GENERAL AGREEMENT ON

TARIFFS AND TRADE

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MINUTES OF MEETING

Held in the Centre William Rappard
on 20 December 1988

Chairman: Mr. John M. Weekes (Canada)


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1. Accession of El Salvador (L/6440)

The Chairman recalled that in May 1987, the Council had established a working party to examine El Savador's application for provisional accession. Contracting parties had recently received a communication from El Salvador in which that Government now asked for full accession (L/6440).

The representative of El Salvador, speaking as an observer, recalled that while his Government had applied for provisional accession in order to be able to participate in the Uruguay Round, its real intention was to seek full accession to GATT. On 30 November, a note to this effect had been presented (L/6440). In September 1988, El Salvador had circulated, as an official GATT document, a Memorandum on its foreign trade régime along with

annexes containing all of El Salvador's relevant legislation (L/6391). His country hoped that the accession process could be started, and would continue to participate in the Uruguay Round during this process.

The Chairman proposed that the Council take note of the statement and agree to change the terms of reference of the Working Party previously established to examine El Salvador's earlier request for provisional accession, as follows:

Modified terms of reference

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

The Council so agreed.

He suggested that the Council agree also that membership in the Working Party continue to be open to all contracting parties indicating their wish to serve on the Working Party, and further agree that Mr. Emilio Artacho (Spain) continue to serve as Chairman of the Working Party.

The Council so agreed.

2. Pakistan - Renegotiation of Schedule
- Request for extension of Waiver (C/W/573/Rev.1, L/6443)

The Chairman drew attention to the request by Pakistan in L/6443 for a further extension of its waiver from the provisions of Article II of the General Agreement, and to the draft Decision in document C/W/573, which had been circulated to facilitate consideration of this item by the Council.

The representative of Pakistan recalled that in 1977, his Government had found it necessary to revise Pakistan's Customs Tariff. This tariff revision had been undertaken for purely fiscal reasons and had not been intended, or taken, as a trade measure. In view of that, the CONTRACTING PARTIES had decided to waive the application of the provisions of Article II of the General Agreement with a view to enabling the Government of Pakistan to maintain in force the rates of duty provided in its revised Customs Tariff pending the completion of negotiations for modification or withdrawal of concessions in its GATT Schedule (BISD 24S/15). Extensions of this waiver had been subsequently granted by the CONTRACTING PARTIES. The most recent extension, to 31 December 1988, had been granted considering that Pakistan might present a new Schedule of Concessions in the Harmonized System (HS) Nomenclature, which took into account the negotiations conducted in terms of the waiver, and that the proposed Schedule would be finalized after negotiations and consultations with

interested parties (BISD 34S/34). As already indicated in the present request, Pakistan had now prepared its new draft Schedule of Concessions in the Harmonized System. This new draft Schedule took into account the negotiations and consultations conducted in terms of the present waiver and had been provided to the interested parties. Pakistan was in the process of consulting with its trading partners for finalization of the Schedule according to the requirements of the established GATT procedures. This process would, understandably, take some time before the Schedule was finalized. Pakistan therefore requested that the CONTRACTING PARTIES agree to extend the time limit of the present waiver until 31 December 1989, for the consultations envisaged to be conducted in a proper and structured timeframe.

The representative of the United States said that Pakistan's request for extension of its waiver had become an annual affair, although the present one was different because the renegotiation of the Schedule was tied in with the Harmonized System exercise. He noted that it had not been abnormal for developing countries to request waivers to allow completion of the HS process, but that in such cases, the waivers had been granted for a period of six months. It was the US view that the same treatment be given to Pakistan. Thus, his delegation would recommend, although reluctantly supporting it, a six-month extension of Pakistan's waiver in line with the waivers provided to other developing countries.

The representative of Pakistan expressed surprise at the United States' response, in particular since Pakistan had carried out both extensive and substantive negotiations with that country. The new draft Schedule which took account of those negotiations had been provided to the United States. The case at hand was not merely a regular case of transposing an existing GATT Schedule to the Harmonized System, but one of presenting a new Schedule. Pakistan's 1977 waiver had been extended successively up to the present year. In the current case, Pakistan was presenting a new HS Schedule in order to avoid the duplication which would arise from presenting one in the CCCN and then once more in the HS nomenclature. Thus the situation constituted a different case altogether.

The representative of the United States regretted putting Pakistan's representative in a difficult situation as it was clearly not his but his authorities' fault if each year the plea had to be made again. For that reason, however, the United States found it useful for these authorities to be forced to come back to the Council for another request again in six months. The United States wished to be amenable to Pakistan's needs, but only for six months.

The Chairman noted that there seemed to be no disagreement on the principle of the request, but only as to the time period. He asked whether Pakistan could accept six months.

The representative of Pakistan said that his delegation had submitted the request on the understanding that a one-year extension would be granted. However, if the Council wished to grant only six months, he would report this to his authorities.

The Chairman suggested that the Council take note of the statements, approve the text of the revised draft Decision extending the waiver until 30 June 1989 (C/W/573/Rev.1) and recommend its adoption by the CONTRACTING PARTIES by postal ballot.

The Council so agreed.

3. United States - Import restrictions on certain products from Brazil - Recourse to Article XXIII:2 by Brazil (L/6386 and Add.1)

The representative of Brazil referred to the communications in L/6386 and Add.1 concerning the imposition of unilateral and restrictive measures by the United States against certain products imported from Brazil. Upon the announcement of the decision to impose such restrictions, Brazil had requested Article XXIII:1 consultations with the United States because concrete harm was already being inflicted on Brazil's trade interests. These requests, however, had been turned down by the United States on the grounds that no measures had yet been adopted against imports from Brazil. On 20 October 1988, the United States had increased import duties to a prohibitive 100 per cent ad valorem on non-benzenoid drugs, paper products and consumer electronics goods imported from Brazil. US statistics indicated that these items had generated exports from Brazil to the United States averaging approximately US$39 million in each of the preceding three years. Brazilian statistics, however, showed that the value of the sales of these items was much higher. In addition, due to substantial investment in recent years, these products had a significant potential for future export sales, which had now been lost. The US action violated Articles I and II of the General Agreement. Article II required contracting parties to limit their tariffs on particular goods to a specified maximum. All of the products on which the United States had increased the ad valorem duties to 100 per cent were bound at rates ranging from zero to five per cent. The United States had not invoked any GATT provision to justify this action. Its decision to assess increased duties against Brazil also violated Article I: by increasing duties on Brazilian products but not on products from other contracting parties, the United States had treated products from Brazil less favourably than like products from the latter, in clear violation of Article I. The unilateral US action constituted a prima facie nullification and impairment of the benefits accruing to Brazil under Articles I and II.

