile in this unequal struggle against the Community's application of an import licensing system as part of its surveillance mechanism for apple imports, as well as the discriminatory countervailing charges applied to maintain arbitrary reference prices, which were incompatible, independently of their temporary nature, with Articles II, XI and XIII. This system systematically pushed the Community's tariff on apples above the GATT-bound 6 per cent and, as a result, reduced the access of Chile's apples to the Community market. Colombia supported Chile's request for a panel to examine this matter on an urgent basis. Procedural aspects should not be allowed to become an obstacle to Chile's invoking its GATT rights.

The representative of Venezuela said that although his country was not an apple exporter, it had export interests in bananas, avocado pears and mangoes, which were subject to a similar regulation and to a similar surveillance system. Venezuela was concerned at possible trade restrictions on these other products and supported Chile's request. The reference price system and the surveillance mechanism should not become covert obstacles to trade. Prior experience with such trade instruments had demonstrated that they did cause restrictions on imports. In the case at hand, there was the further problem of the discriminatory application of such measures. Venezuela supported the establishment of a panel under urgency provisions.

The representative of Uruguay said that parties to a dispute should indeed try to find a solution thereto through consultations. However, failing a satisfactory agreement through consultations, adjudication through a panel was provided for in the General Agreement. It was clear that apples were a perishable product and that they were of importance to Chile. Uruguay believed that the Community's restrictive measures, and particularly the countervailing charges, not only caused serious injury to Chile, but were contrary to the GATT. Uruguay therefore supported the establishment of a panel and the application of urgency procedures.

The representative of Guatemala supported Chile's request for a panel and said that the panel should follow the procedures required in cases of urgency.

The representative of Canada indicated his Government's support for Chile's panel request. Canada believed that there was no inherent incompatibility between the search for a solution and the establishment of a panel. Indeed, paragraph 16 of the 1979 Understanding[9] made clear that in the process of dispute settlement, panels should consult regularly with the parties to the dispute and give them adequate opportunity to develop a mutually-satisfactory solution.

The representative of Bolivia said that his Government shared Chile's concerns. Bolivia regretted that consultations had not resulted in a satisfactory solution to this dispute and supported the establishment of a panel.

The representative of Peru said that his Government also regretted that the consultations had not resulted in a successful conclusion, and supported Chile's request for a panel under the urgency provisions.

The representative of Chile said that his Government was concerned with the effects of the Community's restrictions on Chile's next apple harvest. If this matter were not considered as one of urgency, it would not be satisfactorily resolved before the next season, which began in March 1994. If the dispute on bananas, discussed under Item 4, was any indication, the case at hand might well be concluded only at the end of the next season. Chile's aim had always been to find a solution through consultations. However, having exhausted all possibilities of a satisfactory solution through such consultations, Chile believed it had the right to request a panel now, since the Community had not accepted its proposal to postpone its request for a panel if the latter was willing to accept this case as one of urgency and to resolve it through further consultations. As a result, Chile had no assurance of reaching a solution -- which was very important to it -- before the beginning of the next season. Chile appreciated, however, the willingness of the Community's delegation to recommend to its authorities that they find a solution and was willing to continue to work towards a bilateral solution through as many meetings as necessary with the Community towards that end.

The representative of the European Communities said he wished to query what Colombia had meant when it had spoken of a "discriminatory" countervailing charge. One very often talked about non-discrimination, but he wondered if there was any such thing as a non-discriminatory countervailing charge. Having said that, he wished to react positively to Chile's remarks. On a procedural level, the Community had indicated that an urgency procedure was not applicable and therefore that Chile's request for a panel would not be acceptable at this stage. However, the Community was aware and conscious of Chile's difficulties. He assured Chile that he would not only make a recommendation to his authorities, but would bring all his weight to bear to find a solution to this problem. The Community would be prepared to hold consultations as of the following week. At the same time, the Council Chairman could also perhaps hold consultations on how the problem of time could be overcome and a solution found that would ensure that Chile's next apple harvest would not be harmed by any measure that hindered the normal access of Chile's apples to the Community market. He would also request that the Community's

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[9]Understanding Regarding Notification, Consultation, Dispute Settlement and Surveillance (BISD 26S/210).

intentions regarding its surveillance system not be put on trial. While there were understandable fears and concerns, he would not accept that the Community's intentions be questioned.

