

**GENERAL AGREEMENT  
ON TARIFFS AND TRADE**

RESTRICTED  
C/M/272  
1 June 1994  
Limited Distribution

(94-0962)

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COUNCIL  
10 May 1994

MINUTES OF MEETING

Held in the Centre William Rappard  
on 10 May 1994

Chairman: Mr. M. Zahran (Egypt)

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Prior to adoption of the Agenda, the Chairman, on behalf of the Council, welcomed St. Kitts and Nevis, Liechtenstein, Qatar, Angola and Honduras as the 119th, 120th, 121st, 122nd and 123rd contracting parties, respectively.

1. Canada - Article XIX action on boneless beef (L/7219 and Add.1, 2, 3, 4, 5, 6, 7 and 8)

The Chairman recalled that at its meeting in March, the Council had considered this matter and had agreed to revert to it at the present meeting.

The representative of Australia said that, following Canada's notification in January of its decision to continue restrictions on imports of boneless beef from sources other than the United States (L/7219/Add.8), Australia had held consultations with Canada on 19 April in accordance with Article XIX. Similar consultations had been held in relation to the 1993 measures. In the consultations, Australia had reiterated its concern regarding the absence of any justification for Canada's measures and had requested an early review by Canada, as required under Article XIX, of both the market circumstances — which in Australia's view did not present any evidence of injury or threat thereof to Canadian industry — and of the administration of the restrictions, including the level of the tariff quota and the calculation of the out-of-quota surtax. Against this background, Australia welcomed Canada's decision in the past week to increase the level of the tariff quota for 1994 by 13,000 tonnes. This responded to a certain extent to Australia's argument that there was no justification for Canada's restrictions on boneless beef. In Australia's view, conditions in the North American market were such that Canada could easily bear trade in boneless beef under normal commercial conditions of fair competition at the bound rate. Australia therefore urged Canada to keep the import measures under close review and to eliminate the restrictions at the earliest possible date.

The representative of Canada recalled that Canada's action had been based on a recommendation made by the Canadian International Trade Tribunal (CITT). He confirmed that Canada had increased the tariff quota by about 13,000 tonnes for 1994, bringing the total quota to 87,000 tonnes. This increase followed extensive consultations, both with the domestic parties involved and with interested trading partners, and was in line with the recommendations of the CITT that downstream processors and other users not be unnecessarily restricted in their access to traditional supplies of boneless beef. At the same time, the safeguard remedy remained sufficient to prevent the threat of serious injury to Canadian cattle producers and processors. This one-time adjustment to the 1994 tariff-rate quota was a balanced response to a variety of interests, and did not signify in any way that circumstances had fundamentally changed in terms of the CITT's finding regarding the threat of injury. As regards Australia's statement concerning the North American market, his delegation would note that Australia's participation in a restrictive grey-area measure with the United States had placed additional pressure on the Canadian market and was a major contributing factor in this issue. Furthermore, the voluntary restraint arrangement between the United States and Australia provided for no flexibility in the quantities involved.

The representative of the European Communities reiterated the Community's position that the conditions of Article XIX regarding the imposition of quantitative restrictions had not been met in this case. The Community supported Australia's request for the removal by Canada of its measures.

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

2. European Economic Community

- (a) Import régime for bananas
  - Panel report (DS38/R, DS38/10, 11, 12 and 13)
- (b) Member States' import régimes for bananas
  - Panel report (DS32/R)

The Chairman recalled that the Council had considered these matters at its meeting in March, and had agreed to revert to the matter in sub-item (a) at the present meeting and to that in sub-item (b) at a future meeting. The matter in sub-item (b) was on the Agenda of the present meeting at the request of Guatemala.

The representative of Guatemala, speaking also on behalf of Mexico, Honduras, Ecuador and Panama, and addressing the Panel report in sub-item (a) (DS38/R), said this was the second time that a panel had qualified the banana import régime of the European Community as being in violation of the General Agreement. The Panel had found: (a) that the specific duties levied by the Community on bananas were in violation of Article II as they went beyond the 20 per cent tariff previously bound, without any opportunity for renegotiation under Article XXVIII; (b) that the preferential tariff rates on bananas accorded to the ACP countries were inconsistent with Article I and could neither be justified by Article XXIV nor by Article XX (h); and (c) that the allocation of import licences granting access to imports under the tariff quota was inconsistent with Article III and Article I and could neither be justified by Article XXIV nor by Article XX (h). These conclusions were clear-cut, and the Community could not continue to ignore them and to impose a régime that was in violation of GATT rules. The fact that some countries had accepted an offer by the Community in the context of the Uruguay Round did not make the régime any more consistent with the GATT or with the basis of the new World Trade Organization (WTO). The Community's offer had been made after the 15 March deadline for the submission of offers, and had not been verified in the verification process that had been conducted until 29 March. In any case, its offer did not resolve the illegal aspects highlighted by the Panel, but on the contrary made them more restrictive. The Community's offer did not make good the illegalities of EC Regulation 404/93, as had been indicated in the Declaration by the Group of Latin American and Caribbean Banana-Producing Countries in Guayaquil on 8 April.<sup>1</sup> Furthermore, the Framework Agreement on Bananas, entered into between the Community and several Latin American countries, unduly extended the tariffication to member States of the Community which did not have any measures warranting such tariffication in the Uruguay Round framework and, moreover, failed to respect the corresponding modalities. Their Governments urged the Council to adopt the Panel report, and urged the Community to comply with the Panel's recommendations as soon as possible.

