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Held in the Centre William Rappard
on 22 September 1988

Chairman: Mr. A.H. Jamal (Tanzania)

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1. Third Lomé Convention
- Report of the Working Party (L/6382)

The Chairman recalled that at its meeting in March 1987, the Council had established a Working Party to examine the Third ACP-EEC Convention signed at Lomé, and to report to the Council. He drew attention to L/6382 containing the Working Party's report.

Mr. See, Chairman of the Working Party, introduced its report, At the Working Party's meetings in November 1987 and July 1988, the parties to the Third Convention had explained its background, noting that it had entered into force in May 1986 and would expire in February 1990, and that it constituted an extension and uninterrupted continuation of the First and Second Lomé Conventions. A certain number of improvements had been made, in areas other than the trade régime, in favour of the last-developed, land-locked and island ACP States. The trade provisions as well as the pattern and structure of ACP-EEC trade under the earlier Lomé Conventions had not changed fundamentally. The Working Party had considered matters related to the presentation of statistical information, the implementation of the Convention by Spain and Portugal and the respective implementing regulations, the scope of the MFN treatment accorded by the ACP States, the application of the safeguard clause, the allocation of financial transfers, the purchase of goods and services from third countries, the definition of "originating products" in Protocol 1 of the Convention as well as the submission of biennial reports and the biennial review of the operation of the Convention by the CONTRACTING PARTIES. There had been wide sympathy in the Working Party for the view that the purpose and objectives of the Convention were in line with those embodied in the General Agreement, including Part IV. However, some members had considered it doubtful that the Convention could be fully justified in terms of the legal requirements of the General Agreement. The Working Party had noted that the parties to the Convention were prepared to submit reports concerning its operation, and to notify any changes which might be made to the Convention, for review by the Council on a biennial basis. It was understood in the Working Party that the Convention would in no way be considered as affecting the legal rights of contracting parties under the General Agreement.

The Council took note of the statement and adopted the report in L/6382.

2. Agreements among Argentina, Brazil and Uruguay
- Communication from the United States (L/6394)

The representative of the United States referred to the communication from his delegation in L/6394 and recalled that at the 20 July Council meeting, the United States had expressed its interest in a review of the Latin American Integration Association (LAIA) agreements signed by Argentina and Brazil two years earlier, and which had since been expanded to include Uruguay. Press reports made it clear that the agreements

contained major preferential trading provisions for their participants. GATT precedent and provisions, as well as the provisions of the Enabling Clause[1] under which the agreements had been loosely justified by their participants, granted contracting parties the right to information concerning the content and effect of such agreements. Repeated requests for notification and review of the trade-related portions of these agreements in both the Council and the Committee on Trade and Development had been ignored, as had specific questions concerning them. It was not even clear which of the agreements were actually covered by the LAIA. The United States also understood that there had been 18 new preferential trade agreements signed over the past several months, and that their preferential access provisions were not confined to tariffs, but included apparent derogations from GATT provisions concerning non-discrimination in the administration of quantitative restrictions, licensing, State-trading and State-owned enterprises. It was therefore necessary to bring this problem before the Council formally and to insist on a substantive response. The United States' continued preference was for the participants to choose a forum, such as the Committee on Trade and Development, where they would feel comfortable in examining the agreements.

The representative of Brazil said that this matter was related to the report of the LAIA, which had been under review in the Committee, whose responsibilities covered, inter alia, the review of the implementation of the Enabling Clause. At the June 1988 session of the Committee, the United States had raised some questions relating to these agreements, which had been signed under the aegis of the 1980 Montevideo Treaty. Those questions had been referred to the respective capitals with the hope that they would be in a position to respond, as appropriate, during the next session of the Committee in October. Under these circumstances, his delegation considered that there was no reason to raise the matter in the Council. It had first to be exhausted in the Committee, where Brazil planned to work with other delegations towards completing the examination of that report.

The representative of Argentina said that his delegation agreed fully with Brazil. The Committee was dealing with this matter and was the competent body to do so. The LAIA had been notifying the progress achieved in the implementation of these agreements and it was in the Committee that their review should be made and any concern voiced.

The representative of Uruguay said that his delegation fully shared the statements by Brazil and Argentina. The Committee would meet in the near future and would take this matter up in detail and in the proper context of the LAIA.

The representative of Japan said that his country was also interested in the trade agreements signed by Argentina, Brazil and Uruguay and possibly other countries under the auspices of the LAIA because they seemed

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

to be directly related to the interpretation and application of Article XXIV of the General Agreement. He recalled that the strengthening of disciplines under Article XXIV was one of the main themes that Japan was pursuing in the Uruguay Round Negotiating Group on GATT Articles. Japan therefore associated itself with the US request that specific information as to the provisions, operation, scope and time-table for implementation of the agreements be made available to the CONTRACTING PARTIES as soon as possible.

The representative of the European Communities said that his delegation was also interested to have information concerning the LAIA agreements. It was proper for the Council to have the information requested by the United States. His delegation was not satisfied by the suggestion by the participants in the agreements to await the next session of the Committee on Trade and Development in order to provide the requested information.

The representative of the United States said that his delegation, while noting that other delegations also had concerns, was deeply disappointed at the unsatisfactory responses to the need for transparency. In these responses there had been specific omissions of the participants' obligations to notify the agreements and to circulate information, and of a commitment to have a formal review of their provisions and effects in the Committee. The United States had therefore no choice but to seek establishment of a working party for the examination of these agreements.

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

3. Association Agreement between the European Economic Community and Turkey
- Biennial report (L/6380)

The Chairman drew attention to document L/6380 containing information furnished by the parties to the agreement referred to in that biennial report.

The representative of the United States asked that this item be kept on the Council's agenda for its next meeting. His delegation had asked the Community for specific information which would help the Council to understand the Agreement, as follows: the level of tariff preference currently enjoyed by Turkey's exports in the Community's market; the portion of EEC/Turkey trade conducted under the provisions of the Agreement; the approximate date for the full implementation of the Agreement; and a description of the nature of the amendments to the Agreement and other autonomous measures undertaken to account for the accession to the Community of Spain and Portugal.

The representative of the European Communities said that this biennial report had been submitted to the Council as a matter of information, and it was proper that questions might be asked. While he could not promise

precise answers to all of the four questions, as some were more complicated than they appeared, the Community would do its best to provide the maximum information available and at the next Council meeting if not earlier.

The Council took note of the statements and of the report in L/6380, and agreed to revert to this item at a future meeting.

4. Korea - Restrictions on imports of beef
- Recourse to Article XXIII:2 by New Zealand (L/6354 and Add.1, L/6395)

The Chairman recalled that at its meeting in July, the Council had agreed to revert to this item at the present meeting.

The representative of New Zealand drew attention to his delegation's recent communication in L/6395. As New Zealand had exhausted all possible avenues for resolving the matter satisfactorily in bilateral discussions with Korea, including extensive Article XXIII:1 consultations in Seoul, it was now asking the Council for the third time to establish a panel to examine the matter, in order simply to receive equivalent treatment from Korea to that already accorded to the United States and Australia. The substantive and procedural aspects of this matter had been fully put on record at the June and July Council meetings.

The representative of Korea said that his Government had made its best efforts to reach a mutually acceptable solution in the Article XXIII:1 consultations with New Zealand, which had been held on 18-19 August. Since these efforts had not so far resulted in such a solution, his delegation agreed to the establishment of a panel as requested. As for the terms of reference, composition of the panel and other administrative arrangements, his delegation was prepared to consult with New Zealand, the Council Chairman and the Secretariat in accordance with established practice. He added that Korea had already started to import beef for the athletes at the Olympic Games in Seoul.

The representative of the United States said that the opening of the Korean market for beef had been accompanied by gigantic surcharges. Thus, it was only with mixed blessings that United States welcomed that part of the statement by Korea.

The representative of New Zealand recalled that when the Agenda for the present meeting was being approved, the Chairman had indicated his intention to make an announcement under "Other Business" about the Panels established for the similar Article XXIII:2 actions by Australia and the United States against Korea. He was sure that all contracting parties would agree that it would be nonsense if the panel to which Korea had just agreed were different, or if New Zealand were subjected to different procedures than those agreed among Korea, the United States and Australia. That was not New Zealand's expectation.

The representative of Canada said that his authorities were following this issue closely. His delegation was pleased that Korea had agreed to the establishment of a panel. The considerations just put forward by New Zealand made a good deal of sense in that the burden of composing the Panel and establishing procedures would be lessened. Canada reserved its right to make a submission to the panel.

The representative of the European Communities reserved the Community's right to make a submission to the panel.

The representative of the United States supported the idea that New Zealand be treated in the same way as his own country, and reserved the United States' rights in this regard.

The representative of Australia said his delegation had no objection to harmonizing the proceedings for the three Panels.

The Council took note of the statements and agreed to establish a panel to examine, in the light of the relevant GATT provisions, the matter referred to the CONTRACTING PARTIES by New Zealand in document L/6354 and to make such findings as would assist the CONTRACTING PARTIES in making the recommendations or rulings provided for in paragraph 2 of Article XXIII.

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

5. United States - Imports of sugar
- Recourse to Article XXIII:2 by Australia (L/6373)

The Chairman recalled that at its meeting in July, the Council had agreed to revert to this item at the present meeting.