The representative of Chile regretted that the Community had not accepted the request for a panel at the present meeting, and requested that this item be considered again by the Council at its next meeting.

The Chairman, in response to the Community, said that he was ready to organize informal consultations on certain aspects of this matter if this also met with Chile's approval.

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

6. Monitoring of implementation of panel reports under Paragraph I.3 of the April 1989 Decision on improvements to the GATT dispute settlement rules and procedures (BISD 36S/61)

The Chairman recalled that this item was on the Agenda pursuant to paragraph I.3 of the April 1989 Decision, and that in the course of informal consultations held in 1992 and the early part of 1993 it had been understood that it would continue to appear on the agenda in its present form. He drew attention to a recent communication from the United States in DS23/10 on the status of implementation of the Panel report on its measures affecting alcoholic and malt beverages (DS23/R).

The representative of the United States said that since his delegation's previous report on the implementation of the alcoholic and malt beverages Panel report, his authorities had consulted with twenty states concerning progress on implementation of GATT-compliant legislation, and two states -- Montana and Indiana -- had now enacted legislation allowing small foreign breweries, like small domestic breweries, to sell directly to retailers. Two other states -- Massachusetts and West Virginia -- had also taken action designed to bring them into compliance with the Panel report. The progress made thus far, although incremental, was beginning to add up, and there were a number of states in which practices that had been the subject of the Panel report had been eliminated. The United States would continue its efforts and hoped to be able to report further progress at future Council meetings.

The representative of Canada said that Canada had reviewed the report in DS23/10 and appreciated the additional information provided by the United States at the present meeting. Canada recognized that the United States was continuing to seek implementation of the Panel's recommendations, although it was a long way from completely fulfilling its obligations. While a few more states had taken steps to bring their measures into line, the majority of state measures still remained GATT inconsistent. It was also troubling that the federal measures found by the Panel to be GATT inconsistent, and which fell under the direct control of the federal Government, also remained inconsistent; Canada would appreciate an indication from the United States as to when these measures would be brought into GATT conformity. Canada continued to urge the United States to make serious efforts to implement the Panel's recommendations and hoped this could be completed by the end of the year.

The representative of Brazil said that his Government, too, welcomed the United States' report in DS23/10. Although the information therein confirmed that the pace of implementation

was frustratingly slow, the report helped the Council to perform its monitoring function. Brazil was, however, disappointed at the United States' attitude regarding the implementation of the Panel report on the latter's denial of m.f.n. treatment to imports of non-rubber footwear from Brazil (DS18/R). The United States' statement on this matter at the June Council meeting had indicated that if a contracting party failed to act on the implementation of a panel report, it had the privilege of being silent in the Council under this Agenda item. Brazil did not expect the United States to inform the Council at each meeting that it had not yet completed consideration of how best to bring itself into conformity with its international obligations. Rather, Brazil would prefer to hear it announce to the Council that the report had been implemented. It was small comfort to hear that the United States had not yet determined how to bring itself into GATT conformity, but under this Agenda item that was the least one would expect. If the United States was interested in optimizing the use of the Council's time, as had been implied at the June Council meeting, it should implement the Panel report.

The representative of the United States, in response to Brazil's statement regarding the non-rubber footwear Panel report, said that nothing would make him happier than to see this particular matter finally removed from the Council's agenda. At the present meeting, however, he had had nothing new to report, and had not considered it worthwhile therefore to address this issue.