The representative of Mexico said that, besides giving its full support to Guatemala's request, his delegation wished to place on record its view that an overall solution concerning the Community's measures under Regulation 404/93, and the subsequent amendments thereto, must be found. He recalled that at the March Council meeting, the Community had stated that all interested parties should continue a dialogue on the issue and that it would be prepared to show flexibility in its position. Mexico believed

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<sup>1</sup>The text of the Guayaquil Declaration was circulated as DS38/13.

it was time for the Community to put into practice its desire for dialogue and to reach a solution acceptable to all parties. The Community's measures, besides having an effect on the supply of bananas, had also resulted in changes in prices and the marketing system in the Community itself. In one member State, for example, consumption had been estimated to have dropped by 25 per cent and prices to have increased by 60 per cent. Furthermore, the licensing régime, which had been found to be GATT inconsistent by the Panel, constituted an administrative burden with an incidence on consumers in the final analysis. At the March Council meeting, the Community had indicated that it had not as yet concluded its consideration of the Panel report. Mexico hoped that at the present meeting, the Community would be in a position to agree to adoption of the report, as had been requested by Guatemala.

The representative of Thailand, speaking on behalf of the ASEAN countries, confirmed their support for adoption of the Panel report. The ASEAN countries believed that adoption of the report would contribute to the future implementation of the strengthened dispute settlement mechanism under the WTO.

The representative of Chile noted that both Panel reports under consideration under the present item had recommended that the Community bring its restrictive measures on bananas into GATT conformity. The Community's insistence in refusing to allow the consensus required for the adoption of the two Panel reports highlighted the inability of the present dispute settlement system and jeopardized the guarantees for the rights of contracting parties under the General Agreement. As long as the new dispute settlement procedures under the WTO did not come into effect, the adoption of panel reports and compliance with their recommendations would be hostage to countries that believed they were adversely affected by such recommendations. Although Chile recognized the efforts being undertaken by the Community, it wished to join in the request that a solution be found which would be acceptable to Guatemala and to the other countries concerned, and called on all to agree to the adoption of the Panel report.

The representative of the United States said that the United States strongly urged the adoption, at the present meeting, of the two Panel reports under consideration. The United States believed the reports to be well reasoned and legally sound in all respects, and therefore saw no justification for any other action than their adoption at the present meeting.

The representative of Argentina said that the banana dispute could be used as the yardstick to measure the credibility and the efficiency of the GATT dispute settlement system. At the Council meeting in September 1993, his delegation had urged adoption of the Panel report on the Community's member States' import régimes for bananas (DS32/R), and had highlighted the economic and political importance of the report as well as the repercussions that its non-adoption would have on the viability of the dispute settlement system. Unfortunately, Argentina had to reiterate once again that an erroneous solution in this case might have severe repercussions on the very viability of the multilateral trading system. Argentina wished to note that in light of the conclusions and recommendations of the most recent Panel report (DS38/R), concerning the Community's Regulation No. 404/93, which had not been discussed in the Council, a negotiated solution had been reached between the Community and several Latin American countries which did not resolve the GATT inconsistency of the Regulation and was of a partial nature. While Argentina did not object to a negotiated solution, it believed that the banana issue should be resolved by bringing the Community's measures into GATT conformity, and by negotiations that were balanced and equitable for all concerned. Both approaches formed part of the mechanisms and the "raison d'être" of the multilateral trading system.

The representative of Canada joined previous speakers in urging the Community to agree to the adoption of the two Panels under consideration. As Thailand had stated, this would be in keeping

with the rules of the WTO that would soon come into effect, and would be beneficial for the dispute settlement system of GATT.

The representative of Japan shared the concerns expressed by previous speakers regarding the Community's banana import régime. Japan believed that the Panel report in DS38/R was well reasoned and sound, and was a positive contribution towards the clarification of the issues concerned. Japan supported the Panel's findings and conclusions, and urged the adoption of its report.