The representative of Australia said that in L/6373 and at the Council meeting in July, his delegation had set out the basis for Australia's panel request, in particular, his Government's serious concern about the impact of these restrictions on Australia's sugar exports to the United States, which served to nullify and impair benefits accruing to Australia under the General Agreement. The United States, however, had been unable to agree to the establishment of a panel. Since that meeting, Australia had offered to engage in further consultations in spite of its doubts that those would be productive. The United States had not wanted to continue the consultations, which his delegation had interpreted as evidence that the United States shared its perception that the matter could only be dealt with through the dispute settlement process. To this end, his delegation reiterated its request that a panel be established to consider this matter.

The representative of the United States said that his Government accepted Australia's request for a panel to review US sugar policies. The United States believed its practices to be fully consistent with its GATT

obligations, and his delegation was confident that a panel would uphold this belief. It was the United States' understanding that Australia's request for a panel referred only to US import restrictions on raw and refined sugar implemented pursuant to the authority of the "Headnote" in the Tariff Schedules of the United States (TSUS) and reflecting the provisions in Schedule XX. His delegation sought confirmation of this understanding. The United States was also prepared to agree to standard terms of reference for a panel.

The representative of Australia confirmed that his Government's request referred to US import restrictions on raw and refined sugar, as justified by the United States under the authority of the "Headnote" in the United States' tariff schedule. It therefore did not encompass restrictions on products containing sugar, which were covered by the Section 22 Waiver under the CONTRACTING PARTIES' Decision of 5 March 1955 (BISD 3S/32). This fact ought not to be taken to imply that Australia in any way accepted the manner in which the United States had applied the waiver in restricting imports of sugar-containing products to the United States.

The representatives of Brazil, Nicaragua, Argentina, Colombia and Thailand supported Australia's request for the establishment of a panel.

The representatives of Brazil, Canada, the European Communities, Nicaragua, Argentina, Colombia and Thailand reserved their respective countries' rights to make a submission to the panel.

The representative of Brazil said that his delegation shared Australia's view that the US restrictions on sugar imports were not consistent with its GATT obligations. It was not necessary to stress Brazil's interest in this issue; the increasingly restrictive policies of the United States were a disturbing factor in sugar trade.

The representative of Canada said that Canada's exports of sugar to the US market had encountered problems similar to those of Australia.

The representative of the European Communities said that he was somewhat hesitant to say that the Community shared the view that the US restrictions on sugar imports were inconsistent with the GATT, and to reserve the Community's right to intervene in a panel, because this could make it more difficult to find appropriate panelists. Indeed, in the case at hand the Community would have a large number of appropriate candidates. Nevertheless, given the Community's interest in this matter, he felt obliged to reserve its right to make a submission to the panel.

The Director-General said, on his own behalf and on that of the Secretariat, that the approach which seemed to underlie the Community's statement was not acceptable.

The representative of Nicaragua shared the view that the US restrictions were contrary to Article XI, as her delegation had stated in 1983 when Nicaragua had asked for a panel to examine US quota restrictions

on its sugar exports. That earlier Panel had concluded that the reduction in the quota was in contradiction with Article XIII, and thus had not felt it necessary to extend its examination to Article XI conformity (BISD 31S/67).

The representative of the European Communities referred to the Director-General's statement, and said that by taking the floor to express its interest on an issue, a contracting party risked closing the door to the possibility of having one of its representatives selected as a panelist. The Community had highly qualified experts with a knowledge of GATT and the sugar market, however, and taking the Director-General at his word, he hoped that the list of names to be proposed by the Secretariat as panelists would include such experts from the Community or its member States.

The representative of Canada noted that the debate had shifted to different aspects of the subject matter. He had been asked by his authorities to make the observation that the Council's recent experience in regard to a range of dispute settlement matters made it very clear that early and substantial progress should be made in the area of the Uruguay Round negotiations relating to the dispute settlement process. The issue raised by the Community and commented on by the Director-General and the Community was a good example of the sort of problem which required more practicable solutions. For its part, Canada had earlier agreed to a panel which included a representative from the country with which Canada had a dispute. He thought that this could be done more frequently, and hoped that the Chairman of the Negotiating Group on Dispute Settlement would take note of this view.

The Council took note of the statements and agreed to establish a panel to examine, in the light of the relevant GATT provisions, the matter referred to the CONTRACTING PARTIES by Australia in document L/6373 and to make such findings as would assist the CONTRACTING PARTIES in making the recommendations or rulings provided for in paragraph 2 of Article XXIII.

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

6. European Economic Community - Restrictions on imports of apples - Recourse to Article XXIII:2 by the United States (L/6371)

The Chairman recalled that at the July Council meeting, the United States had asked that consideration of this item be deferred pending the outcome of bilateral consultations.

The representative of the United States said that his delegation was again requesting that a panel be established to examine the Community's ban, as of 20 April 1988, on imports of apples. At the July Council meeting, the United States had decided to give consultations one more try, but these had not resolved the issue. Referring to the complaint in L/6371, he said that the United States believed that the Community's

restrictions contravened Article XI and nullified and impaired benefits accruing to the United States under the General Agreement. The Community's abrupt imposition of quotas on apple imports had inflicted needless injury on US apple exporters and worldwide apple markets. In addition to the direct lost sales in the Community, the closing of that market had diverted Southern Hemisphere apples to the US market, further adding to the trade harm. He recalled that at the Council meeting in May 1988, the Community had accepted the establishment of a panel on the same restrictions in response to Chile's complaint. The United States expected that under the circumstances, the Community would agree at the present meeting to the US request. It was hoped that the Council would, as part of that decision, agree that the panel composition and terms of reference would be the same as those for Chile's dispute; such an administrative arrangement would best ensure compatible results in the two panel reports.

The representative of the European Communities said that he was perplexed that the United States chose to raise this matter three weeks after the measures in question had expired and four and one-half months after a panel had been established for Chile's complaint on precisely the same measures, and in which the United States had reserved its right to intervene. The United States had later requested a panel in its own right, and then had withdrawn the request. There had been further consultations in which full explanations and replies had been provided to the United States' questions. Therefore, the Community could only conclude that the present request was another act of harassment through the use of dispute settlement procedures, all the more so because the United States' economic interests in this matter appeared to be minimal. The fact that the matter was now again raised in the Council seemed to indicate that it was really related to other issues, which again was contrary to the spirit of the dispute settlement process. Having said that, the Community was prepared to accept the rules of the game. It had agreed to Chile's request for a panel the first time it was made, and if another contracting party requested the same, the Community was prepared to accept it in the same way. The Community did not in principle oppose the United States' suggestions regarding the composition and other aspects of the panel, but wanted to reflect on them and follow the normal course in such matters.

The representative of Canada said that his country had a trade interest in this matter and reserved its right to make a submission to the panel.

The representative of Chile said that his delegation supported the US request and reserved Chile's GATT rights in this matter. As to the expiry of the measures, the purpose of the request for a panel was to avoid the recurrence of such measures and, no doubt, to determine the compensation that might be required.

The representative of Australia said that his delegation supported the US request and reserved its right to make a submission to the panel.

The representative of New Zealand said that his country had a trade interest in this matter and reserved New Zealand's right to make a submission to the panel.

The representative of Argentina reserved his country's right to make a submission to the panel.

The Council took note of the statements, agreed to establish a panel and authorized the Council Chairman to draw up the terms of reference and to designate the Chairman and members of the Panel in consultation with the parties concerned.

7. United States - Restrictions on the importation of agricultural products applied under the 1955 Waiver and under the Headnote to the Schedule of tariff concessions (Schedule XX - United States) concerning Chapter 10
- Recourse to Article XXIII:2 by the European Economic Community (L/6393)

The Chairman drew attention to a communication from the European Economic Community in L/6393.

The representative of the European Communities said that for many years the CONTRACTING PARTIES had regularly set up working parties to examine the United States' annual reports on the application of its Waiver. Those working parties had regularly noted that the United States had maintained or adopted measures inconsistent with the provisions of the Waiver.[2] In this respect, the United States did not live up to the assurances given in 1955 in order to obtain the Waiver. The findings of the working parties had regularly remained a dead letter because, for lack of consensus due to the attitude of the United States, they could not be translated into conclusions. The United States had then brought that same attitude to the Council when the working parties' reports came up for adoption, rendering the Council discussions inconclusive and leaving the unresolved matter to be taken up again the following year. That meant, simply, the acknowledgement of the CONTRACTING PARTIES' collective impotence. This attitude on the part of the United States over three decades, which neared cynism, was unacceptable. In fact, the United States was encouraged by contracting parties' collective passiveness; they were all equally guilty of lack of courage and imagination. From time to time the Community had revolted against that fate, for example, two years earlier when the Council had, without opposition by the United States, concluded that the Working Party could make recommendations. However, those recommendations had never been adopted for lack of consensus in the Council. That situation could not be allowed to go on. A waiver, by

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[2]Waiver granted to the United States in connection with import restrictions imposed under Section 22 of the United States Agricultural Adjustment Act (of 1933), as amended (BISD 3S/32).

definition, should be temporary; otherwise, it became an exception, and thus, part of the GATT's basic structure. Should that exception persist, it would become a violation of the GATT's principles and, worse yet, a source of disequilibria, tensions and weakening of the system.