The Council took note of the statements.

7. Harmonized System - Requests for waivers under Article XXV:5
   (a) Jamaica (L/7263, C/W/750)
   (b) Trinidad and Tobago (L/7262, C/W/749)

The Chairman drew attention to the communications from Jamaica and Trinidad and Tobago in L/7263 and L/7262, in which each of these Governments had requested a waiver in connection with its implementation of the Harmonized System (HS). He also drew attention to the respective draft decisions in C/W/750 and C/W/749.

The representative of Jamaica said that, as indicated in L/7263, his Government had introduced the HS on 15 February 1991. Jamaica was in the process of preparing the required documentation which it would circulate to contracting parties as soon as possible. Jamaica was prepared to carry out consultations and negotiations under the provisions of Article XXVIII in respect of any changes that might result in its Schedule from the transposition process. Jamaica requested a temporary waiver from its obligations under Article II until 31 July 1994 in order to finalize the preparation of the required documentation, and subsequently to hold the necessary consultations and negotiations.

The representative of Trinidad and Tobago said that, as indicated in L/7262, his Government requested a waiver from the provisions of Article II in order to complete its implementation of the HS, which had been introduced on 1 January 1991 as part of a comprehensive and far-reaching trade liberalization programme, including tariff reduction, non-tariff reform, and simplification of customs procedures and requirements. He described some of the measures that had already been undertaken, and said that despite the high social costs of these endeavours, his Government was firmly committed to this path and would appreciate the support of other contracting parties through the approval of the waiver request.

The representative of the United States said that at the June Council meeting, Sweden, on behalf of the Nordic countries, had proposed that countries seeking such waivers be required to report to the Committee on Tariff Concessions, and through it to the Council, on progress prior to the extensions of the waivers being granted. The United States continued to believe that the Nordic countries' proposal should be followed in all such instances and, accordingly, would support granting the waivers requested by Jamaica and Trinidad and Tobago only if those countries provided explicit assurance that they would report to the Committee on the steps taken during the waiver period to finalize their HS conversions.

The representative of the European Communities said that, like the United States, his delegation would support the two waiver requests on the basis of the understanding reached at the June Council meeting.

The Chairman said that the Council was considering requests by Jamaica and Trinidad and Tobago for waivers and not for extensions of waivers previously granted. He noted that at the June Council meeting, Sweden, on behalf of the Nordic countries, had made a proposal in the context of requests for extensions of waivers under consideration at that meeting (C/M/264, item 9(a)), and that the Council had agreed to invite the Committee on Tariff Concessions to include on its agenda at its next meeting the issue raised by Sweden on behalf of the Nordic countries. Therefore, in his understanding, the concerns of the United States and the Community could adequately be addressed in that Committee.

The representative of Argentina said he agreed with the Chairman's statement. The proposal by Sweden on behalf of the Nordic countries at the June Council meeting had given rise to a number of comments, and he would not wish to reopen that debate at the present meeting.

The Chairman proposed that the Council take action on the two requests. In that context, he stated that the documentation still to be submitted and any negotiations or consultations that might be required should follow the special procedures relating to the transposition of the current GATT concessions into the HS, adopted by the Council on 12 July 1983 and contained in document L/5470/Rev.1.

The Council took note of the statements, approved the texts of the draft decisions in C/W/749 and C/W/750, and recommended their adoption by the CONTRACTING PARTIES by postal ballot.

8. Trade Policy Review Mechanism
- Programme of reviews for 1994

The Chairman informed the Council that the programme of reviews under the Trade Policy Review Mechanism for 1994 would be as follows:

- Two-year cycle: Third reviews of Canada, Japan and the European Communities.
- Four-year cycle: Second reviews of Hong Kong, Indonesia and Sweden.
- Six-year cycle: Cameroon, The Gambia, Macau, Pakistan, Tunisia and Zimbabwe.