The representative of Brazil said that as the second largest banana producer in the world, and because it had an interest in principle in the matter, Brazil paid close attention to the development of the Community's policy affecting the import of bananas. As Brazil had previously stated, it was an interested party in this matter, and wished to re-affirm its support for the banana producers adversely affected by the Community's import régime. At the same time, Brazil hoped that a comprehensive solution to the problem would soon be found by the Community in the light of the recommendations of the two Panels.

The representative of El Salvador said that her Government wished once again to place on record its support for the adoption of the Panel report in DS38/R, and to urge the Community to bring its Regulation No. 404/93 into line with GATT provisions.

The representative of Uruguay expressed his delegation's support for the concerns voiced by the banana producing and exporting countries that faced problems resulting from the changes introduced in the Community's import régime. Uruguay urged the Community to bring its régime into GATT conformity, and supported adoption of the Panel report in DS38/R. Uruguay believed that the request by the countries concerned, namely that negotiations be carried out in the light of the Panel reports so that their complaints and rights could be fully met, was legitimate.

The representative of the European Communities said that the banana dispute was clearly very sensitive and difficult. His delegation had listened with interest to the statements by a number of contracting parties wishing to see their access to the Community market maintained, even increased, and had noted the request that the dialogue be continued and a negotiated solution sought that would meet the interests of all parties involved. That was, however, precisely what the Community was trying to do. It had been able to negotiate a solution with a certain number of countries, and was ready to initiate negotiations with all its partners on this issue with the aim of reaching a solution that met the interests of all concerned. The Community was concerned, however, that the Panels had challenged the very basis of the Community's assistance policy, namely, the Lomé Convention. He noted that the Lomé Convention, which had been in effect for nearly forty years, had assisted in the development of developing countries and in the stabilization of their economies. He reiterated that the Community was trying to seek a negotiated solution to this dispute in a way that would be acceptable to all its trading partners, and expressed the hope that no one would jeopardize the chances of success as one came close to reaching an acceptable formula.

The representative of Jamaica said that her Government was still studying the report of the Panel in DS38/R, as well as the implications of the recent Framework Agreement Bananas signed between the Community and four of the co-complainants in this dispute and annexed to the Final Act of the Uruguay Round. Jamaica was therefore unable to pronounce itself on the report at the present time. Her delegation wished to reiterate that ACP member States which had a substantial interest in trade in bananas expected to participate in any further dialogue among all the parties to the dispute.

The representative of India said that India was the world's largest producer of bananas, and although the totality of its production was consumed domestically, it had a systemic interest in this dispute. India had always believed that the fundamental principles of GATT should be upheld at any cost and, in that light, recommended that the Panel report in DS38/R be adopted. This being said, his delegation noted and welcomed the Community's intention to seek a negotiated solution, and hoped that one would soon be found that would be GATT consistent.

The representative of Paraguay noted with satisfaction that the Community had initiated negotiations with the parties concerned, and hoped that such negotiations would be successfully concluded. Paraguay hoped that the GATT legal system would be maintained and preserved, because it was precisely that legal system which provided the only guarantee to ensure that the law of the jungle did not prevail in international trade. Paraguay believed that the Community's greatness and its understanding would make it possible to reach a satisfactory solution with all the parties involved in this dispute, and that it would be possible to maintain intact the GATT dispute settlement mechanism and not set a dangerous precedent. While Paraguay recognized the tremendous importance of the Lomé Convention to the countries party thereto, it believed that a treaty which favoured one group of developing countries should not have a pernicious effect on others. It therefore hoped that the Community would continue its efforts to find a solution favourable to all taking part in the negotiations.

The representative of Côte d'Ivoire expressed support both for Jamaica's statement and for the Community's statement indicating its desire to take into account the interests of all parties by means of a negotiated solution. In light of this, Côte d'Ivoire could not support the adoption of the Panel report in DS38/R, and requested that the second group of complainant countries seek a negotiated solution with the Community. This approach would be compatible with these countries' officially stated position, namely that they were not opposed to the interests of the ACP countries, which were developing countries just as they were.

The representative of Cameroon said that in view of the recent developments in negotiations between the Community and some of the complainant parties, Cameroon was not in a position to pronounce itself on the adoption of the Panel report in DS38/R.

The representative of Ghana said that adoption of the Panel report in DS38/R would not serve the interests of the ACP exporters. The recommendations of this Panel report would give a "carte blanche" to those that were already strong in the Community's market to dislodge completely the African exporters that were trying to hold on to their already small share of this market. Ghana supported a solution that took into account African countries' needs in the Community's market.