He said that the non-respect of the Waiver's provisions and the deliberate refusal to honour the assurances given at the time it had been granted had spurred cumulative effects which had contributed to the perturbances in world agriculture trade, which the United States ironically championed. These cumulative effects over 33 years had contributed to the crisis in the trade of many products covered by the Waiver, had caused injuries to contracting parties and had nullified or impaired their GATT benefits. He recalled that all present, the United States included, had launched the Uruguay Round as an attempt to remedy the imbalance which sometimes prevailed among partners in the GATT framework. The Community, directly following this guideline, had for its part decided to take the initiative of requesting bilateral consultations with the United States concerning the restrictions applied under the 1955 Waiver and the Headnote, which had been held on 12 July and 1 September. He said that the term "Headnote" was diabolical because while it had no legal basis, no one had ever taken the trouble to challenge it, and it was on this Headnote that the United States based its measures. An end had to be put to this. Perhaps the most expeditious way to end the Waiver would be to determine whether the required two-thirds majority of 64 votes could be obtained to confirm that the Waiver was still justified. It would suffice for 64 contracting parties to decide not to be prejudiced further by the Waiver. There was also a second way, by virtue of another GATT provision which was simple and equally tempting, namely, to end the Waiver by a simple majority. The Community was considering this method, but some contracting parties might lack the necessary courage to use it. For these reasons, and because the Community sought to convince rather than to make a show of force, yet a third approach seemed reasonable to it. Thus, in order to illustrate in a concrete manner the Community's position, that is, its accusation, the Community was asking for a panel which would, for a start, examine a first product covered by the Waiver, namely sugar and sugar-containing products. He emphasized that this would be a starter, and he reserved the Community's right to revert to other "products" as well as to the overall Waiver.

The representative of the United States said that there was irony in the fact that the Community -- which was, at least partially, held together by the web of the Common Agricultural Policy -- was attacking other contracting parties' agricultural policies. That was amazing, especially when the very policy under attack had been put on the negotiating table in the Uruguay Round. The GATT was an agreement which had brought contracting parties to the present day as a result of the past -- of a series of sub-agreements and understandings thereof, the Waiver being one of them. At the same time, one looked towards the future that could perhaps include new agreements and new understandings as a result of the successful conclusion of the Uruguay Round, where the issue of the Waiver could best be examined. Nevertheless, the United States believed in the right of any contracting party to ask for a panel, and nothing in his comments could be construed as denigrating that right. However, the United States had

examined L/6393 very carefully and had concluded that it contained no identification of the products about which the Community was complaining or any reference to the basis of its complaint. In paragraph 10 of the 1979 Understanding[3], the CONTRACTING PARTIES had agreed that a request for the formation of a panel "would be granted only after the contracting party concerned had had an opportunity to study the complaint and respond to it before the CONTRACTING PARTIES". No such opportunity had been offered. In fact, sugar had only been barely touched upon in the consultations, and the United States was now only for the first time learning about the product involved in the Community's complaint. The Community's request was therefore premature. He said that at a minimum the Community was obligated to prepare and circulate a revision to L/6393 which adequately identified the product or products about which the Community was complaining and the basis of its complaint. He wanted to give some time to his authorities to consider this matter which could be revisited at some other time.

The representative of Japan said that the quantitative restrictions maintained by the United States under the Waiver posed a number of problems: first, no definite time period had been set during which the Waiver would remain in force, and it appeared as if it had a quasi-permanent nature; second, the Waiver's product coverage was flexible and ambiguous; and third, the maintenance of the restrictions over more than 30 years was causing considerable inequity in world agricultural trade, as they were highly trade-distorting and were identical in their economic effects to other quantitative restrictions which were deemed to be GATT inconsistent. Japan had been continuously exhorting the United States to resolve these problems, or to eliminate the Waiver. The CONTRACTING PARTIES' decision on the Waiver clearly stipulated the assurances given by the United States as conditions for granting the Waiver. For example, the US Government would promptly terminate any restrictions imposed when it found that circumstances requiring the action no longer existed, and would modify restrictions whenever changed circumstances warranted such modification. It was regrettable that the United States had maintained the restrictions under the Waiver for more than 30 years, while not making sufficient efforts to fulfil such assurances. That was all the more problematic from the viewpoint of the balance of GATT rights and obligations because other countries had been trying to achieve greater liberalization in agricultural trade. In Japan's view, a fundamental review of the Waiver was essential for equitable and balanced agricultural negotiations in the Uruguay Round. The fact that the Waiver had been granted and the length of its duration highlighted the difficulty of handling agricultural matters in GATT; this was one of the issues requiring thorough negotiations in the Uruguay Round.

The representative of Australia said that his country's concerns regarding the Waiver and US sugar policy were well-known. His delegation supported the Community's request for establishment of a panel and reserved Australia's right to make a submission to it if established.

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[3]Understanding regarding Notification, Consultation, Dispute Settlement and Surveillance (BISD 26S/219).

The representative of Brazil said that both the Community and Japan had raised a number of important issues. Brazil's clear position on the Waiver had always been that the time had come to review the situation of that exceptional measure which had been examined a long time ago. His delegation was convinced that the establishment of a panel was completely justified, and fully supported the proposal.

The representative of Argentina said that his delegation considered that the Waiver constituted a major concern in world agricultural trade. The arguments put forward in favour of establishing a panel were justified. His delegation supported the proposal and reserved its right to make a submission to the panel, if established.

The representative of Canada said that his delegation supported the Community's right to have a panel established to examine the measure in question. However, the precise nature of the complaint was not entirely clear. The Community had specified the product coverage but had not stated the actual basis of its complaint in regard to that particular product. His delegation thought there was merit in the United States' remark about paragraph 10 of the 1979 Understanding, to the effect that the party against which a complaint was brought should have an opportunity to comment on it in the Council prior to the establishment of a panel. His delegation supported the Community's request and remained open to the possibility of establishing a panel at the present meeting, but wanted to see greater precision as to what the complaint was, before the Council took a decision.

The representative of Uruguay said that his delegation supported the Community's request which the matter at hand justified. Uruguay, along with Canada, would be interested in the Community's being more precise regarding the nature of its request. His delegation reserved its right to make a submission to the panel, if established.

The representative of New Zealand said that his delegation supported the Community's request but shared Canada's puzzlement as to the scope of the complaint which the Community had described as pertaining primarily to sugar, while leaving open the possibility of extending it to other products in which New Zealand had an interest. His delegation reserved its right to make a submission to the panel, if established.

The representative of Jamaica agreed with Brazil that the Community's statement was an important one. He recalled the United States' statement in the Negotiating Group on Agriculture that it was prepared to negotiate this Waiver. Before taking a decision on the Community's request, he wanted some clarification as to its timing and as to whether -- given the generic nature of the Waiver and the particular rules and disciplines attached to panels -- a panel or a working party would be more appropriate. His delegation supported Canada's view concerning the need to understand the nature of the complaint and in this respect, recalled the case of copper between the Community and Japan for which a group of governmental experts had been found more suitable (BISD 34S/168). He also wanted some clarification regarding the matter raised by Canada, and

regarding the extent to which the establishment of a panel would inhibit progress in the Uruguay Round, where the Waiver was on the negotiating table.

The representative of Nicaragua said that her delegation shared the views expressed by previous speakers concerning the importance of this matter and supported the request for the establishment of a panel, to which any contracting party was entitled, as the United States itself had stated. Nicaragua, too, was interested in the clarification of the various points mentioned by other representatives and reserved its right to make a submission to the panel, if established.

The representative of the European Communities asked that the Community not be pushed into passiveness, irresponsibility and playing accomplice to what was at the origin of the imbalances. He referred to L/6393 and quoted from its first paragraph. His earlier statement had embraced the whole Waiver, but there were different ways to squeeze the substance out of that Waiver and to eliminate it as a cancer which was devouring the GATT. Not even the United States could identify the precise products to which the Waiver currently applied. It was difficult to reconcile this with the provisions of the GATT. Consequently, he had nuanced the Community's request. In order to be practical and not to add to the confusion, he had made a precise request for an Article XXIII:2 panel to examine a precise product, sugar, and the violation of Article XI. But he reserved the right to raise other products or other aspects, either in this panel or perhaps in others.

The representative of Peru said that his delegation supported the Community's request and shared Jamaica's doubts concerning the United States' having put the Waiver on the negotiating table. He was concerned that a temporary exception, which should be eliminated unilaterally, could be negotiated and reciprocated by concessions. The Waiver could not be used as a negotiating weapon and should be subjected to the CONTRACTING PARTIES' surveillance.

The representative of the United States said that, in response to the clarification sought by some delegations, the United States for its part wanted to see a new and revised document from the Community which would be more specific about its complaint and the request for a panel.

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

8. Accession of Bulgaria
- Consultations on procedural aspects of the Working Party

The Chairman recalled that in November 1986, the Council had established a Working Party to examine Bulgaria's request for accession, and had agreed to consider in due course the procedural aspects of its establishment. He informed the Council that consultations with interested

delegations had been underway and some progress had been made. It appeared that more time would be needed, however, and the consultations would be continued.

The Council took note of this information.

9. United States - Taxes on petroleum and certain imported substances - Follow-up on the Panel report (L/6175, C/W/540 and Add.1)

The Chairman recalled that at the Council's regular meeting in June, it had been agreed that the Secretariat would give technical advice to the European Communities and the United States on this matter, and that this technical advice would also be made available by the Secretariat to other interested contracting parties.[4] He informed the Council that the Secretariat had transmitted this technical advice to the two parties and to other contracting parties which had expressed an interest in receiving it, and that this item was on the agenda of the present meeting at the request of the European Communities.