The programme for the rest of 1993 had been announced at the June Council meeting. At this stage, he merely wished to say that, while every effort would be made to keep to the scheduled dates, it should be recognized that there might be a need for some flexibility in scheduling in the light of the Uruguay Round work programme.

The Council took note of the statement and agreed to the 1994 Programme of Reviews (L/7285).

9. Council review of the status of observers and of their rights and obligations - Proposal by the Chairman on observer status of governments in the Council (C/W/748)

The Chairman recalled that in May 1990, in connection with the former USSR's request for observer status, the Council had agreed that the whole issue of the status of observers and of their rights and obligations should be reviewed at the end of 1992. In November 1992, the Council had agreed that more time would be required before this review could be conducted, and that further consultations should be held early in 1993 so that this matter could be brought to the Council before the summer of that year.

As the Council had been informed at its meetings in March and June, he had been holding such consultations, which had resulted in agreement on a draft decision concerning observer status for governments in the Council (C/W/748). With regard to the observer status of international organizations in the Council, and of governments and international organizations at sessions of the CONTRACTING PARTIES, it was his understanding, on the basis of these consultations, that no further action was required at this stage. With regard to the draft decision in C/W/748, he made the following clarifications: (a) all governments that were currently observers in the Council should provide information under paragraph 1 of the draft decision, unless they were deemed to have done so recently to a satisfactory extent; (b) the five-year period referred to in paragraph 2 of the draft decision would not apply retroactively to governments that were currently observers in the Council; and (c) the draft decision did not affect countries which applied the General Agreement on a de facto basis and which were not observers in the Council. He then proposed that the Council adopt the draft decision in C/W/748.

The Council took note of the statement and adopted the Decision (L/7286).

10. EFTA - Bulgaria Free-Trade Agreement (L/7257 and Add.1)

The representative of Austria, speaking on behalf of the EFTA countries and Bulgaria, under "Other Business", informed the Council that the text of a Free-Trade Agreement between the EFTA countries and Bulgaria had recently been notified to contracting parties (L/7257 and Add.1). The Agreement, which had been signed on 29 March 1993, had entered into force between Bulgaria and Sweden on 1 July, and was applied provisionally by Liechtenstein, Norway and Switzerland. The Agreement would enter into force in other EFTA countries when their respective ratification processes had been concluded. The Agreement covered trade in industrial products, fish and other marine products and processed agricultural products. Within its framework, bilateral agricultural arrangements had been concluded between each EFTA country and Bulgaria. The content and structure of the Agreement was similar to other such agreements concluded between the EFTA countries and other Central and Eastern European Countries. The objective of the Agreement was to abolish tariffs and other restrictions on substantially all the trade between the EFTA countries and Bulgaria, and it contained provisions dealing with, inter alia, public procurement, intellectual property rights, state aid and competition. An evolutionary clause provided the possibility of extending relations to areas not covered by the Agreement. The Parties to the Agreement were at the Council's disposal for further information and consultation

on this Agreement and, in this context, he recalled that Bulgaria was currently negotiating its accession to the General Agreement.

The Council took note of the statement.

11. EEC - Countervailing charge on lemons

The representative of Argentina, speaking under "Other Business", said that Argentina had been affected in recent weeks by various border measures applied by the European Economic Community under the latter's Common Market Organization for fruits and vegetables as set out in Regulation 1035/72. These measures were clearly aimed at limiting the access of Argentina's products in the Community's market, and had been applied on the basis of a reference price system established by that Regulation which appeared to be incompatible, inter alia, with Articles X, XI and XIII. On the basis of this Regulation, between 11 June and 13 July, countervailing charges on lemons from Argentina had progressively been increased by 900 per cent, from an initial ECUs 4.71 per 100 kilograms to ECUs 46.8 per 100 kilograms, and had resulted in stopping Argentina's lemon exports to the Community. In this connection, he noted that Argentina was the principal supplier of lemons to the Community, accounting for 42 per cent of the total non-Community supply of lemons to that market in the past three-year period. Argentina had communicated its concerns on this matter to the Community and would consult informally with the latter. It intended also to request formal Article XXII consultations with the Community, and therefore requested that this matter be put on the agenda of the next Council meeting.