The representative of St. Lucia said that his Government's position was the same as that of Ghana and Jamaica. St. Lucia was not yet in a position to pronounce on the Panel report in DS38/R. The bulk of St. Lucia's exports consisted of bananas, and its future and livelihood were fully dependent on secure access to its only market, namely, the Community. It was therefore not as easy for St. Lucia as it was for some that had spoken earlier, and whose fundamental interests were not threatened, to regard this simply as an abstract matter concerning dispute settlement procedures.

The representative of Madagascar said that Madagascar's position on this dispute was the same as that of Jamaica. The ACP countries hoped that the negotiated solution proposed by the Community would respect the interests of all parties concerned.

The representative of Bolivia said that Bolivia shared the views that had been expressed on the importance of the adoption of the Panel report in DS38/R. While Bolivia had noted with satisfaction what it considered to be encouraging signs in the Community's statement, it supported and firmly encouraged adoption of the report.

The representative of Dominica expressed support for the statements by Jamaica and St. Lucia, which he said were important for the future of their countries' problems. Dominica believed that a solution should be found to the recommendations of the Panel report in DS38/R.

The representative of Cuba said that, having heard the previous statements, and particularly the Community's statement, Cuba considered it appropriate that meetings be held in order to find a global solution to the satisfaction of all parties concerned. Cuba welcomed the fact that contacts in this direction were continuing. At the same time, Cuba supported the conclusions of the Panel report in DS38/R, and urged that the report be adopted. Adoption of this report would provide credibility to the multilateral trading system and to its dispute settlement system in particular.

The representative of Australia said that his delegation wished to join those that had been urging adoption of the two Panel reports. At the same time, his delegation had noted the Community's statement that it was still actively seeking a mutually satisfactory solution. Australia hoped that these negotiations would quickly bear fruit.

The representative of Trinidad and Tobago expressed support for the statements by Jamaica and St. Lucia in particular, and urged that in seeking a solution to this dispute consideration be given to those countries which depended heavily on the export of bananas to the Community.

The representative of the Dominican Republic said that her country, as an ACP country and a party to the Lomé Convention, did not associate itself with the communication from Guatemala in DS38/13. The report of the Panel in DS38/R was being studied by her Government, and her delegation was presently unable to take a position regarding its adoption.

The representative of Egypt said that nearly a year had passed since the Panel report on the Community's member States' import regimes for bananas (DS32/R) had first been considered in the Council. The situation regarding the banana dispute appeared not to have changed much since that time. Egypt wished to underline the vital interests that this complex issue entailed for the various parties, and stressed once again the necessity for an early and satisfactory solution thereto.

The representative of St. Vincent and the Grenadines expressed support for the statements by St. Lucia and Jamaica, and hoped that a solution to this dispute would be found to the satisfaction of all parties taking into consideration the needs of the developing countries.

The representative of Mauritius said that adoption of the Panel report in DS38/R would drive the small island countries in the Caribbean region into indigence. He noted that appeals had been made in regard to these concerns, and that the Community had indicated that it was seeking a negotiated settlement to the dispute. Nothing would be better than a negotiated solution, and one should therefore be sought.

The representative of Ecuador, speaking as an observer, said that having established a Panel to examine the Community's import régime for bananas, and having given the Panel a specific mandate, the Council could not avoid a debate on the conclusions and recommendations of the Panel in DS38/R. The evasive manoeuvres in respect of this report did no good to the credibility of the GATT system. As a Government in the process of accession to the GATT, Ecuador was concerned to see attempts being made to side-step the treatment of substantial matters involving commitments under the General Agreement. This was inconsistent with the "raison d'être" of GATT, and Ecuador wished to commend those that had requested the adoption of the Panel's recommendations. The impression which been given, that debate on this Panel report was unnecessary because an agreement had been reached between the Community and some countries, was erroneous because that agreement had not yet entered into force, and probably never would because of the internal divergences on this matter within the

Community. Furthermore, this agreement was incompatible with the GATT since it did not eliminate the inconsistencies identified by the Panel. In addition, it did not fulfil the objectives established in the Uruguay Round for tropical products, which meant an even greater inconsistency now and not a solution. Worse still, an attempt was being made to penalize the non-contracting party countries that supplied more than 60 per cent of the Community market by assigning them a quota of 46 per cent. For these reasons, Ecuador reiterated its appeal that a solution be found by means of a broad-ranging dialogue that would enable the Community's banana import régime to be brought into consistency with the GATT and the realities of the market.

The representative of Panama, speaking as an observer, stressed that Panama did not consider the banana problem to have been resolved, which was of deep concern given that bananas were vital for Panama's economy. The Community's banana import régimes, both the earlier régime and the present one, were far from being fair, and were in violation of GATT rules, as had been found by the two Panels. Panama believed that it was only in keeping with the Panels' recommendations that the Community would be able to find the means necessary to reach a speedy and global negotiated solution. Panama therefore reiterated the request made earlier by Guatemala that the Panel report in DS38/R be adopted. Contracting parties could not put aside a matter that was of concern to them, as it involved the principles of free trade and non-discrimination which should govern international trade, and also affected the credibility of the dispute settlement system. Contracting parties had clearly expressed their strong support for the concerns that Panama had outlined, and Panama hoped that there would be a more intensified dialogue with the Community so as to find a solution to this problem as soon as possible.