The representative of the European Communities said that the Panel had made its recommendation a long time ago, and the Community had repeated, over several months in the Council, its request for some positive follow-up to the Panel's clear and unambiguous findings (L/6175). Regrettably that had not been possible, and the Community had thus been obliged to ask the Secretariat to undertake further work to assist it in resolving the outstanding problems and to reach a conclusion whereby the follow-up to this Panel report could be definitively settled. The Community was grateful for the Secretariat's technical advice, which it believed to be a valuable contribution; however, it perhaps did not immediately help to move this issue forward insofar as it presented a number of options from which the Community could choose. Two of those options more or less returned the problem to the disputing parties -- the United States and the Community -- and thus, for the purpose of a rapid conclusion, were not particularly helpful. Another option was close to the suggestion the Community itself had put forward. What was currently needed was a clear signal that this matter could finally be resolved, since the Community was not aware that the United States was in a position to provide adequate compensation for the breach of GATT rights that had been assessed. Accordingly, the Community had to ask for authority to make appropriate compensatory withdrawals. Insofar as the technical advice did not finally and definitively state what the level of those withdrawals should be, the Community was willing to consult with the United States and with other contracting parties directly concerned in determining that level.

The representative of Mexico recalled that this Panel had been established subject to the understanding that the procedural rights which the parties to the dispute would have enjoyed if separate panels had

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[4]The Secretariat's technical advice was subsequently circulated to all contracting parties in Spec(88)48.

examined the complaints would in no way be impaired, and that if one of the complainants so requested, the panel would submit a separate report on that party's complaint. It was Mexico's understanding that the Secretariat's technical advice referred exclusively to the Community's request regarding the United States, and that it thereby could not create a precedent for the other parties to the dispute or for cases that might arise in future. He then commented on the Secretariat's technical advice as such. From a legal point of view, the Secretariat had begun with the premise of the withdrawal of substantially equivalent concessions which, while applicable to the renegotiation of concessions under Article XXVIII of the General Agreement, did not correspond to the letter or spirit of Article XXIII:2, which was the applicable Article in dispute settlement cases. Article XXIII was mentioned only in the last paragraph of the technical advice and in note 17 thereto. This question was of paramount importance in distinguishing between renegotations of concessions consistent with GATT rules, and measures which were GATT-inconsistent. The latter implied a different response in order to re-establish provisionally the balance between a contracting party's rights and obligations.

It was for this reason that Mexico had asked at the May Council meeting for the Secretariat's legal opinion regarding what was to be included in the estimate of damages. He recalled that the Legal Advisor's reply had been that the wording in Article XXIII was more general and gave more leeway in determining the retaliatory measures than did Articles XIX or XXVIII; also, that the understanding of the Working Party on the Netherlands' complaint (BISD 1S/62) was that a purely statistical test would not by itself be sufficient, and that broader economic factors would have to be considered in the assessment of the injury. The Chairman of the Working Party had also noted, inter alia, that one had to take into consideration the purpose for which the action had been proposed, i.e., the elimination of the US measure. From a purely technical point of view, the Secretariat's technical advice was considerably limited by economic reality; it was impossible to be certain of the amount of damage caused by the US measure if, as the Secretariat recognized, information was lacking on the exact coverage of the products affected by the measure. The technical advice therefore lacked balance because it did not include the economic impact of the measure beyond the sector directly affected. This approach disregarded the costs of readjustment in the quest for new markets for the exports diverted from the US market.

Given the foregoing, Mexico considered that the Secretariat's technical advice did not appropriately reflect the technical and legal considerations required to determine the justification of the measures proposed by the Community given the circumstances as laid down in Article XXIII:2. Therefore, this opinion should not be taken as a sufficient basis on which the CONTRACTING PARTIES could decide to accede to the Community's request unless the Community accepted that advice as a satisfactory solution for itself for reasons it deemed fit. In conclusion, he reiterated his country's astonishment and concern over the fact that despite the 15 months that had elapsed since the Council's adoption of the Panel report, the US Government had not implemented those recommendations. Mexico trusted that the US Congress, in considering the budget for the next fiscal year, would adopt the relevant measures so that the discriminatory tax currently in force would be eliminated.

The representative of the European Communities said that Mexico's statement brought to light a number of aspects of this matter which might be relevant in themselves but which had very little to do with the particular problem at hand. As a consequence of the Panel's finding and further discussions, and of the inability of the United States to provide compensation, the Community felt obliged to ask that there should be withdrawal of equivalent concessions, as contained in C/W/540 with further details subsequently submitted in C/W/540/Add.1. Therefore, the problem before the Council was simply whether it could authorize the Community to proceed with the withdrawal of equivalent concessions which the Community had calculated in its document. This was the only option in the Secretariat's technical advice which had any figures attached to it, and was the only one which the Community could presently consider.

The representative of Canada recalled that his country was the third co-complainant in this case, and said that once again the Council was on the leading edge of the dispute settlement negotiations in the Uruguay Round. Canada's far-preferred option in the present case was the United States' removal of the offending measure as expeditiously as possible, as recommended by the Panel. The other options available under the procedures which had evolved under Article XXIII, such as the withdrawal of concessions or the granting of compensation, were clearly less preferable. However, the United States' failure to remove the measure might leave Canada with no option but to request compensation.

The representative of the United States said that his delegation had found the Secretariat's observations, in its analysis of the question of injury in the Superfund tax differential, to be useful in establishing a number of theoretical benchmarks on the issues of trade injury and the revenue effects involved in the application of the tax to imports. However, the technical advice also illustrated clearly the limitations in attempting to apply pure economic theory to this sort of question. The upper and lower bounds of the amount of injury or revenue effect that could be postulated resulted from extreme economic assumptions. The utility of pure economic theory was further complicated by the lack of reliable elasticity estimates. As the United States had noted throughout this dispute, there were practical economic realities in the production and marketing of petroleum and petroleum products that greatly influenced how the Superfund tax had actually affected trade. Regarding the Community's request for authority to retaliate, his Government recognized that the preferred resolution of this matter was the elimination of the GATT-inconsistent aspects of the tax; however, despite diligent efforts by his authorities over the past months, this had not been possible. Given the present circumstances, the appropriate next step was not a decision by the Council, which would be unwarranted and which might lead to further politization of this issue in the United States. Rather it would be more appropriate for the United States to negotiate with affected contracting parties on the issue of compensatory adjustments, which the US Executive branch could then present to Congress for implementation. He stressed that the United States would consider this an interim solution only, and his authorities remained committed to working with the Congress to eliminate the GATT-inconsistent aspects of the tax at the earliest opportunity.

The representative of the European Communities said that while the Community would have sought compensation, as this was the preferred option in a case where the GATT-inconsistent measure was not removed, it was due to the United States' failure to provide satisfactory compensation that the Community now felt obliged to request authority for the withdrawal of substantially equivalent concessions. As this was the only option remaining, the Community had to insist on it. Failing such authorization by the Council, the Community, in a case where the Panel's findings justified the Community's request, would have to consider other means of resolving this problem and seeking satisfaction.

Mr. Mathur, Deputy Director-General, in response to Mexico's comments, emphasized that the Secretariat had been asked to give technical advice in this case and not legal advice. Paragraph 3 of the technical advice should help to determine whether the Community's assessment of damages was correct and, if not, what the appropriate amount, if any, would be. Mexico was correct in pointing out that Article XXIII:2, unlike Article XXVIII, did not speak about equivalent concessions and therefore, it was not really a question of authorizing the withdrawal of equivalent concessions as such. That was why the Secretariat had pointed out that Article XXIII did not require that the amount of retaliation should be equivalent, and that the CONTRACTING PARTIES might wish to determine what other factors to take into account in examining the appropriateness of the proposed retaliatory measure. All the Secretariat could do was to help in an examination of the appropriateness of the retaliatory measure to be taken by the Community. It could not, in the context of the advice given to the Community, take into account what would be the appropriate level of the retaliatory measures that could be authorized on a global basis. In this case, it was the Community which had indicated what retaliatory action it wished to take; any other contracting party which considered that its interests were affected had the possibility of indicating that -- as all other means of solving the problem had failed in its view to provide results -- this was the action it would propose to take. Then, of course, it would be for the CONTRACTING PARTIES in their best judgement to decide whether to authorize that action.

The representative of Jamaica said that his delegation saw merit in the Community's request and would support action in the Council which would authorize those countries which had been affected by the United States' measure to take the action which was consistent with their rights under the General Agreement. His delegation saw no other way but for the Council to act, as a matter of principle, when confronted with such situations.

The representative of Nigeria drew attention to paragraphs 17 and 34 of the Secretariat's technical advice and said that it was Nigeria's expectation that the third parties on record as having lodged a complaint against the US measure would be advised regarding the options left open to them. In the absence of any such options at the present time, Nigeria could only reiterate that the Council was obliged to take a definite stand on this matter and to solve the problem once and for all. The Community had a right to make its request, but what would the fate be of the third parties that did not have the capacity to take retaliatory action? Thus,

the best option would be for the United States to continue with its best efforts to remove the measure and to find a solution to this problem as soon as possible.

The representative of the European Communities said that it was not the Community's wish to raise this issue to the level of a major dispute between the United States and the Community, but the Community could not just sit back and wait for something to happen. This made a mockery of the dispute settlement procedures and of contracting parties' endeavours to improve them. It was for that reason that the Community continued to come back to this issue. He said that if the Council could do no more than take note of the statements on this item, it was indeed a bad day for the dispute settlement procedures and for the trading world as a whole.

The representative of Kuwait said that his delegation fully supported the statements by the Community, Mexico, Nigeria and Jamaica.