The representative of the European Communities said he would convey Argentina's concerns to his authorities, who would undoubtedly be prepared to engage in formal or informal consultations with Argentina on this matter.

The Council took note of the statements.

12. US/Japan Framework Agreement

The representative of the United States, speaking under "Other Business", informed the Council that on 10 July, the US President and the Japanese Prime Minister had agreed on a new Framework for talks between the United States and Japan to open markets, encourage growth and address persistent imbalances in Japan's trade with the world. Under the Framework, Japan and the United States had identified the specific sectors of the economy where they believed that more trade was warranted, reaffirmed their commitment to an open multilateral trading sysem that benefited all nations, and had also agreed that benefits would be on an m.f.n. basis. They believed, therefore, that their efforts thereunder would lead to open markets and expanded trade. To this end, the Framework would also complement their efforts in the Uruguay Round.

The representative of Japan said that the Framework would serve as a new mechanism for consultations and was designed to address structural and sectoral issues of interest to both Japan and the United States. He stressed that both Governments had expressed their firm commitment to an open multilateral trading system, and that any benefits accruing from the Framework Agreement would be extended on an m.f.n basis. The parties were prepared to provide contracting parties with any relevant documentation. .

The representative of the European Communities said he hoped and expected that the statements made concerning the m.f.n. extension of any results stemming from the Framework Agreement would be effectively implemented.

The Council took note of the statements.

13. Restrictions on poultry imports in certain Central American countries

The representative of the United States, speaking under "Other Business", said that for almost two years, the United States' exports of cut-up poultry to Nicaragua, El Salvador, Guatemala and Honduras had been blocked by measures that appeared to be in violation of basic GATT obligations. The United States was also concerned that at least one other country in the region might be contemplating similar measures. The United States had made numerous attempts to address this problem bilaterally with the countries in question in order to find a mutually agreeable, GATT-consistent method of achieving the necessary protection for their poultry industry while providing for market access for its exports. It believed that such a solution was achievable and would continue to seek it. However, his delegation wished to alert the Council and all the Governments in question that if no bilateral agreement could be reached by September, the United States intended to seek resolution of this issue through the appropriate GATT channels.

The representatives of El Salvador, Nicaragua and Guatemala and the observer from Honduras said that their delegations had listened carefully to and taken due note of the United States' statement and would convey it to their authorities. They reaffirmed their countries' willingness to continue the dialogue with the United States in order to find a solution to this matter.

The representative of Honduras, speaking as an observer, said that his Government had initiated simultaneously a process of consultations with its poultry industry, which could be seriously affected by any increased imports of the products in question, and a dialogue with the United States with a view to achieving a rapid and mutually acceptable solution. He recalled that at the second meeting of the Working Party on the Accession of Honduras, his Government had agreed to multilateralize the results of these negotiations. In this context, his delegation believed it appropriate to provide a detailed explanation of the laws and decrees that authorized the Executive to impose certain restrictions on the imports of poultry.

The Council took note of the statements.

14. United States - Anti-dumping and countervailing duty actions on steel

The representative of Australia, speaking under "Other Business", informed the Council that on 15 July, Australia had formally requested consultations with the United States pursuant to Article 15:2 of the Anti-Dumping Code[10], in respect of the latter's final dumping determinations and provisional measures against certain corrosion-resistant carbon steel flat products from Australia. In these consultations, Australia would be seeking clarification from the United States regarding the consistency of its decisions and measures with the provisions of the Code.