The representative of Guatemala, addressing the Panel report in document DS32/R, reiterated that Guatemala placed complete trust in the rules of GATT as well as in its dispute settlement procedures. Guatemala reiterated its confidence that decisions under dispute settlement procedures would aid towards a greater liberalization of economies with access to markets which resulted in a scenario of prosperity on a worldwide scale. Such decisions did not, or should not, attack countries. Guatemala's aim was simply that the flow of agriculture goods be governed ever more by the natural laws of the market. It was unfortunate that for more than ten months the Community continued to refuse to accept the recommendations of this Panel simply because these recommendations went against it. More unfortunate was that the Community continued to insist on applying GATT-inconsistent trading practices despite the fact that some of its own member States were against such practices. Guatemala wished to reiterate to the Community that it had a commitment to respect GATT rules and the dispute settlement system, which provided security in the multilateral trading system and predictability in trading relations. Guatemala wished to urge also that this Panel report be adopted at the present meeting.

The Chairman noted that the arguments that had previously been made on the Panel report in DS32/R were well-known, and were on record. In light of this, it was not his intention to recommence the debate on that report. He proposed that the Council take note of the statements and agree to revert to the matters under consideration at a future meeting.

The Council so agreed.

3. 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 in early 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 document DS23/15 on the status of implementation of the Panel report on US measures affecting alcoholic and malt beverages (DS23/R).

The representative of the United States, referring to the implementation of the alcoholic and malt beverages Panel report, noted that the number of individual practices in the United States cited in the report was large. The United States had been, and remained, committed to achieving compliance with the Panel's recommendations. Its efforts thus far had been persistent, and had been described in detail in recent reports to the Council<sup>2</sup>, including in that circulated prior to the present meeting (DS23/15). Progress had been reported, although more needed to be done. The United States pledged to continue its efforts to achieve full implementation of the Panel's recommendations.

The representative of Brazil, referring to the implementation of the Panel report on the US denial of m.f.n. treatment as to non-rubber footwear from Brazil (DS18/R), noted that the United States had asserted at several previous Council meetings that it was searching for suitable means to implement the recommendations of this Panel report. He expressed his Government's expectation that this search would lead to the implementation of those recommendations in the very near future.

The representative of Canada recalled that his Government had urged the United States to take full advantage of the short legislative season this spring to enact the many changes required to bring state measures into conformity with the recommendations of the alcoholic and malt beverages Panel report. Canada was disappointed that this had been done in only one state this year. It would continue to monitor developments closely, and looked forward to further progress, not only at the state level but also at the federal level, at which there should be no concerns over jurisdiction or short legislative seasons.

The representative of Australia joined Canada in calling on the US Administration to continue to actively encourage the states to bring their legislation into conformity with the recommendations of the alcoholic and malt beverages Panel report as quickly as possible.

The Council took note of the statements.

4. Roster of non-governmental panelists

- (a) Proposed nomination by Brazil (C/W/788)
- (b) Proposed nomination by Colombia (C/W/789)
- (c) Proposed nomination by India (C/W/792)

The Chairman drew attention to documents C/W/788, C/W/789 and C/W/792 containing proposed nominations by Brazil, Colombia and India, respectively, to the roster of non-governmental panelists.

The Council approved the proposed nominations.

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<sup>2</sup>See DS23/6, 7, 8, 9, 10, 11, 12, 13 and 14.

5. Corrections to the French and Spanish language texts of the General Agreement (C/W/791)

The Chairman said that during the discussions of the French- and Spanish-language texts of the Uruguay Round Final Act, the issues of the consistency of terminology between the General Agreement and the Final Act, for both the French- and Spanish-language texts, and of the need for a Spanish-language authentic text for Parts I to III of the GATT 1994, had been raised. Accordingly, at its meeting on 30 March 1994, the Uruguay Round Trade Negotiations Committee had adopted a Decision (MTN.TNC/41) inviting the CONTRACTING PARTIES to undertake certain actions to correct the French- and Spanish-language texts of the General Agreement. The draft decision in C/W/791 reflected the Decision by the Trade Negotiations Committee, and was being submitted for adoption by the Council, acting on behalf of the CONTRACTING PARTIES. It was his understanding that contracting parties were in favour of such action, and he accordingly proposed that the draft decision in C/W/791 be adopted.

The Council so agreed (L/7457).