The representative of Brazil expressed his delegation's concern over the discussion on this item. On the one hand, there was an important effort to strengthen the dispute settlement mechanism; on the other, there was action by some contracting parties that did not accord with this effort. Brazil expected that very soon, perhaps at the next Council meeting, there could be a decision on this matter, as Brazil did not want to have a repetition of the case of the United States' waiver on agricultural matters.

The representative of Nicaragua said that this discussion further strengthened a point Nicaragua had been making over the past two years, which was that the dispute settlement procedures in GATT could not duly reflect the interests of developing contracting parties. Nicaragua supported the Community's request for authority to withdraw equivalent concessions. This was granted by the General Agreement, and her delegation believed that the Council should authorize such measures of retaliation. It was obvious that all contracting parties which had spoken on this item could not take similar measures. Therefore, a clear lesson could be drawn from this case, and Nicaragua hoped that during the Uruguay Round negotiations this would serve as a further example which would lead the CONTRACTING PARTIES to adopt provisions for compensatory measures for developing countries, so that the concept of retaliation could eventually be eliminated.

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

10. Roster of non-governmental panelists
    (a) Proposed nomination by Israel (C/W/560)
    (b) Proposed nomination by Finland (C/W/562)

The Chairman drew attention to documents C/W/560 and C/W/562 containing proposals for nominations to the roster of non-governmental panelists.

The representative of Israel gave additional information on the nominee proposed by his Government.

The representative of Finland asked the Council to withhold action on the proposed nomination of Mr. Stening and gave additional information on Mr. Sahlgren.

The Council took note of the statements and approved the proposed nominations.[5]

11. International Trade Centre
- Report of the Joint Advisory Group (ITC/AG(XXI)/112)

Mr. Marchand (Canada), Chairman of the Joint Advisory Group, introduced the report on its twenty-first session (ITC/AG(XXI)/112). The Group had reviewed the activities of the International Trade Centre (ITC) during 1987 and had formulated recommendations to the governing bodies of UNCTAD and GATT. The Group had noted the resource constraints facing developing countries and had strongly urged the international development community to allocate additional financial resources to the ITC's technical co-operation activities. It had recommended that ITC co-operation with international development assistance bodies be strengthened, and had attached great importance to the ITC's evolving activities related to its result-oriented enterprise approach. Regarding export market development, the Group had recommended that the ITC continue to expand its assistance towards the development and consolidation of national trade information services. Emphasis had also been placed on the ITC's rôle in helping developing countries to stimulate production development for export through, inter alia, the promotion of export-oriented joint ventures with foreign partners. The Group had welcomed progress made by the ITC in providing assistance on commodities, and a number of members had stressed the high priority attached to certain elements of the sub-program related to "Specialized national trade promotion services". Concerning human resource development for trade promotion, the Group had urged the ITC to continue to give special attention to the training of trainers in view of its multiplier effects for trade development. While pursuing its emphasis on the training of export entrepreneurs, the ITC should also continue to train personnel of national trade promotion organizations. The Group had expressed the wish that the ITC assign a high priority to the assistance needs of least-developed countries, and had recommended an increased flow of resources for ITC technical co-operation with them. The Group had also noted the ITC's increased interest in fostering the participation of women in the development of trade, and had recommended that it pursue vigorously its efforts to enhance the participation of women in developing countries in trade promotion activities.

The Group had endorsed, for evaluation in 1989, the program elements related to export packaging and export quality control, and for evaluation in 1990, the export market development sub-program. The Group had endorsed

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[5] See L/6269/Add.4.

the conclusions of the consultant and of the technical meeting regarding the program evaluation carried out in 1987 on supply and demand surveys.

In conclusion, he said that several trust fund contributions to the Centre had been announced. In addition to the contributions in kind announced by Austria, Brazil, Ireland and Israel, the following governments had announced their trust fund contributions: Canada, China, Denmark, Finland, France, the Federal Republic of Germany, India, Indonesia, Italy, Japan, the Netherlands, Norway, Poland, Spain, Sri Lanka, Sweden and Switzerland. A large majority of these donors had announced that they were prepared to increase their contributions to the ITC.

The representatives of Sweden on behalf of the Nordic countries, Bangladesh, Canada, Chile, the European Communities, Argentina, Uruguay, India, Nicaragua, Peru, Mexico, Pakistan, Nigeria, Tunisia, Morocco, Israel and Tanzania expressed interest and appreciation for the useful and valuable work of the ITC and its Secretariat.

The representatives of Bangladesh, Argentina, Uruguay, Nicaragua, Peru, Mexico, Pakistan, Nigeria, Colombia, Tunisia, Morocco, Israel and Tanzania drew attention to specific areas of assistance which their respective countries had been given.

The representative of Sweden, on behalf of the Nordic countries, said that the crucial rôle of exports in the development of developing countries had perhaps never been more evident than in recent times. Diversified and increased production and trade was a backbone in the development process. In this context, the rôle of the ITC as the focal point in the United Nations system for technical cooperation in trade promotion was increasingly important. The ITC's activities were a significant complement to what was being done in UNCTAD and GATT to facilitate the development of developing countries. Through the implementation of projects that were closely related to business activities, the ITC contributed to developing countries' ability to reap the benefits of the international trading system, the liberalization that had taken place within it during recent decades, and the liberalization that was yet to come as a result of the Uruguay Round. In the Nordic countries' view, two mututally reinforcing fields of work stood out as the most important for the ITC on a general level: commodity-related activities and activities directed towards the least-developed countries. Broad-based and continuous multilateral support was essential to enable the ITC to carry out its important task. In 1987, assistance channeled to developing countries through the ITC amounted to US$21 million. For 1988, an ambitious delivery target of US$28 million had been set. While the Nordic countries welcomed the ITC's ability to increase its assistance, there was still reason to call for increased contributions from an additional number of donors.

The representative of Bangladesh commended in particular the ITC's assistance provided to the least developed countries. His delegation was pleased that more funds would be available. He hoped that the ITC could strengthen its work in some areas: seminars and workshops at regional and country levels; trade fairs for non-traditional items; greater participation of women in export promotion activities, cottage and

agro-based industries; and more buyers/sellers meetings to be held in sellers' countries. He noted that 21 countries had made contributions, and appealed for more contributions to the Trust Fund.

The representative of Chile referring to paragraph 51 of the report, drew attention to the need to increase the value of developing countries' exports of sub-products and derivatives.

The representative of the European Communities said that the assistance provided by the ITC represented an area where the GATT and the UNCTAD had achieved successful cooperation. He noted that the ITC's work program included assistance for import policy, and said that this aspect needed to be considered thoroughly. Some member States were prepared to make their contribution, financial and otherwise; it could not be excluded that the Community would do the same. He noted with encouragement that developing countries were themselves contributing to this work.

The representative of Argentina drew attention to the continuing diversification of the ITC's activities, noting that it had embarked on new programs such as those related to its result-oriented, enterprise approach. He noted the successful cooperation achieved between the GATT and the UNCTAD in the developing countries' export promotion efforts.

The representative of Uruguay drew attention to the conclusions in the report, in particular the areas which had been singled out for strengthening.

The representative of India said that his delegation was particularly pleased with the diversification of the ITC's activities and looked forward to the continuation of that process.

The representative of Nigeria said that the scope of the ITC's activities could be expanded. As to the list of contributors, he pointed out that his country had also made a modest contribution.

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

12. Office of Director-General
- Communication from the Chairman of the CONTRACTING PARTIES (C/157)

The Chairman drew attention to a communication from the Chairman of the CONTRACTING PARTIES concerning the Office of the Director-General (C/157).

Mr. Oxley, Chairman of the CONTRACTING PARTIES, recalled that in December 1986, the CONTRACTING PARTIES had adopted procedures for future appointment of the Director-General (BISD 33S/55), which provided inter alia that "consultations about the reappointment of the Director-General should be conducted by the Chairman of the CONTRACTING PARTIES after an announcement has been made at a meeting of the Council of Representatives, not less than six months before the termination of the

first term of office of the Director-General". In July, he had received a communication from the Director-General, who had proposed that the status of his appointment be considered in the context of the Uruguay Round. He said that he had accordingly sent to the heads of contracting party delegations a letter, dated 28 July 1988, inviting them to an informal consultation on this matter on 23 September 1988, enclosing a copy of the Director-General's letter. In accordance with the prescribed procedures, and
after consultation with the Council Chairman, he had requested the inclusion of this item on the Agenda of the present meeting in order to advise the Council and to announce officially that he would initiate the required consultations.

The Council took note of this information.

13. Committee on Budget, Finance and Administration
- Report of the Committee (L/6384)

The Chairman drew attention to the Report of the Committee on Budget, Finance and Administration in L/6384. He said that this was a very important matter, and final action on it had to be taken at the October Council meeting. Since some delegations might not have had enough time to complete their consideration of the report, he suggested that the Council agree to revert to it at its next meeting. There would be consultations on this matter in the meantime, open to all interested delegations.

The Council took note of the Chairman's statement and so agreed.