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

The representative of Brazil recalled that on 22 June, the US Department of Commerce had announced final affirmative determinations in anti-dumping and countervailing duty investigations on certain steel products imported from about twenty countries. Much had been said in earlier Council meetings on the disruptive nature of the massive series of steel actions in the United States, and Brazil would not recall those arguments at the present meeting although it reserved the right to do so in the future. He informed the Council that a second round of bilateral consultations with the United States on the actions affecting Brazil was being held that same day in Geneva, and hoped they would contribute to a satisfactory solution. Brazil was also confident that the US International Trade Commission would determine, at the end of the month, that the imports concerned were not causing injury to US industry.

Brazil would pursue this matter in the GATT until a satisfactory solution had been reached.

The Council took note of the statements.

15. Canada - Article XIX action on boneless beef (L/7219 and Add.1 and 2)

The representative of Australia, speaking under "Other Business", said that the issues raised by this case were of concern to Australia and should also be to other contracting parties, including those with no direct interest in beef. He recalled that, further to its notifications in L/7219 and Add.1, Canada had, on 12 July, notified contracting parties of safeguard measures on boneless beef implemented on 21 June (L/7219/Add.2), and had indicated that the régime for 1994 and 1995 would be announced later in the year. Australia was concerned about how it was to maintain its GATT rights under Article XIX. It had sought to follow the common practice of seeking an extension of the time-limit set out in Article XIX:3(a) pending a decision by Canada on the extent and nature of restrictions it proposed for 1994 and 1995. This was required because in the absence of an extension the parties affected by such measures would have to move to the stage of suspending equivalent concessions or obligations without knowledge of the severity of future restrictions. At bilateral consultations on 14 July, Canada had not been prepared to give a definitive response to an extension of the time-limit for action under Article XIX:3(a) in respect of its Article XIX notification. This position would be comprehensible only if it was Canada's expectation that it would no longer be maintaining the measures announced for 1993 beyond September. However, in the light of Canada's stated intentions of possible continued restrictions on imports into 1994 and 1995, and given the current practice of Article XIX consultations, there would appear to be no reason why Canada could not give assurances on the question of extension. As had been observed by many contracting parties when similar issues had been raised in the past, it was against the spirit of the GATT to force contracting parties to withdraw concessions or obligations prematurely simply to preserve GATT rights. Such action should be a last resort. However, Australia had no option but to place clearly on record that it reserved its rights to suspend substantially equivalent concessions or other obligations in respect of Canada under Article XIX:3(a) in respect of measures applying for 1993, or those that might be implemented for 1994 and 1995, on imports of boneless beef from Australia.

The representative of Canada said that, as his delegation had noted at the June Council meeting, Canada's Article XIX action was in sharp contrast to the voluntary restraint arrangements that Australia had readily aquiesced to with other contracting parties. Canada's action had been taken pursuant to a report by the Canadian International Trade Tribunal (CITT), an independent, quasi-judicial body that had reached its conclusions after objectively having analyzed all relevant facts and solicited written and oral submissions from all interested parties. The Australian government and industry had had full opportunity to participate in the hearings

conducted by the CITT, and Canada had since consulted with Australia in respect of the Article XIX action no less than five times. At the most recent consultation on 14 July, the focus of Australia's concern had been the possibility for extending the period provided for in Article XIX:3(a). While such extensions had become common practice, they were by no means automatic and were possible only with the agreement of both parties. At Australia's request, Canada had agreed to consider such an extension. Australia had, however, just that same day turned down Canada's offer to extend the 90 day period until after the next Council meeting in the autumn. In essence, Australia was asking Canada to agree to an extension of the consultation period before the consultations it planned to hold in late August or early September had been concluded. Canada could not accept this request at the present time, and believed such a decision could more appropriately be made once the consultations had actually taken place.

The Council took note of the statements.