Following the imposition of increased tariffs on Brazilian exports, the United States had finally agreed to consultations, which had been held on 29 November 1988. Brazil had then reiterated its concern, already

expressed to the Council, that its legitimate rights had been nullified and impaired by the discriminatory US action. The United States, however, had made no attempt to justify such an action under the General Agreement, nor had it shown any sign of willingness to remove the restrictive measures against Brazil. Thus Brazil considered that the November consultation had not resulted in a satisfactory adjustment. Consequently, Brazil urged the CONTRACTING PARTIES to establish a panel to examine this matter. This problem did not affect Brazil alone, but challenged the very essence of the multilateral trading system. It was the Council's common responsibility not to allow unilateral actions to undermine the foundations of the trading system, which all contracting parties were committed to preserve and improve.

The representative of the United States said that, unfortunately, it had not been possible at the consultations with Brazil on 29 November to resolve the issue. Brazil now requested dispute settlement to deal with the consequences of its trade-restricting actions in the pharmaceutical sector. The US action to increase tariffs on Brazilian products had not been taken for protectionist purposes but rather in response to Brazil's refusal to address a trade issue of great importance to the United States, namely the lack of adequate intellectual property protection for pharmaceuticals and fine chemicals. Brazil, however, had stated that one of the purposes of its policy was to protect its domestic pharmaceutical industry. Brazil's actions in this matter had severely damaged US trading interests. After more than two years of fruitless discussion with Brazil, it was no longer possible to ignore the damage to US trade; some response was necessary. As a consequence, the US President had ordered that tariffs on certain exports from Brazil, with a trade coverage averaging US$39 million over the preceding three years, be raised to 100 per cent ad valorem. The United States estimated that US pharmaceutical and fine chemical producers had suffered total annual losses of at least US$39 million as a result of Brazil's refusal to protect the legitimate intellectual property rights on these goods.

The United States deeply regretted that it had been necessary to take this step and would have greatly preferred a trade-liberalizing rather than trade-restricting result from two years of discussions. The United States firmly believed that retaliation should be an action of last resort in any trade dispute, and that had been the case in the present dispute. It had made very effort to resolve this issue. With no other avenue of redress available, and with no hope of resolving the issue without some action on its part, the United States was left with no alternative but to take retaliatory action in order to defend its legitimate economic interests. The United States hoped that it would be possible to lift these sanctions in the near future, and was prepared to do so as soon as Brazil responded fully to its concerns. This situation argued forcefully for rapid progress to deal within the GATT system with the trade effects of shortcomings in the protection of intellectual property rights. The issue

would certainly not be resolved by ignoring the underlying cause of the confrontation -- the damages suffered due to lack of agreed standards in the area of intellectual property -- and by focusing only on the resulting retaliatory response. The United States was studying Brazil's request and an appropriate response to it in light of the issues just raised. It was not prepared to respond to that request at the present Council meeting, but expected to be able to respond more fully at the next Council meeting.

The representatives of Argentina, Canada, Colombia, Nigeria, the European Communities, Mexico, Chile, Hong Kong, Uruguay, Yugoslavia, Singapore, Australia, India, Egypt, Peru, Jamaica, Kuwait, Indonesia, Thailand, Malaysia, New Zealand, Norway on behalf of the Nordic countries and Hungary supported Brazil's request for the establishment of a panel to examine this matter.

The representatives of Switzerland, Singapore and Malaysia reserved their respective countries' rights to make a submission to a panel should one be established.

The representative of Argentina said that the US measures were not justified under Articles I and II. He expressed concern that the normal channel for seeking redress for impairment or nullification of a contracting party's rights -- Articles XXII and XXIII -- had not been pursued by the United States. The unilateral measures it had taken in retaliation had not been authorized by the CONTRACTING PARTIES, and there was no legal basis for maintaining them. The measures clearly violated the General Agreement. He emphasized the importance of the GATT rules to prevent the "law of the jungle" from prevailing in solving disputes. With regard to the preservation of intellectual property rights, this was the subject of specific negotiations in the Uruguay Round. It was a complex matter which deserved adequate in-depth study with a view to achieving a satisfactory solution by consensus. In this respect, the US action did not contribute to a proper climate for solving the problem in the context of GATT.

The representative of Canada expressed his country's concerns with the recourse by any contracting party to unilateral actions which circumvented the GATT dispute settlement procedures and with the possible destabilizing effects of such actions on third countries' trade.

The representative of Colombia said that his delegation fully agreed with Canada and Argentina.

The representative of Nigeria said that his delegation had been following with keen interest the escalation of unilateral measures and the threat of illegal action against some contracting parties. That was unfortunately a violation of clear GATT obligations and commitments. The US measures against Brazil fell into that category and constituted a

violation of the standstill commitment in the Uruguay Round not to resort to measures in such a manner as to improve one party's negotiating position. Efforts had been made by Brazil to solve the issue through Article XXIII consultations, but in the absence of a solution, Brazil had been left with no other choice than to request a panel.

The representative of the European Communities said that on numerous past occasions, his delegation had regretted the absence of sufficient legislation in Brazil to protect intellectual property rights. There were indeed important Community interests at stake; the Community, too, was concerned that this situation might lead to its own interests being compromised in this area. The Community continued to believe that this case demonstrated the urgent need for international rules in the area of intellectual property rights. Brazil's situation, however, could not justify the use of measures that cut across GATT rules. The US action had been taken unilaterally, without regard to either Articles XXII or XXIII, by which the United States was expected to pass in order to be authorized to withdraw concessions. Moreover, the US action was discriminatory and constituted a prima facie nullification of rights accruing to contracting parties under Articles I and II. This case was of particular concern to the Community, as it had noted in an earlier Council discussion regarding the 1988 US Omnibus Trade Act. For all these reasons, the Community pressed for a review of this situation, and supported the views expressed by Brazil and the establishment of a panel to identify the issues involved.