14. United States - Import restrictions on certain products from Brazil
- Recourse to Article XXIII:1 by Brazil (L/6386)

The representative of Brazil, speaking under "Other Business", recalled that at the most recent meeting of the Trade Negotiations Committee, his delegation had drawn attention to the US Government's announcement, on 22 July 1988, of its intention to impose unilateral trade restrictive measures against selected Brazilian exports. The mere announcement of the decision was already causing damage to Brazil's trade interests. Notwithstanding that the process to decide which items would be restricted was still underway, US importers of all the items under consideration were refraining from continuing normal purchases. Brazil had already encountered such a problem in the recent past, when a similar announcement by the US Government had led to a permanent loss of that market for certain Brazilian exports, even after the suspension of the contemplated measures. Because of the threat to Brazilian commercial interests resulting from the US unilateral action, on 22 August 1988, Brazil had formally requested bilateral consultations with the United States under Article XXIII:1. The United States had replied that the request was premature, since no concrete action had yet been taken. Brazil had also notified the matter to the Surveillance Body, since the US decision violated not only established GATT rules, but also the political standstill commitment, in particular paragraph (iii) of the 1986

Ministerial Declaration[6] which stated that participants would not "take any trade measures in such a manner as to improve its negotiating positions". The United States' threat to impose restrictions, however, went against that commitment in calling upon Brazil to "join the United States and other nations in establishing comprehensive intellectual property protection" in the Uruguay Round. Brazil saw no valid reason for delaying the requested consultations or, if necessary, the further steps of the dispute settlement process because the US announcement had resulted in annulling or impairing legitimate concessions by inhibiting or suspending imports of Brazilian goods into the US market. To avoid the consultations on the ground that the imposition of restrictions had not yet been formalized was only a further demonstration of the unilateralism of the legislation and practice embodied in Section 301 of the US Omnibus Trade and Competitiveness Act and of the reluctance to submit it, together with the acts therefrom derived, to the scrutiny laid down in the multilateral trading system. In this matter one partner was attempting to impose its own laws over another's, in disregard of the multilateral framework that had been developed over the past forty years in GATT to deal with such differences. He asked why the United States had not sought to bring the issue of the alleged commercial damage it was suffering to the CONTRACTING PARTIES? Clearly because its unilateral and discriminatory action found no legal grounds in GATT's rules and disciplines. Brazil expected the US Government to agree promptly to bilateral consultations under GATT in order to avoid even greater damage not only to Brazil's trading interests and GATT rights, but also to the very credibility of the GATT mechanisms. Brazil reserved its rights to resort to Article XXIII:2 in this matter.

The representative of the United States said that on 21 July 1988, the US President had determined under Section 301 of the Trade Act of 1974, as amended, that Brazil's failure to provide process and product patent protection for pharmaceutical products was "unreasonable" and burdened or restricted US commerce. That determination had followed more than two years of bilateral discussions between Brazil and the United States attempting to reach a mutually satisfactory solution to these issues. In his determination the President had stated his intention to take appropriate and feasible action in response to Brazil's policy, and had directed the US Trade Representative to hold public hearings to determine which products imported from Brazil were the most appropriate candidates for increased duties or other import restrictions. The US Government had taken no action against any product from Brazil, and had stated privately and publicly to Brazilian officials its strong preference that such action be proven unnecessary. Consequently, the United States had taken no action inconsistent with its GATT obligations. Any consultation would therefore be premature. If the United States did take such action, it would be willing, at the parties' mutual convenience, to consult on whether that action nullified or impaired any GATT benefit accruing to Brazil. Brazil's policy of denying patent protection for pharmaceutical products was clearly detrimental to international trade in such products, and that country was

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[6]Ministerial Declaration on the Uruguay Round (BISD 33S/19).

almost unique in failing to do so; other governments provided at least process patent protection for methods of producing pharmaceuticals. More generally, intellectual property rights had become increasingly important in international trade flows and, if adequately and effectively protected, promoted innovation and intellectual creativity and were a key component of international competitiveness for all countries. Protection of these rights was essential to the expansion of international trade, investment and the transfer of technology. As to the issue of standstill, the Council was not an appropriate place to discuss it. His delegation would discuss the issue, if Brazil wished, at the appropriate time and place.

The representative of Brazil said that his country was one of the oldest members of, and its laws were fully compatible with, both the Paris and Bern Conventions, to which the United States was only now contemplating adherance. These laws gave exactly the same treatment to Brazilians as to foreigners. Brazil's statute for pharmaceutical products had been adopted in 1945, and had already been in force when practically all the major foreign pharmaceutical companies had decided to invest in the country. It was hard to believe that those firms had been hurt by Brazil's legislation when the figures showed that the lion's share of the Brazilian market was in the hands of transnational corporations which dominated about 80 per cent or more of total sales, with the US in first place with 35 per cent. The participation of Brazilian firms was limited to about 20 per cent of the market, catering mostly to "family medicines" for which no prescriptions or sophisticated patents were required. He said that during recent hearings in Washington to discuss the US restrictions, not a single substantial case had been raised against Brazil for patent infringement for pharmaceutical products, nor had a similar case been raised in Brazil before or after the hearings. The US claims, therefore, could find no objective backing in reality. That only reinforced Brazil's belief that the United States was using this case to derive benefits in other areas, as he had mentioned earlier, besides causing irreparable damage to unrelated but highly competitive Brazilian export sectors against which the United States would like to see tighter restrictions imposed. He said it was easy to raise grave accusations without being able to substantiate them, and, if one so wished, the US actions could also be compared to forms of behaviour condemned by the international community. Brazil, however, wanted to keep the debate on an objective basis and so refrain from engaging in an exchange of accusations which it had not started in the first place.

The representatives of Argentina, Nicaragua, Cuba, Yugoslavia, Mexico, Colombia and Chile supported Brazil's request for consultations with the United States.

The representative of Argentina said his delegation believed that it was any contracting party's right to seek redress for prejudice. He

recalled the issue discussed under Agenda item no. 9 whereby an affected party had been seeking redress for damage incurred due to another contracting party's action which had been found inconsistent with the General Agreement. Undertakings with regard to the status quo, as referred to by Brazil, also had to be respected.

The representative of Nicaragua said that Article XXIII was clear regarding the right of any contracting party to request consultations, and it was not possible for a contracting party to deny them. Moreover, Nicaragua believed that the consultations requested by Brazil should take place before the United States implemented the contemplated measures.

The representative of Cuba said that Brazil's statement contained a number of important points which were relevant to the Council's consideration of Article XXIII.

The representative of Yugoslavia said that the current trade negotiations demanded that the participants create a climate of confidence in order to achieve satisfactory results, especially when trade aspects of intellectual property were involved. It would be dangerous for the multilateral trading system, already weakened, if unilateral and discriminatory trade sanctions which fell outside GATT's competence were applied to other countries' measures. When a developing country's interests were at stake, consultations should be held before any damage was done.

The representative of Mexico said that the United States should put no obstacle in the way of allowing the consultations requested by Brazil in conformity with Article XXIII.

The representative of Uruguay said that his delegation agreed with the representatives contending that this dispute should be dealt with in accordance with the normal GATT mechanism, with a view to reaching a satisfactory solution. Uruguay reserved all its rights in this matter.

The representative of Colombia said that GATT provided for a dispute settlement process which included consultations such as those requested by Brazil. That was a logical and natural way of handling a dispute.

The Council took note of the statements.

15. Calendar of meetings

The representative of Bangladesh, speaking under "Other Business", raised the difficulty encountered by small delegations in participating in the meetings of the policy-making bodies in Geneva, in particular when they were held at the same time. This problem deserved the Council's serious attention in order for the legitimate interests of the countries concerned to be taken into account. He suggested that in deciding on future calendars of meetings, the GATT Secretariat be asked to cooperate and

collaborate more closely with other organizations, particularly the UNCTAD. Bangladesh was confident that in this way a practical solution would be found.

The Director-General assured the representative of Bangladesh that the Secretariat was very aware of the heavy burden for a number of delegations which resulted from very heavy schedules of meetings, not only for all the Geneva institutions, but even within GATT itself. He could assure Bangladesh that the prime aim was to reconcile the schedules of meetings in GATT and to avoid, as far as possible, clashes with meetings of other organisations, such as UNCTAD. He would take the initiative to discuss this, when he next contacted the Secretary General of UNCTAD, and perhaps others, to see if more could be done to rationalize and improve the situation. While he did not want to make any promises on which he could not follow up, he said that greater efforts would be made in that direction, but that further clashes between meetings might sometimes prove to be unavoidable. He pointed out that Council meetings were generally announced by its Chairman two meetings in advance and sessions of the CONTRACTING PARTIES one year in advance. He added that it was incumbent on delegations to advise the Secretariat of other meetings that might clash.

The Council took note of the statements.

16. United States - Omnibus Trade and Competitiveness Act

The representative of the European Communities, speaking under "Other Business", expressed grave concern on behalf of the Community and its member States about the US Omnibus Trade and Competitiveness Act, the gestation of which had for a long time burdened GATT's work, particularly during the delicate period leading up to the Uruguay Round. Now that the proposed legislation had become law, one had to live with it. He paid tribute to the US Administration for the considerable efforts to weed out the ultraprotectionist measures which had earlier been present in the proposed legislation, measures which would have led to automatic actions against countries with a continuing bilateral trade surplus with the United States. More importantly, the Act gave the US Administration negotiating authority for the Uruguay Round. However, that did not prevent it from being a source of worries. First, the Act contained a number of provisions which could incite a recourse to unilateral actions inconsistent with the GATT. Second, it was now clear that the Administration's discretionary authority for the formulation and implementation of trade policy, with regard to respect for GATT obligations, had been reduced. Third, the Act might encourage lobbying activities for GATT-inconsistent actions. Fourth, it appeared to provide the United States with built-in means to improve its negotiating position regarding sensitive Uruguay Round issues, in contradiction with standstill undertakings. One hoped that the United States would not use that kind of "bargaining chip" in the Uruguay Round, as this would entail the risk of imposing results which would unavoidably be circumvented.