6. Trade Policy Review Mechanism

— Decision on arrangements for the continued operation of the Mechanism (C/W/790)

The Chairman recalled that at their Forty-Ninth Session, the CONTRACTING PARTIES had agreed that informal consultations should be held on issues relating to the operation of the Trade Policy Review Mechanism. On the basis of recent consultations which he had held on this subject, the draft decision contained in the Annex to document C/W/790 was being submitted for adoption. He proposed that the Council adopt this decision.

The Council so agreed (L/7458).

7. Korea - 1995-1997 Programme of liberalization (L/7449 and Corr. 1)

The Chairman recalled that in October 1989,<sup>3</sup> Korea had agreed to disinvoke Article XVIII:B by 1 January 1990, and had undertaken to eliminate remaining restrictions in a generally even manner, on an m.f.n. basis, over two three-year programmes, beginning on the expiry of its liberalization programme in 1992. Korea had further undertaken to notify the Council of its three-year programmes by March of the year before their introduction. He drew attention to Korea's notification of its 1995-1997 liberalization programme in document L/7449.<sup>4</sup>

The representative of Korea informed the Council that all the items included in Korea's 1992-1994 liberalization programme (L/6834) had been liberalized in accordance with the announced schedule, and were no longer subject to restrictions. The liberalization programme for the 1995-1997 period, as notified in L/7449, covered the remaining restrictions on 150 items, which would be eliminated or brought into conformity with GATT provisions from the dates specified therein. The ninety-five agricultural items marked by an asterisk in L/7449 would be liberalized in accordance with Korea's Uruguay Round Schedule, which had been agreed and verified through the multilateral verification process. In most cases, these items would be liberalized in 1995 and 1997, while eight products would be liberalized in 2001, as agreed in the Uruguay Round. The thirty-one items that were to be liberalized

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<sup>3</sup>See BOP/R/183 and Add.1.

<sup>4</sup>A corrigendum was subsequently issued as L/7449/Corr.1.

in 1995 without any specific mention of dates, would be liberalized from the date of entry into force of the Agreement establishing the World Trade Organization (WTO). Restrictions on the other fifty-five items would be eliminated or brought into conformity with GATT provisions in the period 1995-1997.

The representative of New Zealand said that while Korea's notification had only recently been received and was being studied, his delegation wished to query the implication as well as the coverage of the note contained at the end of the liberalization programme in L/7449. He recalled that the issue of mark-up had been very important for New Zealand in the recent verification of Korea's Uruguay Round market access schedule. New Zealand assumed that the right reserved by Korea in this note allowed it only to take measures that were consistent with its GATT and Uruguay Round obligations, and conferred no wider derogation.

The representative of the United States welcomed the steps taken by Korea in fulfilment of its commitments made upon disinvocation of Article XVIII:B. The United States noted that Korea would not liberalize restrictions for a large number of items until after the 1 July 1997 date that had been agreed in 1989. While the United States supported these extensions of the time-period, which had been discussed in the context of the Uruguay Round agricultural negotiations, it was not prepared at present to support the extension of time for the two tariff lines for live cattle. The United States was engaged in consultations with Korea regarding this and other outstanding issues and could not support an extension for live cattle until the consultations were concluded satisfactorily. The United States noted that for thirty-one items Korea had stated only that the restrictions would be liberalized in 1995, and that the exact date would depend on the date of entry into effect of the WTO Agreement. Since both the United States and Korea were working actively for an entry into force date for the WTO of 1 January 1995, his delegation wished to have confirmation of its understanding that if the WTO indeed entered into force on 1 January 1995, Korea would remove its restrictions on these items on the same date. In the light of past problems associated with newly-liberalized agricultural and fisheries products, the United States requested also that Korea refrain from imposing other restrictions on these items. The United States expected Korea, for example, to ensure that any food safety, phytosanitary or quarantine requirements were based on sound science and notified and implemented well before the products were liberalized. The United States also requested confirmation that upon implementation of all liberalization detailed in L/7449, Korea would no longer maintain any import restrictions formerly justified under Article XVIII:B for any products.

The representative of Japan welcomed Korea's notification of its liberalization programme. As contracting parties were aware, Japan had been making the utmost efforts towards liberalization and the realization of an open and non-discriminatory trading system, and all had to continue to endeavour towards this in the future. In this context, he hoped that Korea would make efforts towards further liberalization and market opening, including improvement in its diversification programme of importing sources, so as to keep its trade policy in line with a genuine, non-discriminatory multilateral trading system.