The representative of Mexico reiterated his country's concern with unilateral measures and in particular the US measures against Brazil's exports. It was important that all contracting parties' rights be established on a contractual basis and that contracting parties be insured that this was so. That was one of the reasons for Mexico's accession to GATT, namely that it expected to find a dispute settlement mechanism which would prevent the adoption of this type of unilateral measure.

The representative of Switzerland said that in accordance with its constant policy in this respect, Switzerland did not oppose the establishment of a panel. It regretted any recourse to unilateral or bilateral measures, irrespective of the party taking the measure. The absence of precise multilateral rules for the protection of intellectual property rights, whether that protection was excessive, insufficent or inexistent, increased the risk that contracting parties might adopt unilateral or bilateral measures in order to ensure that rights holders be adequately protected. Therefore, it was urgent to intensify the Uruguay Round negotiations in the area of intellectual property rights. Only a satisfactory conclusion of such negotiations would reduce the risk of such measures being taken.

The representative of Chile expressed her delegation's general concern with restrictive measures and in particular with retaliatory measures taken without prior GATT authorization. Chile viewed a panel as a last resort

after consultations had been exhausted without producing a satisfactory solution. Such was the present case.

The representative of Hong Kong noted that the United States' justification for its action was disputed by Brazil; hence, the latter's request for a panel. Firstly, his delegation strongly supported the right of any contracting party to a panel. This was indeed one of the "on hold" results achieved in Montreal to which his delegation hoped CONTRACTING PARTIES would give approval in April 1989. Secondly, Hong Kong also shared the concerns of Canada and others about the destabilizing effects of such unilateral measures. His delegation noted that the United States would respond positively to Brazil's request at the next Council meeting.

The representative of Uruguay said that her delegation fully supported the statements by Argentina, Canada, Colombia, Nigeria, the European Communities, Mexico, Switzerland, Chile and Hong Kong, as well as that of Brazil.

The representative of Yugoslavia said that her delegation supported Brazil's request because the United States' unilateral measures could not be justified under GATT, violated the standstill commitment, affected the exports of a highly indebted developing country and risked affecting the delicate Uruguay Round negotiations on trade-related aspects of intellectual property rights. Should the measures not be removed, which was the preferred solution, her delegation supported the establishment of a panel to examine this matter.

The representative of Singapore expressed her delegation's concern with the use of unilateral measures to settle a bilateral issue. Her delegation's support for Brazil's request was in line with Singapore's position that every contracting party was entitled to a panel.

The representative of India said that Brazil's present and earlier presentations had made clear the nullification of its rights on account of the US unilateral and discriminatory action. The US contention that this action had been taken as a last resort to defend its genuine trade interests had to be examined in the context of the General Agreement. A panel represented the only logical step to examine this matter. India fully supported the request for the establishment of a panel at the present meeting, in the belief that the GATT and the dispute settlement process would be strengthened.

The representative of Egypt said that the previous statements had made clear that the case -- not a common one in GATT -- was well established. Egypt had two concerns with it: one was the clear absence of GATT justification for the US measures, and the other, the fact that the US action not only affected the ongoing Uruguay Round negotiations but was

meant to influence them. Therefore, a panel should be established as expeditiously as possible in order to clarify the legal aspects of this case.

The representative of Peru said that his delegation joined all those which had supported Brazil's request, and hoped the United States would respond positively.

The representative of Tanzania said that his delegation would have preferred not to have seen the US measure taken and would have liked to see a settlement through consultations. In the absence of both, Brazil had no option other than to request a panel. The US explanation had raised many questions, e.g., how could one pursue the attainment of an objective for which there was no provision in GATT and in so doing, use measures which directly violated GATT Articles at the same time, thus causing considerable anxiety on the part of contracting parties, such as Tanzania, which were trying to see whether there was any sense in the GATT system at all. With Egypt's argument in mind, his delegation shared the concern that if any effort was ever made to use the present Council meeting to influence the Uruguay Round substantively, the outcome might be negative.

The representative of Indonesia expressed his delegation's concern for the destabilizing effects of unilateral measures.

The representative of Thailand said that the principle of the right of any contracting party to a panel should not be rejected. His delegation was also greatly concerned with the use of unilateral measures by the United States.

The representative of Malaysia said that his delegation had followed the issue closely, hoping that the two parties would resolve the problem and that the United States would not take unilateral action even as a last resort. These measures would definitely serve the US interests alone, and not those of the multilateral system. Furthermore, he hoped that this matter would not negatively influence the current Uruguay Round negotiations.

The representative of New Zealand said that his delegation supported Brazil's right to a panel as a matter of principle. As a small country with large trading interests, New Zealand had supported moves to expand and improve GATT dispute settlement procedures. The United States' denial of the panel requested by Brazil helped neither to promote nor to expand these procedures, but rather was an unfortunate step backward.

The representative of Norway, speaking on behalf of the Nordic countries, said that without taking a position on the substance of the matter, the Nordic countries, in line with their long-held view of principle, supported Brazil's request for a panel.

The representative of Brazil thanked all the contracting parties which had supported its request, thus reinforcing the defence of the multilateral trading system against what was no longer a threat but had become the reality of unilateralism. Instead of justifying its unilateral action on the legal grounds of the General Agreement, the United States had attempted to divert attention from the violation of the General Agreement by the unilateral measures, to the alleged cause of that violation -- Brazil's policy on pharmaceutical products. There was little doubt that the reason for this continued failure lay in the undisguisable fact that the United States had no case in juridical, moral or political terms. Short of arguments to defend the undefendable, it was left with the resort to diversion manoeuvres and tactics aimed at delaying presentation of the problem to a panel.