He cited four examples to illustrate his point: first, the GATT consistency of Section 301 in itself was somewhat dubious, to the extent that it gave the President's Special Representative for Trade Negotiations the possibility of taking unilateral actions on the basis of a unilateral determination without prior CONTRACTING PARTIES' authorization. The amendments to Section 301 now required automatic action, inter alia, when the United States' rights, in its own opinion, were not recognized or were violated or placed in jeopardy. That increased the propensity to take unilateral actions. It was extremely serious for a country to grant itself the right to take GATT-inconsistent measures to counter GATT-consistent measures taken by third countries.

Second, the Act had dropped the requirement to determine prejudice in the context of Section 337 violations. Without such a criterion, the United States could take retaliatory measures which touched on GATT obligations without the CONTRACTING PARTIES' authorization. That tended to increase the possibility of discriminatory measures.

Third, Section VI of the Act, on telecommunications, required automatic actions to obtain reciprocal market access opportunities -- another open door for unauthorized retaliatory measures when the United States, on its own and according to its own criteria, determined where mutually advantageous opportunities lay. There again was the seed of unilateralism, arbitrariness and bilateralism in the negative sense of the word, because it was that right which implied that obligations became the law of the fittest.

Fourth, in the area of agriculture, the Act provided for an automatic triggering of marketing loans, including for export stimulation, should significant results not be obtained in the Uruguay Round. This was a flagrant threat to the negotiation process, and one which had been conceived to improve the United States' negotiating positions, contrary to the Punta del Este standstill undertakings.

From a GATT viewpoint, and for all the reasons he had mentioned, the Community and its member States were left with no choice but to watch carefully the implementation of the Act, and were determined to take action promptly should their GATT rights be compromised by it. More worrisome still, one might doubt the United States' commitment and faith in the multilateral trading system; the United States would be well advised to dispel this perception.

He deeply regretted the Act, which had stemmed from an erroneous knowledge and perception of the outside world and from a far too cyclical vision of life. That law could never be imposed on the rest of the world; it could not provide an alternative to the multilateral system which, notwithstanding the latter's shortcomings and weaknesses, was irreplaceable. The Act was a time-bomb which all -- the United States included -- should strive together to defuse, because if it exploded, it would spare no-one, especially not the United States. The United States' problems could not be solved through this Act without other countries' support. While the Act might well have been intended, in its essence, to help reinforce the multilateral system, it could, in the eyes of the United

States', constitute an alternative should that system fail. If the United States were to turn to such an alternative, the Uruguay Round would be marginalized and a fatal blow would have been dealt to the multilateral system, but the Community would pursue its irreversible process of integration, and would survive. For the Community, prosperity -- not survival -- was at stake. That being so, its integration could be better pursued within a multilateral system, because the Community depended on others.

He said that the 1200-plus pages of the new Act could not be a substitute for the 57 pages of the General Agreement. He hoped that the present and future US Administrations, as objective allies, would continue the battle, notably against the worrisome proposed legislation in the field of textiles.

The representatives of Japan, Hong Kong, Korea, Switzerland, Sweden on behalf of the Nordic countries, Uruguay, Canada and Australia expressed their delegations' satisfaction that the Act gave the United States negotiating authority for the Uruguay Round.

The representative of Japan said his Government deeply regretted that this Act, which contained a number of problematic provisions, had come into effect despite the strong misgivings repeatedly expressed by many contracting parties. The following elements in the Act were Japan's main points of concern: (1) The so-called "Super Section 301", which introduced a large degree of automaticity into the process of unilaterally identifying foreign practices as harmful, and which could lead to mandatory retaliatory action; (2) the imposition of mandatory three-year sanctions against Toshiba Machines, Kongsberg Trade, and other parties violating COCOM[7] agreements; (3) the strengthening of Section 337 of the US Tariff Act of 1930, which discriminated against imported goods regarding alleged patent right infringements; (4) the reform of Section 201 of the US Trade Act of 1974 so as to facilitate the introduction of emergency import relief or safeguard measures; (5) under the Trade Adjustment Assistance program, a uniform "import fee" of not more than 0.15 per cent ad valorem on all imports, which could be unilaterally imposed should agreements to permit such fees not be reached with the US trading partners within two years; (6) the prevailing trend of the many provisions amending anti-dumping and countervailing duty laws to facilitate their use in order to cope with what the United States considered unfair competition and unfair imports; (7) the Act's provisions related to telecommunications, which were inspired by a concept of sectoral reciprocity and included the possibility of unilateral retaliatory action; (8) others, such as the primary dealer, shipping, investment and steel import provisions.

Japan was profoundly concerned that this Act and its implementation could negatively affect the cooperative relations among trading partners and impede the sound development of world trade. Japan urged the US Administration to implement the Act in such a way that no measures inconsistent with GATT would be taken, and reserved all its rights under the General Agreement in this respect.

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[7]Committee for the Control of Exports to Communist Countries.

The representative of Hong Kong expressed his authorities' concern over certain aspects of the Act. Hong Kong was particularly perturbed by the anti-dumping clauses which, in its view, exceeded the provisions of the General Agreement and the Anti-Dumping Code.[8] For example, the Act tightened the cumulation provisions in the case of threatened injury, such as to in effect provide a means of evading the requirements of Article XIX by allowing global restrictions with a low standard of injury and with no compensation. The Act codified the concept of "Downstream Product Monitoring", not sanctioned by the General Agreement or the Anti-Dumping Code. The Act provided for no prior determination of dumping or injury in respect of component parts used in assembling a product, and went beyond the General Agreement in that its anti-circumvention provision covered third-country assembly -- meaning that anti-dumping action could be extended to products assembled in any country if the pattern of trade suggested that the assembler was related to a manufacturer whose exports of similar products were subject to anti-dumping duty. In Hong Kong's view, all this created new rights for the United States on matters which were squarely for negotiation in the Uruguay Round. It upset the balance of rights and obligations and was clearly detrimental to the negotiating climate. Hong Kong reserved all its rights under the General Agreement in respect of this matter.

The representative of Korea said that in the context of the important progress being made in the Uruguay Round, the effect of the recently enacted US legislation -- containing elements which further strengthened protectionism and thus risked obstructing progress in the negotiations -- was particularly strong. For example: (1) the so-called "Super-Section 301", which could be invoked more easily due to an easing of the criteria for doing so. Furthermore, by allowing individual countries to be designated as "unfair" trading nations, it constituted a potential violation of the basic GATT principle of non-discrimination. (2) The provision for unilateral retaliation outside the GATT dispute settlement mechanism, and the forced entry of US goods into foreign markets. (3) The arbitrary interpretation of anti-dumping and countervailing duty laws. (4) The unilateral establishment of the method and subject of protection of intellectual property rights at a time when the Uruguay Round negotiations were still under way. In the area of labour rights, the United States had again unilaterally introduced rules which would have repercussions on the conduct of international trade. At this difficult and crucial juncture in the Uruguay Round negotiations, it was imperative that all participants strengthen the spirit of cooperation and resist any protectionist tendencies. Korea urged the United States to give serious and careful consideration to the implementation of the Act, so as to avoid any impairment of GATT principles and of the efforts to achieve the negotiating objectives of the Uruguay Round.

The representative of Switzerland said that his authorities were making a detailed analysis of the Act. Regarding Switzerland's preliminary

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[8] Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade (BISD 26S/171).

views, it was concerned that the Act opened the door to unilateral interpretations of international trade laws and rules. Switzerland was also concerned that the complex and numerous provisions which US companies could invoke would lead to a procedure-type of protectionism. Switzerland strongly hoped that the Act would always be applied in keeping with the multilateral rules governing world trade, would encourage further liberalization of trade in goods and services, and would not jeopardize but reinforce the credibility of the Uruguay Round negotiations. It was hoped that the United States could give signs to its trading partners, as soon as possible, to dispel their misgivings over the Act; the Uruguay Round would be the best forum for this, and thus the mid-term Ministerial review in Montreal in December 1988 would take on a completely new connotation.

The representative of Sweden, on behalf of the Nordic countries, expressed their hope that the new Act would not be used for protectionist ends, and that it would be applied in accordance with the United States' international obligations and would help to develop further the open multilateral trading system.

The representative of Uruguay said that the countries which had met in Caracas at the recent SELA[9] Ministerial meeting were of the opinion that the Act introduced certain provisions which might cause additional difficulties for their trade relations with the United States, for example, the provisions allowing for an increase in unilateral measures as well as the régime for intellectual property. In agricultural trade, an increase in subsidies and other forms of assistance would affect the trade of the countries in the region. The increased restrictions and threats thereof would worsen the existing crisis in the multilateral trading system and would question the credibility of the standstill commitment. The Ministers estimated that the rules and provisions of the Act did not take into account the trading interests of the Latin American region, and felt that the United States should abide strictly by its undertakings in GATT, which should prevail over the national legislation of any contracting party. These countries intended to defend their rights to take any measure necessary under GATT should their trade interests be harmed or threatened. They welcomed the debt provisions of the Act. Uruguay hoped that the United States would reassure contracting parties that the Act would be applied in accordance with the objectives pursued in GATT as well as in the Uruguay Round.