16. United States - Proposed legislation concerning the use of imported tobacco by domestic cigarette manufacturers

The representative of Brazil, speaking under "Other Business", drew attention to a provision introduced into the 1993-1994 Budget Bill in the US Senate which would require US cigarette manufacturers to use a minimum of 75 per cent of domestically produced tobacco in their products. Under the proposed legislation, a cigarette manufacturer failing to comply with this requirement would face specific penalties. He noted that the proposed legislation referred only to "burley" and "flue-cured" tobacco, although US manufacturers also used other types of tobacco, including "oriental" tobacco which was not grown domestically. Brazil was the United States' main supplier of "burley" and "flue-cured" tobacco, and its producers had already expressed concern to his authorities at the possible approval of this restrictive and GATT-illegal measure. If approved, this provision would undoubtedly injure Brazil's exports to the US market. Brazil urged the United States to prevent adoption of this measure which was a blatant violation of Article II and was in breach of the standstill commitment of the Uruguay Round negotiations. Measures of this kind went against the trade liberalizing spirit of the Round which now seemed likely to be concluded soon.

The representative of Chile shared Brazil's views on this matter. Adoption of this proposed legislation would be a violation of Article III:5 as well as of the standstill commitment of the Punta del Este Declaration. Chile therefore appealed to the United States' delegation that it convey the concerns expressed to its legislature, and request that the proposed legislation not be adopted.

The representative of Argentina shared the concerns expressed by Brazil and Chile, and said that Argentina had held a number of bilateral consultations with the United States, as well as informal consultations with members of the US Congress and other interested parties.

The representative of El Salvador said that her country also exported "burley" and "flue-cured" tobacco to the United States, and wished to join others in voicing concern on this matter. She requested that the United States' delegation transmit to its legislators the concerns expressed on this matter.

The representative of Guatemala endorsed the statements by the previous speakers, and said that her country would also be directly affected if the United States were to adopt legislation

that would restrict tobacco imports. Guatemala was concerned that this threat of new restrictions might actually come into effect. Guatemala had taken up the challenge of liberalizing its economy and requested that other contracting parties, particularly the more developed contracting parties, help its developmental efforts by not setting up obstacles to its main export products.

The representative of Venezuela supported the statements by the previous speakers, and asked that their message be conveyed to the United States' legislature.

The representative of the United States said that, as had been noted by the previous speakers, the measure in question was only a proposal at this stage. His delegation had carefully noted the tobacco-exporting countries' concerns, and would forward them to its authorities, who would be sure to pass them on to Congress. His delegation was not in a position at this point to give the Council a definitive explanation of the US Administration's stance on this particular measure.

The Council took note of the statements.

17. Korea - Restrictions on imports of beef
- Follow-up on the Panel reports (BISD 36S/202, 234 and 268, L/7270)

The representative of Korea, speaking under "Other Business", informed the Council that Korea had reached agreements with the United States, Australia and New Zealand on the implementation of the Panel reports concerning Korea's restrictions on imports of beef adopted by the Council in November 1989 (BISD 36S/202, 234 and 268). The Agreements with the United States and Australia had been signed on 15 July and 20 July 1993, respectively, while that with New Zealand had been initialled on an ad referendum basis on 15 July, and would soon be formally signed. The three Agreements were nearly identical and provided for a 7 per cent increase each year in the minimum amount of beef to be imported by Korea. The minimum amount would be 99,000 tonnes in 1993, 106,000 tonnes in 1994 and 113,000 tonnes in 1995. The Agreements also called for a steady increase -- 10 per cent in 1993, 20 per cent in 1994 and 30 per cent in 1995 -- in the percentage of imported beef to be marketed under the Simultaneous Buy/Sell (SBS) system, and for an expansion in the number of entities that would participate in the SBS system. The Agreements also provided for bilateral consultations to be held no later than 1 June 1995. Details of the Agreements, which would be applied on an m.f.n. basis, had recently been circulated to contracting parties (L/7270).