The representative of Australia said that, as noted by Korea in its covering note to document L/7449, the programme therein was in line with the liberalization dates indicated in Korea's Uruguay Round agriculture schedule. However, while Australia appreciated Korea's efforts in reaching a conclusion in the Uruguay Round negotiations, it was disappointed over the levels of market access offered. Australia understood the difficulties faced by Korea in reaching the settlement on agriculture in the Round, and although the schedule had been verified, it continued to believe that Korea's scheduled offers on market access openings had been modest. Against this background, Australia wished to stress the importance of Korea adhering strictly to the timetables set out in the balance-of-payments related liberalization programme and in its Uruguay Round schedule. Australia also wished to underline its



agreement with New Zealand's statement regarding the note at the end of Korea's communication in L/7449.

The representative of Chile shared the concerns expressed by previous speakers, and urged Korea to continue taking steps towards the progressive liberalization of its economy.

The representative of Canada said that since Korea's notification had only recently been submitted, his delegation had no detailed comments at the present time. However, Canada reserved its rights to revert to this matter at a future date.

The representative of Korea said that the purpose of the note at end of the communication in L/7449 was to avoid any possible misunderstanding in the future. While Korea had not decided on whether or not to introduce the measures indicated in the note, any such measures would be taken in a manner consistent with its GATT obligations. As regards the United States' concerns on the live cattle tariff items, consultations were under way and Korea hoped that this matter would soon be resolved in a mutually-satisfactory manner. Regarding the last part of the United States' statement in relation to Article XVIII:B, his delegation understood the US concerns on this matter but was not in a position to prejudge the future use by any contracting party of its GATT rights. With regard to Japan's concerns regarding the diversification programme, he noted that Korea had been facing huge trade deficits in its trade with Japan for four decades. If the mechanical application of GATT rules resulted in a continued imbalance for a long period of time, where was the fairness that all wished to have under the GATT system? Korea strongly believed that there should be a way to address the grave problems that many contracting parties were facing under the GATT system and would no doubt be facing under the WTO system as well.

The Council took note of the statements.

#### 8. Korea - Standards for frozen sausage (L/7450)

The Chairman drew attention to the communication from the United States on this matter in document L/7450.

The representative of the United States said that since mid-February, Korea had refused to allow the entry of sausages exported from the United States. This action, which was surprising since the same product had successfully entered Korea for the past four years, had resulted in thirty-seven containers of heat-treated sausage with considerable value being held at port in Korea. This was only the most recent example of disruptions in trade caused by unscientific or improperly notified food safety or phytosanitary restrictions, which had been a continuing problem for US exports to Korea. Numerous discussions between the United States and Korea had been held on this issue, without any resolution. The United States had been informed that the containers had been detained because Korea did not have a food code category for "heat-treated, frozen sausage". For the past four years, however, the same product had been allowed to enter as a "raw, frozen" product, which allowed for a ninety-day shelf life. Now that the product had been classified as "heat-treated, chilled", it had a thirty-day shelf life. The new classification was apparently necessary because Korea's customs administration had wrongly classified the product in the past. The United States believed that the original interpretation of the regulations was consistent with science because "heat-treated, chilled" exceeded "raw, frozen" as a preservation method. The United States had already provided Korea with scientific and regulatory information that supported a ninety-day or longer shelf life for heat-treated frozen sausage. The United States did not question Korea's right to adopt and apply technical regulations that might be necessary to fulfil a legitimate objective, such as the protection of human health or safety. However, both the United States and Korea had obligations to ensure that such measures would not be used to create

unnecessary obstacles to trade. In view of the substantial commercial losses already caused by Korea's sudden action, as well as the continuing losses due to the effective closure of Korea's market for these products, the United States requested Korea to take immediate action to ensure the release of the containers now detained at port and the immediate approval for sale of their contents as well as the establishment of standards consistent with science to allow trade to continue to flow. Depending on Korea's actions to address this disruption in trade, the United States would review all options available and appropriate to ensure fair treatment for its exports to Korea.

The representative of Canada supported the United States' position that a change in tariff classification on the grounds of technical standards might be necessary and appropriate for the protection of human, animal or plant life or health only when there was sufficient scientific or technical evidence supporting the change. Canada was now reviewing the recent revisions of the Korea's Food Code, and would raise bilaterally with Korea any specific trade concerns that arose as a result of the revisions.

The representative of the European Communities said that the Community was at present reviewing the situation regarding its own exports of such products to Korea. The Community believed that there might be a horizontal type problem with certain rules that the Korean authorities had introduced or were about to introduce and which affected market access to Korea. The Community therefore reserved the right to revert to this issue at a future meeting.

The representative of Australia said that the matter at hand was of a technical nature and could therefore be discussed in appropriate GATT bodies. Nevertheless, the matter involved a general trade policy aspect of wider interest to contracting parties. Australia had some concerns with certain aspects of Korean food standards particularly when short shelf life requirements by Korea adversely affected the capacity for imported goods to compete on the Korean market. Australia was currently discussing this issue with the Korean authorities and hoped that satisfactory adjustments could be made to address Australia's concerns.