The representative of Canada said that his delegation, like others, had considerable concern about provisions in the bill as earlier proposed, and had made those concerns known in detail to the US authorities in Washington. He welcomed the US Administration's efforts, which had resulted in removal of some of the aspects considered to be offensive. Canada hoped that the United States would be prepared to use fully the important negotiating authority that the Act provided, which would help ensure the success of the Uruguay Round. However, the Act as passed contained some provisions which gave Canada concern, and his authorities would be carefully monitoring its implementation over the coming months.

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[9] Latin American Economic System

The representative of Australia said that his Government regarded the Act as an opportunity for the US President and his successor to work for an improved international trading system. Australia hoped that the negotiating authority it provided for the US participation in the Uruguay Round would accelerate progress towards a substantive stage in the negotiations, and that the US Administration would use the opportunity of the new legislation to demonstrate its commitment to a free, open and equitable international trading system. The leadership by the United States in the run-up to the December mid-term review of the Uruguay Round would be crucial to the outcome of the Montreal meeting. While Australia appreciated that some of the more harmful provisions in the draft bill, including some which would have affected Australia's trade, had been removed prior to its passage, the Act contained worrying protectionist provisions, particularly regarding unfair trade practices and import relief measures. These provided scope for a resort to protectionism and unilateral action as a means of protecting US industries. The US Administration and Congress had a heavy responsibility to moderate international trade tensions as much as possible by avoiding unnecessary recourse to some of the more controversial provisions of the Act.

The representative of Brazil said that in his delegation's view, the Act would have a very negative impact on world trade, in particular on developing countries like Brazil. One aspect of the Act which caused grave concern to Brazil was its disregard of specific GATT provisions related to special and differential treatment for developing countries, as stated in the General Agreement and in the 1979 Decision on Differential and More Favourable Treatment, Reciprocity and Fuller Participation of Developing Countries (BISD 26S/203). In authorizing the recourse to subsidization as a means of improving the competitiveness of US products, the Act ignored the United States' obligations under the Subsidies Code.[10] The provisions of the Act might bring about a number of retaliatory measures by the United States which would only increase uncertainty in international trade. The new Section 301 of the Act called for even more rigidity in the process of applying restrictions; thus, its negative implications, in stressing the tendency towards bilateralism as opposed to multilateralism in trade relations, was likely to be felt more widely. It was therefore difficult to reconcile the approval of the Act with the rhetoric used in GATT by the United States, which called for greater liberalization and for a stronger multilateral trading system.

The representative of India shared the concerns expressed regarding the Act, particularly those having a possibly negative impact on the environment for the Uruguay Round negotiations. Two elements, among others, were of concern to India: the disregard of the 1979 Decision regarding developing countries, to which Brazil had referred, and the conspicuous absence of the subject of textiles and clothing from the negotiating authority provided by the Act.

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[10] Agreement on Interpretation and Application of Articles VI, XVI and XXIII of the General Agreement on Tariffs and Trade (BISD 26S/56).

The representative of the United States said that on one hand, there was the concern and criticism which had permeated this discussion; on the other, there was his own Government's view that the Act was the result of tremendous hard work by the US Administration aimed at combating protectionism which might have been a natural tendency of a country that in 1987 had a trade deficit of US$170 billion. The legislation that had finally been passed had been stripped of the protectionist provisions it once had contained. It was also his authorities' view that the Act was first and foremost a firm commitment to multilateralism. The United States remained committed to a strong, effective multilateral trading system under GATT. While the United States' preference was to settle all trade disputes within GATT, that was unfortunately not yet possible. A major US objective in the Uruguay Round was to strengthen the GATT as an institution and to extend its jurisidiction, so that it could address more disputes. Until that occurred, the United States had to handle bilaterally unfair trade practices in areas not covered by GATT rules. The Act could not be called protectionist, as it erected no barriers to trade; rather, it guaranteed that the United States would continue to take an aggressive stance against unfair trade practices of other countries. He urged all contracting parties to wait and see how the Act was actually applied, as his authorities had assured that this would be done responsibly. The Act, should be analysed as passed, rather than as it had appeared prior to passage.

The Council took note of the statements.

17. European Economic Community - Regulation on imports of parts and components
- Recourse to Article XXIII:1 by Japan (L/6381)

The representative of Japan, speaking under "Other Business", said that his delegation had already informed the Council in L/6381 of his Government's request for consultations with the European Communities concerning the Council Regulation 1761/87 of 22 June 1987 and its applications to some products assembled or produced by Japanese-related companies in the European Economic Community. He informed the Council that Article XXIII:1 consultations had taken place on 16 September, but that no mutually satisfactory solution had been reached. Japan reserved all its GATT rights with respect to any further step in the dispute settlement procedures.

The representative of Hong Kong said that his delegation noted that the Regulation was the subject of Article XXIII:1 action and that it was also being examined in the Committee on Anti-Dumping Practices. His delegation was also concerned that the Regulation provided for the extension of anti-dumping duties under circumstances which did not accord with the General Agreement or the Anti-Dumping Code.[11] For example, the anti-circumvention provisions contravened the basic requirement that there had to be a determination of dumping, material injury and a causal link

[11] Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade (BISD 26S/171).

between dumped imports and injury prior to the imposition of anti-dumping duty. Hong Kong would continue to watch developments closely and reserved all its GATT rights.

The Council took note of the statements.

18. Provisional Accession of El Salvador
- Memorandum on El Salvador's foreign trade régime (L/6391)

The representative of El Salvador, speaking as an observer and under "Other Business", said that on 6 September 1988, his country had submitted the Memorandum on its foreign trade régime in connection with its application for accession to GATT. The Memorandum referred to provisional accession because El Salvador's request had been submitted hurriedly to comply with the deadline stipulated in the Punta del Este Declaration. In fact, his Government was interested in full accession; this was being considered and would be communicated to the Secretariat at an opportune time. Accordingly, L/6391 should be considered in the perspective that El Salvador was interested in active participation in the Uruguay Round and all other GATT fora. He noted that the Memorandum referred to certain trade measures which were aimed at stimulating development and should be examined under the appropriate GATT provisions relating to developing countries. El Salvador hoped that preferential treatment would be extended in its case and that Part IV of GATT would be translated into fact.

The Council took note of the statement.

19. European Economic Community - Payments and subsidies paid to processors and producers of oilseeds and related animal-feed proteins
- Recourse to Article XXIII:2 by the United States (L/6328)

The representative of the United States, speaking under "Other Business", said his delegation was deeply concerned that three months after the approval of its request for a panel, no progress appeared to have been made on its composition. His delegation was disappointed that the Community continued to frustrate the dispute settlement process, and had delayed progress by arguing for a five-person panel and for special terms of reference. Quick access to the GATT dispute settlement process was a fundamental right of all contracting parties and one that should be given a high priority if GATT were to continue to perform a useful and credible function.

The representative of the European Communities said that, in view of the United States' allegation against the Community, the debate had been lifted into the realm of surrealism given the discussion at the present meeting about delays in matters of dispute settlement. He said that a meeting would be held on 26 September in response to an agreed procedure and in an area where one was acting under the Director-General's overall good offices and jurisdiction. Both sides would give their considered reflexion at that meeting on the details of the Panel's composition. The

Community did not consider that this in itself constituted a delay; there were issues which had been discussed, and nothing on the Community's part could be interpreted as procrastination or footdragging. The Community was ready to proceed in the usual way under the Secretariat's guidance in this matter in preparation for the meeting.

The Council took note of the statements.

20. Arrangements for the Forty-Fourth Session
- Consultations by the Chairman of the CONTRACTING PARTIES

Mr. Oxley, Chairman of the CONTRACTING PARTIES, speaking under "Other Business", recalled that one of the items on the Agenda of the CONTRACTING PARTIES' Forty-Fourth Session would be "Election of Officers" as follows: Chairman and Vice-Chairmen of the CONTRACTING PARTIES, Chairman of the Council and Chairman of the Committee on Trade and Development. He said that he was beginning his consultations on this subject and wanted to advise delegations that he would be contacting them concerning prospective candidates, so that through a process of consensus, this matter could hopefully be settled prior to the Session.

The representative of Jamaica said that his delegation had in the past commented on the need for transparency in the consultation process. He had taken note of the preceding statement and hoped that there could be more transparency than in the past, so that delegations could be informed about who was being proposed and by whom.

The Council took note of the statements.

21. Appointment of presiding officers of standing bodies
- Consultations by the Council Chairman

The Chairman, speaking under "Other Business", recalled that at the regular Council meeting on 15-16 June (C/M/222, item no. 13), it had been suggested that the Secretariat prepare some information which could serve as the basis for informal consultations on how to regularize the process of appointing the presiding officers of standing bodies. He informed the Council that on the basis of that information, he had conducted two informal consultations on this subject. The process was not yet completed, and he invited any interested delegations which had not yet done so to inform the Secretariat of their wish to participate in this work.

The Council took note of this information.

22. Korea - Restrictions on imports of beef
(a) Recourse to Article XXIII:2 by Australia
- Panel composition
(b) Recourse to Article XXIII:2 by the United States
- Panel composition

The Chairman, speaking under "Other Business", recalled that at its meeting in May, the Council had agreed to establish two Panels to examine the complaints by the United States (L/6316) and Australia (L/6332), and had authorized him, in consultation with the parties concerned, to designate their Chairmen and members.

He announced that the composition of both panels would be the same, as follows:

Chairman: Mr. Tai Soo Chew

Members: Ms. Yvonne Choi
Mr. Piotr Freyberg

The Council took note of this information.