Once more, an attempt had been made to describe Brazil's pharmaceuticals policy in an oversimplistic and distorted way. Contrary to US allegations, that policy was fully compatible with the positive international law applicable in this case, namely the Paris Convention. It was in no way discriminatory -- in contrast to the US measure against Brazil -- nor arbitrary or recent, as its adoption dated back to 1945. 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 United States 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. Furthermore, not a single substantial case had been raised against Brazil for patent infringement for pharmaceutical products. 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.

At stake in this case was the illegal and discriminatory action by the United States taken against Brazil. An unprecedented number of representatives had shown at the present Council meeting that they shared Brazil's interest in having this matter submitted to a panel. There was no useful purpose in unduly extending the present phase of this dispute, which only contributed to the serious harm already incurred by Brazil's legitimate trading interests. In the course of the recent debate and negotiation of new rules for dispute settlement, the United States had been the most insistent advocate of a proposal for a limited timeframe of 15 months for dispute settlement procedures. Brazil had supported that proposal. Since the measure had been announced, four months had elapsed and two months since implementation.

For all these reasons, and taking into account the damage suffered by Brazil's trade interests, his delegation insisted on the immediate establishment of a panel and urged the United States to agree to this at the present meeting.

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

4. 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 recalled that at its regular meeting on 19-20 October, the Council had considered this item. It was on the agenda of the present meeting at the request of the European Communities.

The representative of the European Communities recalled that on 12 September 1988, the Community had formally requested the establishment of a panel to examine this matter, as set out in L/6393. The Council had twice been seized with this problem and had been unable to establish a panel. The Community hoped that on this third try, the United States would not oppose a decision by the Council to this effect.

The representative of the United States said that the Community still had not explained either to the United States or to the Council the legal basis for its claim. Its complaint remained incomplete, despite repeated requests since September that it be revised to identify adequately the products about which the Community was complaining and the basis of its complaint. The explanation for this failure was clear -- the case was not being brought on its own merits. The Community had been explicit that it had raised this issue as a response to the United States' request (L/6328) for a panel on the Community's GATT-inconsistent subsidies on oilseeds and related animal feed proteins.

The representative of Canada said that his delegation would welcome more precision from the Community on its complaint; however, Canada supported the Community's right to have its complaint heard by a panel and thus supported the establishment of a panel at the present meeting.

The representative of the European Communities said that this sort of "dialogue of the deaf" could be carried from one Council meeting to the next. The Community had made one thing very clear -- its position regarding product coverage. It had, at the September Council meeting, made it clear that its request was based essentially on sugar; the Headnote to the schedule of tariff concessions referred to in L/6393 covered sugar.

Furthermore, at the 19-20 October regular Council meeting, the Community had explained the nature of its request. On 14 October 1988, the Community had sent a letter to the United States setting out its thinking on this matter, with a copy to the Director-General. Since it seemed that the US delegation had not properly read or understood this letter, he would read it out to the Council, so that the Community would not be criticised for not having informed the Council sufficiently of its way of thinking. Part of the letter read as follows: "... The Community would like to specify that the matter referred to the CONTRACTING PARTIES (L/6393) concerns the GATT consistency and implications of the application of measures taken under the 'Waiver' and the so-called headnote. However, the Community considers that the application made in the sugar sector is the most evident example of impairment or nullification of benefits or rights accruing to it under the GATT. Therefore, it requests, without prejudging any examination, finding or recommendation on the matter the Panel may deem appropriate, the panel to focus its attention on measures applied to sugar and sugar-containing products." The United States was now linking progress on the matter at hand with the composition of a panel established -- despite tremendous political differences within the Community -- in June. The Community had made every effort to enable that panel to begin its work effectively. It had made concessions regarding the number of panelists, accepting three instead of five, and had already agreed with the United States on two panelists, leaving only the chairman still to be found; however, none of the Secretariat's proposals had been acceptable either to the United States or to the Community. His delegation had also made considerable efforts by reducing the text and content of the terms of reference to the strictest minimum requirements. Furthermore, six weeks earlier, the Community had made a proposal which could have satisfied the United States' requirements. To the present day, no answer had been forthcoming. Thus, it was not the Community which had stood in the way of a panel on the oilseeds issue. He reiterated the Community's statement at the October Council that it had a credit of disappointment; that credit had now been doubled.

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

5. United States - Increase in the rates of duty on certain products of the European Economic Community (Presidential Proclamation No. 5759 of 24 December 1987)
- Communication from the European Communities (L/6438)

The representative of the European Communities said that the Council was once again seized with a major problem, namely, action by the United States against another contracting party under conditions and terms which had nothing to do with the General Agreement. On 24 December 1987 the United States, under Presidential Proclamation No. 5759, had determined --

without regard to GATT procedures under Articles XXII and XXIII governing the making of such a determination -- that the Community's hormone directive was unreasonable, unjustifiable and constituted a disguised restriction on international trade. As a consequence, an automatic procedure had been put in motion leading to substantial tariff increases in a series of products, set out in L/6348, of particular importance to the Community. The Community felt compelled to bring this case to the Council in much the same way as another contracting party had felt compelled to take similar action at the present meeting because the United States, in acting on the basis of its own domestic legislation, was not only undermining the multilateral trading system, but was seriously affecting the trade interests, and nullifying the rights, of one of its trading partners. In the long history of this problem, the Community had sought to minimize the trade damage resulting from this case, but it could not be silent in the face of an action which was mandatory and in which there was no discretionary element. The Proclamation required that things happen. It was not up to the United States Trade Representative to weigh the pros and cons. The decision had effectively been taken that on the products in question, there would be an increase in the duty up to 100 per cent ad valorem.