The representative of Australia welcomed the conclusion of the Agreement with Korea on access arrangements for beef for the period 1993-1995, which represented a significant improvement over the arrangements for 1990-1992. Australia wished to record its satisfaction that in the context of this agreement, Korea had reaffirmed its undertaking to eliminate its remaining restrictions on imports of beef or to otherwise bring them into GATT conformity, as had been agreed in the October 1989 consultation in the Committee on Balance-of-Payments Restrictions (BOP/R/183 and Add.1).

The representative of New Zealand said that New Zealand, too, welcomed the conclusion of the Agreement with Korea. It viewed the new arrangements as taking Korea further along the path of liberalization of its beef market, consistent with its commitment to eliminate its remaining import restrictions on beef or to otherwise bring them into GATT conformity by 1997. The new Agreement was the platform for the movement by Korea to full liberalization in accordance with its commitments and international obligations.

The Council took note of the statements.

18. Appointment of the Deputy Directors-General
- Announcement by the Director-General (C/185)

The Director-General, speaking under "Other Business", drew attention to his decision in document C/185 concerning the appointment of the Deputy Directors-General. As noted in that document, he had carried out the consultations foreseen in the procedures for the future appointments of the Deputy Directors-General agreed in April 1987 (BISD 34S/173). He had also paid due regard to the discussion at the Special Session of the CONTRACTING PARTIES on 9 June (5SS/SR/1, pp. 3-9) and had taken into account the guidelines that had been communicated to him in a letter from the Chairman of the CONTRACTING PARTIES, as well as the announcement by the latter at the meeting of the Council in June (C/M/264, item 23). Following his consultations, he had decided to appoint Mr. Anwarul Hoda, Mr. Warren A. Lavorel and Mr. Jesús Seade as Deputy Directors-General. He had communicated his decision to the individuals concerned, who had all confirmed their agreement.

The Council took note of this information.

19. Committee on Balance-of-Payments Restrictions
- Consultations with Israel and South Africa

Mr. Witt (Germany), Chairman of the Committee, speaking under "Other Business", said that on 1-2 and 7-8 July, the Committee had consulted with Israel and South Africa and that the reports on these consultations would shortly be circulated. At this stage, in respect of the consultation with Israel, he wished to draw the Council's attention to some of the Committee's conclusions. The Committee had noted that the only remaining measure on industrial products for which Israel invoked GATT balance-of-payments (BOP) provisions was the 2 per cent import levy, which was scheduled for reduction to 1 per cent not later than 31 December 1994. The Committee had urged Israel to accelerate the phasing out of this measure, which it considered to have little significance for the present balance-of-payments situation. On agricultural products, Israel was still invoking BOP provisions in respect of import licensing. The Committee, while noting Israel's statement that agricultural items were under negotiation in the Uruguay Round, had urged Israel to establish a timetable for the phasing out of these restrictions. Israel had agreed to provide, by September 1993, an updated list identifying its BOP restrictions on agricultural products at the tariff line level. The Committee had agreed to examine this question after receiving the notification from Israel.

The Council took note of the statement.

20. EFTA-Romania Free-Trade Agreement
- Working Party Chairman

The Chairman, speaking under "Other Business", recalled that at its meeting in June, the Council had established a Working Party to examine the EFTA-Romania Free-Trade Agreement and had authorized him, in consultation with principally interested contracting parties, to designate

its Chairman. He informed the Council that Mr. P. Gosselin (Canada) had agreed to serve as Chairman of the Working Party.

The Council took note of this information.

21. Customs Union between the Czech Republic and the Slovak Republic - Working Party Chairman

The Chairman, speaking under "Other Business", recalled that at its meeting in May, the Council had established a Working Party to examine the Customs Union between the Czech and Slovak Republics and had authorized him, in consultation with principally interested contracting parties, to designate its Chairman. He informed the Council that Mr. J.W.P Wong (Hong Kong) had agreed to serve as Chairman of the Working Party.

The Council took note of this information.