The representative of Korea said that on 30 March, his Government had disqualified certain types of imported sausages as not conforming with Korea's food safety standards after having discovered irregularities committed by some importers. In derogation of Korea's Food Safety Code, some importers, in order to get the benefit of the longer shelf life permitted for frozen raw sausages as opposed to cooked sausages, had been importing frozen cooked sausages and applying for an import license for them under the category of frozen raw sausages. His Government had discovered these irregularities in February, and had taken corresponding corrective measures that were fully appropriate, since no government could allow such irregularities to continue. Any government would have taken similar measures under the same circumstances, and Korea could neither understand the United States' motive in bringing this matter to the Council, or accept its arguments. No breach of GATT rules or of domestic regulations was involved in this case. Korea had taken legal action upon discovery of the irregularities, and had not reclassified the product concerned, as alleged by the United States. Furthermore, since this was merely a corrective measure that involved no change in the standard advance notification was not required. Korea could not share the United States' view that the measure had undermined business predictability and had adversely affected the commercial interest of the importers concerned. Korea believed that the importers had violated the law and had put business interests before human health concerns by unscrupulously circumventing publicly announced food safety standards. The United States had argued that Korea's current standard on cooked sausages was not scientifically justified. However, cooked sausages were generally not sold in a frozen condition, but rather in a chilled condition. In a country that did not have a fully developed cold chain system, such as Korea, it was likely that such sausages went through different preservation conditions before finally reaching the consumer; they might sometimes be kept chilled, sometimes frozen, and, at other times, even be exposed to ambient temperatures, causing a serious deterioration in the safety and quality of the product. However, if the United States questioned the scientific justification for Korea's measure, Korea was prepared to

continue discussions on it. It could not, however, accept the United States' demand that Korea condone the irregularities described above simply because imports of the same products had been permitted in the past.

The representative of Argentina said that, having listened to the technical arguments advanced on this matter by Korea, his delegation believed even more strongly that the Uruguay Round Agreement on the Application of Sanitary and Phytosanitary Measures should be implemented sooner than originally intended.

The Council took note of the statements.

9. Office of the Director-General  
— Announcement by the Chairman of the CONTRACTING PARTIES

The Chairman of the CONTRACTING PARTIES, speaking under "Other Business", said that he had been informed by the Director-General that the latter would not be a candidate for the post of Director-General of the World Trade Organization (WTO) and would leave office by the end of the year — the target date for the entry into force of the Agreement establishing the WTO. As no procedural rules had yet been adopted for the appointment of the Director-General of the WTO by the Ministerial Conference, it was his understanding that one had to proceed in conformity with the procedures approved for the appointment of the Director-General to the CONTRACTING PARTIES to GATT (BISD 33S/55). These procedures provided, inter alia, that "the decision to appoint the Director-General for a first term should be taken after a process of consultation to be conducted by the Chairman of the CONTRACTING PARTIES and to be started by an announcement at a meeting of the Council of Representatives not less than six months before the Session of the CONTRACTING PARTIES where the appointment is made."

Accordingly, he wished to inform the Council that he would initiate a process of consultations on the appointment in the near future, and would keep the Council informed on the progress achieved. He was, from then on, available for advice and views on this important matter at all times. He indicated that he would make a similar announcement, in his capacity as Chairman of the Sub-Committee on Budget, Finance and Administration of the Preparatory Committee, to the next meeting of the Preparatory Committee for the WTO.

The Council took note of this information.

10. North American Free-Trade Agreement (NAFTA)  
— Working Party Chairmanship

The Chairman, speaking under "Other Business," recalled that at its meeting in March, the Council had established the Working Party on the North American Free-Trade Agreement (NAFTA), and had authorized him to designate its Chairman in consultation with the delegations principally concerned. He informed the Council that Mr. Kenyon (Australia) had agreed to serve as Chairman of the Working Party.

The Council took note of this information.

11. Free-Trade Agreements between the EFTA countries and Bulgaria, Hungary and Poland  
— Working Party Chairmanships

The Chairman, speaking under "Other Business", recalled that the Working Party on the EFTA - Bulgaria Free-Trade Agreement had been established by the Council at its meeting in October 1993, while those on the EFTA - Hungary and EFTA - Poland Free-Trade Agreements by the CONTRACTING PARTIES at their Forty-Ninth Session. In each instance, he had been authorized to designate the Chairman of the Working Party in consultation with the delegations principally concerned. He informed the Council that Mr. Kesavapany (Singapore) had agreed to serve as Chairman of the Working Parties on the EFTA - Bulgaria, EFTA - Hungary and EFTA - Poland Free-Trade Agreements.

The Council took note of this information.