In the face of this new affront to the multilateral trading system, the Community had no option but to bring the complaint to the Council, having already had occasion at a recent Council meeting to express the seriousness with which it regarded the further reinforcing by the United States of its internal legislation in a manner which would remove it still further from the provisions of the General Agreement, and having seen the instruments which the United States could use and was now using against the Community. That was the sense of the communication in L/6438. The Community believed not only that its rights under Article II were being impaired and that it was being singled out for discriminatory treatment in breach of Article I, but that the procedures required under Articles XXII and XXIII had been ignored. Against this background, the Community was asking the Council to examine carefully the issues involved in this particular case, and believed that the Council as such should take a view on a situation which was serious, not only for one contracting party but, as had already been demonstrated at the present meeting, in its ramifications and implications for the multilateral trading system as a whole. The Community asked that the Council, having examined the matter, should seek to make a ruling on the legal issues involved in this case and to come forward with a recommendation on the appropriate action that might be taken to remedy the situation.

The representative of the United States urged the Council to understand the need to get the record straight on this matter. This dispute had arisen as the result of a unilateral decision by the Community simply to prohibit US$120 million in US exports per year. This wholesale disruption of traditional trade flows had been announced on the basis of health and science but, in fact, contradicted the weight of scientific evidence. A committee of the FAO Codex Alimentarius, the principal

international standards-making body in the area of food safety, and other veterinary specialists had rejected the Community's view that approved hormones, when used under controlled conditions as in the United States, were harmful. Thus the Community directive went against the overwhelming weight of scientific evidence on this subject. The United States had noted that even senior Community officials had recently admitted that the decision to implement the import ban was based on political, not scientific grounds. This was a serious matter, both because of the trade involved and because of the attention focused on this issue by the world's press. This was why he was weighing his words with great care.

The United States had repeatedly proposed that the Community's import ban be subject to impartial, scientific scrutiny under the Standards Code[1]. The Community had repeatedly refused. In this context, it was ironic that the Community was complaining of "unilateral action" by the United States. It appeared that the Community's refusal to allow this issue to be brought before the Standards Committee meant that it felt the Code was useless. It was the Community's unilateral action which had precipitated this dispute; and its unilateral refusal to accept dispute settlement had forced the United States to respond. The United States had deferred its response for as long as the Community had deferred the implementation of its ban. Now, having blocked dispute settlement in the Committee for eighteen months, the Community was presenting the Council with a wholly unprecedented request for an instantaneous legal finding by the Council. There was no basis for this request, and his delegation opposed it. The United States continued to believe that the Standards Committee was the appropriate forum for resolving this dispute, and remained ready and willing to pursue the matter there or under any other appropriate GATT process as long as the Community continued to defer implementation of its ban. The United States had not wished for any confrontation in this case, and had done everything in its power to avoid it. The Community had left it no other choice, and it was now up to the Community to recognize its responsibilities to the trading system and to take the constructive steps necessary to resolve this issue in an appropriate multilateral forum. His delegation hoped that the Community would see fit to do so.

The representative of Canada said that his delegation considered the Community's proposed ban to be inconsistent with its GATT obligations as it constituted an excessive, and in Canada's view, unjustifiable approach to the problem of ensuring consumers hormone residue-free meat. His Government considered that growth hormones currently approved for use in beef production, if used properly, were completely safe. Scientific evidence, including a working group established by the Community, supported this view. Canada had concerns as to the Community's ability to control

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

and monitor effectively the implementation and enforcement of the ban within the member States in a manner which would guarantee national treatment. The Community's hormone directive had been raised in a number of GATT fora, notably in the Surveillance Body on standstill and rollback, but also in the Standards Committee. Canada had a direct trade interest in the measure and had further indicated its concern insofar as the ban raised several important issues of principle concerning application of technical standards in the agricultural area. From a trade policy perspective, Canada considered that the ban would be inconsistent with both GATT provisions and MTN Codes. The ban went well beyond what was necessary to remedy the specific situation, and in so doing, created an unnecessary barrier to trade. While Canada recognized that this issue had been a source of considerable frustration to the Community's trading partners, it regretted that the United States, in its bilateral negotiations with the Community on this matter, had indicated its intention to respond to the ban's implementation with another unilateral action in the area of tariff rate increases on certain products from the Community. Canada recommended that the United States review this recourse to unilateral action, and urged the Community to reassess its course of action and to reconsider its planned implementation of the measure.

The representative of the European Communities said that the issue under consideration was the US Proclamation and the unilateral action flowing from it. The Community was aware that there were differences of view regarding the Community's hormone directive. However, the Community had the right to listen to its consumers; its Parliamentarians had the right to take the view that they did not want to eat meat containing hormones, and Article XX provided that right. This issue could not be resolved in the Standards Committee. It had been debated in many ways, and different formulae had been sought, without results. It was for this reason that the Community had no choice but to bring this issue to the Council. He repeated that the Community's concern was over a measure taken by the United States in relation to a Community directive which had not been judged good, bad, GATT-consistent or GATT-inconsistent; the measure had simply been taken because the United States considered that its interests had been compromised..

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

6. Canada - Quantitative restrictions on imports of ice cream and yoghurt - Recourse to Article XXIII:2 by the United States (L/6445)

The Chairman drew attention to document L/6445 containing a request by the United States for the establishment of a panel under Article XXIII:2 to examine its complaint against Canada.

The representative of the United States said that early in 1988, Canada had introduced restrictions on ice cream and yoghurt in its "Export and Import Permits Act". A permit was required as a condition for importation of these products. However, Canada had not announced a permissible level of importation and was granting permits only on the basis of importers' past performance. The United States' understanding was that Canada would impose similar restrictions in 1989. US exporters of ice cream and yoghurt had recently developed new products which they were actively marketing in the United States and in other countries. Their efforts were totally blocked by Canada's import restrictions which, in the US view, were inconsistent with Article XI. Moreover, the current restrictions had not been implemented consistently with the requirements of notice and transparency. The United States had held consultations under Article XXII with Canada on this issue, but had not been able to settle the matter bilaterally. Therefore, it requested that a panel be established to review the matter.

The representative of Canada said that Canada considered its action to be fully in accordance with Article XI.2(c)(i) of the General Agreement. Controls on dairy imports were necessary for the enforcement of Canada's measures under the "Agriculture Stabilization Act" and the "Canadian Dairy Commission Act", which operated to restrict quantities of industrial milk which could be produced in Canada. Canada's dairy supply management program would be ineffective without import controls. Canada had attempted to resolve this dispute with the United States in informal and formal consultations, and regretted that a mutually agreeable solution could not be reached. Canada remained willing to seek a negotiated resolution of the issue, but would not stand in the way of the establishment of a panel.

The representatives of New Zealand, Australia, Japan and the European Communities reserved their respective rights to make a submission to the panel.

The representative of New Zealand said that the addition of ice cream, yoghurt and certain other primary and processed products to Canada's import control list was a matter that had been the subject of bilateral discussion between New Zealand and Canada, notably in March and July 1988. New Zealand had a small trade in the items involved, but remained particularly concerned that the potential for expanding trade in these products had been limited by their inclusion in the import control list. Nor did it consider that the restrictions on these products were consistent with the provisions of Article XI.

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

"To examine, in the light of the relevant GATT provisions, the matter referred to the CONTRACTING PARTIES by the United States in document

L/6445 and to make such findings as will assist the CONTRACTING PARTIES in making the recommendations or in giving the rulings provided for in Article XXIII:2."

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

7. United States - Import prohibition on ice cream from Canada - Recourse to Article XXIII:1 by Canada (L/6444)

The Chairman drew attention to document L/6444 containing a request by Canada for consultations with the United States under Article XXIII:1 regarding Canada's complaint against that country.

The representative of Canada recalled that in 1970, the United States had established a quota on imports of ice cream under the authority of the US Agricultural Adjustment Act. This quota had been allocated to only five countries. Despite the history of exports of ice cream to the United States in the period preceding the imposition of the quota, no allocation had been provided to Canada. Since 1970, both the level and country allocation had remained unchanged. Canada considered that the circumstances which had prevailed at the time the quota had been established had changed, such as to no longer require the restriction. To Canada's knowledge, the quota had been fully utilized only once, and recently the utilization rate had been on the order of two per cent. Canada further considered that the United States had failed to live up to its obligations under Article XIII of the General Agreement, as the US quota allocation prohibited imports of ice cream from Canada. The 1955 Waiver (BISD 3S/32) did not exempt the United States from obligations under Article XIII. In October, pursuant to the provisions of that Waiver, Canada had requested that the United States undertake a review to see whether circumstances had changed so as to no longer require the quota. Canada had also requested that, pending the outcome of the review, the United States change the administration of the quota to a global allocation on a first-come first-served basis. The United States had advised on 16 December that it would undertake a review as required by the conditions of the Waiver. Canada fully expected this review to proceed quickly. However, the United States refused to remove the discriminatory prohibition pending the results of the review. Canada remained of the view that the administration of the quota was in violation of the United States' GATT obligations under Article XIII, and therefore had requested Article XXIII:1 consultations. Should it not be possible to reach a satisfactory resolution of this problem expeditiously, Canada reserved the right to request the establishment of a panel under Article XXIII:2.

The representative of the United States said that his country was prepared to enter into additional consultations under Article XXIII:1 with Canada on this matter. He noted that following the Article XXII consultations and a subsequent request from the Government of Canada, the United States had initiated a review of the ice cream quota within the relevant US Government agency. That review was still underway.

The representative of the European Communities said this case was of concern to his delegation as it had wide ramifications going beyond the particular products concerned. The Community would want its interests properly taken into consideration.

The representative of New Zealand said that New Zealand's position was the same as the Community's on this matter.

The representative of Canada asked that this matter be considered at the next Council meeting.

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

8. Evolution of the GATT system
- Communication from Jamaica (C/W/571)

The Chairman drew attention to document C/W/571 containing a communication from Jamaica. At the request of that delegation, he had conducted informal consultations on this matter in November.

The representative of Jamaica said that Jamaica had proposed a discussion of the evolution of the GATT system in order to focus contracting parties' minds on the importance of the GATT and the need to maintain its credibility and increase its coherence. He recalled the significant expansion of GATT's work following the conclusion of the Tokyo Round. Consultations on the proposal in C/W/571 held in November had been inconclusive, but had allowed for a better understanding of it. The proposal was simply that the Chairmen of the CONTRACTING PARTIES, of the Council, of the Committee on Trade and Development, and of the Committee on Budget, Finance and Administration should consult on the main developments which had an impact on the GATT system, and should keep the Council regularly informed. Such a process would provide an institutional locus for a continuing exchange of views among the Chairmen of the four standing bodies, providing the opportunity for these officers and the Director-General to take a strategic and overall view of the evolution of the GATT system. Such consultations could address issues such as the provisional results of the Uruguay Round and their integration into the GATT system. Personnel and budgetary requirements of decisions taken or likely to be taken in the Uruguay Round as well as for regular GATT activities, could be

discussed and anticipated in a timely manner. This would not infringe on the responsibilities of the relevant GATT bodies. On the other hand, this strategic view might focus on the Uruguay Round and its implications, particularly in terms of personnel and financial resources for the GATT system. The scope of these consultations would not be confined to issues arising from the Round, but would allow contracting parties to anticipate and discuss developments likely to have an impact on the system and their fuller participation in the GATT, including decision-making. The intention of the proposal was not to establish a new group or an additional layer of bureaucracy, but merely to give some structure to consultations in order to ensure that all contracting parties were informed on a timely basis about current issues, and that all contracting parties could contribute their views on the evolution of the GATT system.

The representative of Tanzania said that, in his delegation's view, Jamaica's proposal had larger and broader implications in terms of improving the feeling of participation and understanding of the operation of the GATT system in circumstances that were rapidly evolving. He hoped that contracting parties might see benefit in encouraging some structuring of the consultative part of GATT's procedures in order to ensure a quick dissemination of concerns and developments and to enable a timely sharing of information among the respective GATT bodies mentioned in C/W/571. The proposal seemed to be an effort to increase a sense of participation among contracting parties and to give a more human expression to the term transparency.

The representative of Australia said his delegation had understood that informal consultations on this matter had indicated there was no consensus on it. In Australia's view, the virtues of the proposal in C/W/571 were not self-evident, and the matter should be subject to further consultations.

The representative of Colombia said that in his delegation's view, consultations on Jamaica's proposal had not reached any conclusion and should thus be continued, as the proposal gave rise to some doubts. It was not clear, for example, to what extent this special group would substitute for the Consultative Group of Eighteen (CG18), with the disadvantage of having a much smaller membership and thus even less transparency than in the CG18. Also, the very general mandate proposed for this new group might lead to a duplication of work already being done by the Negotiating Group on the Functioning of the GATT System (FOGS).

The representative of Japan said that his delegation had some doubts as to the necessity of Jamaica's proposal. Firstly, Japan saw little need to institutionalize meetings as proposed; the Chairmen of the main GATT bodies and the Director-General could exchange views on an ad hoc basis whenever it was deemed necessary. Also, the integration of the results of

the Uruguay Round into the GATT system was the responsibility of the Trade Negotiations Committee and the Council, and Japan was not convinced that an additional mechanism was needed for this purpose. The same applied to the question of personnel and financial resources required between 1989 and 1990; the Committee on Budget, Finance and Administration and the Council could sufficiently take care of this question, as they had done thus far.

The representative of Canada said that his delegation, too, had reservations on the proposal. Canada questioned the rationale for introducing a new mechanism, given that there were existing bodies to discuss these issues, including the Council. Would the proposal not mean asking the respective Chairmen to take on a new rôle which they had not traditionally assumed? And why would the proposal be restricted to the Chairmen mentioned and not include Chairmen of other GATT bodies?

The representative of Mexico said that his delegation had taken note of the doubts expressed by various participants in the consultations on this matter, and wanted to take part in any further such consultations.

The representative of Austria supported the statements by Japan, Canada and Australia.

The representative of Jamaica said that the proposal did not suggest the establishment of a new group nor an additional layer of bureaucracy; it aimed at a purely informal set of consultations which would be reported in the respective Committees and to the Council. This informal consultative process would not in any way replace the CG18, which had a quite different mandate. Nor could this work be done by the FOGS group, which had its own mandate within the Uruguay Round. The proposal would not institutionalize meetings of the respective Chairmen; it would simply have them meet as appropriate and perhaps more often than in the past. Only the CONTRACTING PARTIES could integrate into GATT the results of the Uruguay Round; the Chairmen themselves could not assume that responsibility. However, by exchanging ideas on the implications of results, potential difficulties might be foreseen and avoided. For example, the Budget Committee, which was of limited membership, had considered a number of issues which had not been fully aired to contracting parties, such as the Trade Policy Review Mechanism. The Chairmen of the relevant bodies might accord a wider and more timely dispersion of information which would be put to Committees for decision. Another example was the Director-General's proposal in the Committee on Trade and Development for a trust fund, which had implications for contracting parties other than the participants in that Committee. Thus, the proposal did not envisage any new rôles for the Chairmen but simply sought to make them more responsible to contracting parties.

The Council took note of the statements, authorized its Chairman to conduct further consultations on this matter, and agreed to revert to this matter at an appropriate time.

9. United States - Taxes on petroleum and certain imported substances - Follow-up on the Panel report (L/6175, C/W/540 and Add.1, Spec(88)48)

The Chairman recalled that at its regular meeting on 19-20 October 1988, the Council had discussed this matter and had agreed to revert to it at the present meeting.

The representative of the European Communities said that this issue had been many times before the Council. The Community was pleased to say that consultations were currently underway between the United States and the Community on the subject of compensation consequent upon the adoption of the Panel report (L/6175) on this matter. The US Administration had provided information to the effect that it intended to make compensation available; the principle of compensation had thus been accepted, and the Community had understood that that principle was soon to be formalized. Under these circumstances, this matter could perhaps be set aside for the present, while maintaining the possibility of bringing it back to the Council should the need arise.

The representative of Canada said that his country considered it unacceptable that after more than 18 months, the United States had still not implemented the Panel's recommendations. While a preferable solution to this problem would be the removal of discrimination between taxes applied to domestic and imported oil, Canada had asked the United States for compensation for the impairment of its trade interests, and considered itself an "interested party" with whom the United States had expressed its intention to consult. Canada expected the United States to move quickly to provide compensation, and failing this, would be forced to consider requesting authority under Article XXIII:2 to withdraw substantially equivalent concessions.

The representative of Mexico said that his delegation understood that the consultations between the Community and the United States regarding compensation to the Community would not in any way prejudge Mexico's situation regarding the procedure followed or the method used to determine the amount of compensation. He reiterated his delegation's position that the best possible solution would be for the United States to abide by the Panel's recommendations to withdraw the measures found to be GATT-inconsistent. As a temporary solution in the absence of such withdrawal, Mexico would be prepared to consult with the United States in order to obtain the compensation due.

The representative of Nigeria said that his country was still very much interested in this matter and could not afford to compromise benefits accruing to it. While interesting developments had taken place regarding the working out of compensatory mechanisms, there were other interested

contracting parties who could not at the present stage resort to working out such mechanisms. For those countries, the only solution left to the United States was to accept the Panel's recommendations unconditionally.

The representative of Kuwait said that his delegation fully supported the statements by Nigeria and Mexico, and asked the United States to implement the Panel's recommendations as soon as possible.

The representative of Malaysia said that his delegation fully shared Nigeria's concern. The issue of compensation was not a substitute for the implementation of the Panel's recommendations, and Malaysia hoped that the United States would undertake to fulfil its obligations.

The representative of Indonesia said that his delegation shared the views expressed and the recommendations made on this issue.

The representative of Norway expressed his delegation's satisfaction that consultations were proceeding. Norway looked forward to a transparent process as to their outcome.

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

10. Japan - Trade in semi-conductors
- Follow-up on the Panel report (L/6309)

The Chairman recalled that at its meeting in May 1988, the Council had adopted the Panel report on Japan's trade in semi-conductors (L/6309). This matter was on the agenda of the present meeting at the request of the European Communities.

The representative of the European Communities said that as far as the Community was aware, no action of any kind had so far been taken in Tokyo in response to the recommendation in the Panel's report, despite the Community's bilateral and multilateral pressures that there should be follow-up action by Japan. The recommendation in paragraph 132 of the report set out the requirements for the action that should be taken. A series of Japanese practices had been found to be inconsistent with Article XI of the General Agreement. He asked what Japan had done or was proposing to do in this respect.

The representative of Japan said that his Government was exerting itself to reach a conclusion on concrete measures to be taken to implement the Panel's recommendation. Japan intended to take the necessary action to decide on those measures, possibly early in 1989.

The representative of the European Communities said that the Community could not consider this answer satisfactory. He asked, as a matter of urgency, that clear answers be provided and that the matter be put on the agenda of the next meeting.

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

11. Roster of non-governmental panelists
- Proposed nomination by the United States (C/W/574)

The Chairman drew attention to document C/W/574 containing a proposed nomination by the United States to the roster of non-governmental panelists.

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

The Council took note of the statement and approved the proposed nomination.

12. Canada - Import, distribution and sale of alcoholic drinks by provincial marketing agencies
- Follow-up on the Panel report (L/6304)

The representative of Canada, speaking under "Other Business", reported that in conformity with the Panel report (L/6304) adopted by the Council in March 1988, an ad referendum settlement had just been negotiated with the European Economic Community on the implementation of the Panel report. As soon as agreement had been reached on this settlement, Canada would communicate the details thereof to the Council.

The representative of Jamaica asked whether this agreement would be implemented before its communication to the Council.

The representative of the European Communities confirmed that an ad referendum agreement had been reached with Canada. The Community took note of Canada's statement. It also noted that Canada regarded that statement as a report to the CONTRACTING PARTIES which Canada had been requested to make in the light of the Panel report. The Community welcomed that report and considered that the ad referendum agreement, if confirmed by the Canadian Government, would provide a basis for the settlement of this long-standing dispute. The Community further looked forward to the full implementation of the terms of the agreement and to the completion of the

process leading to the elimination of discriminatory practices with regard to all alcoholic beverages. The Community intended to notify the agreement to GATT as soon as the formal ratification process was completed.

The representative of Canada, in reply to Jamaica, said that he was not in a position to provide details of the agreement at the present meeting, but would undertake to do so once the ratification procedure had been completed.

The representative of Australia recalled that his country had been an interested party in this dispute and said that it remained interested in receiving the earliest possible advice on the said agreement.

The representative of the United States said that his country's position on this matter was the same as Australia's.

The Council took note of the statements and agreed to revert to this matter when the details of the said agreement were available.

13. Yugoslavia - Establishment of a new Schedule LVII
- Request for extension of time-limit (C/W/576, L/6379, L/6447)

The representative of Yugoslavia, speaking under "Other Business", said that his country had been applying the Harmonized System of Tariff Nomenclature since January 1988 based on the waiver which would expire on 31 December 1988 (L/6379). Yugoslavia had completed its tariff negotiations with interested contracting parties under Article XXVIII, and in line with those negotiations, his Government had proposed to the Federal Assembly the relevant amendments to the Customs Tariff Law. While there were no substantive problems in this process, errors in the translation of product descriptions into some of the Yugoslav languages had caused delays. Thus, his Government requested an extension of the waiver until 31 March 1989 (L/6447) as a precautionary measure.

The Chairman asked whether the Council could agree to approve the text of the draft Decision granting the waiver extension requested by Yugoslavia (C/W/576) and to recommend its adoption by postal ballot.

The representative of the United States asked the Secretariat if it was normal for the Council to take decisions on matters raised under "Other Business".

The Director-General said that it was not usual but that it had happened.

The representative of the United States said that his delegation could go along with Yugoslavia's request in the light of the Director-General's explanation, but on condition that this not be taken as a precedent for action on other items under "Other Business".

The representative of the European Communities said that the important proviso made by the United States held for his delegation as well.

The Council took note of the statements, approved the text of the draft Decision extending the waiver until 31 March 1989 (C/W/576) and recommended its adoption by the CONTRACTING PARTIES by postal ballot.

The Director-General said that a practice seemed to be evolving of adding more items under "Other Business" than were on the Agenda, and that this should not be considered a normal procedure.

The representative of Jamaica said that his delegation found the procedure for the preceding decision to be quite exceptional.

The Chairman pointed out that the Council had not taken a decision to grant the requested extension but merely to recommend such a decision.

The representative of Mexico said that his delegation understood that this decision had been taken because there was a consensus to do so. Had there not been such a consensus, the decision would not have been taken.

The Council took note of the statements.

14. United States - Unilateral measures on imports of certain Japanese products

The representative of Japan, speaking under "Other Business", said that the US Government, since its implementation of GATT-inconsistent unilateral measures on certain Japanese exports to the United States concerning trade in semi-conductors, had so far only partially removed the measures in spite of Japan's best efforts to reach a satisfactory solution through bilateral negotiations. The United States' unilateral measures were contraventions of Articles I and II of the General Agreement, and Japan reiterated its request that they be withdrawn immediately. Japan reserved its right to refer this matter to the CONTRACTING PARTIES in order to establish a panel in accordance with GATT dispute settlement procedures should a satisfactory solution not be reached.

The representative of the European Communities said that his delegation viewed the point just raised by Japan in the same serious light as it had all other questions relating to unilateral action raised at the present meeting.

The Council took note of the statements.

15. Harmonized System - Transposition by the United States

The representative of the European Communities, speaking under "Other Business", said that in the Community's view, the manner in which the United States had transposed its tariff schedule to the Harmonized System did not conform with the principles to be observed in this respect as set out in Section 2 of L/5470/Rev.1, from which he quoted. The Community accepted that for the most part, the United States' transposition had been carried out in a neutral manner, but for certain products in the textiles sector, the increased duties which resulted were totally unjustified and in violation of the principles in L/5470/Rev.1. Two specific examples were: (1) Woollen fabrics entered the United States under TSUS 336.62 if valued between US$2 and US$9 per pound, at a 41 per cent duty rate, and under TSUS 336.64 if valued over US$9 per pound, at a duty rate of 33 per cent. Despite the agreed guidelines, the United States had decided to eliminate the price break and to amalgamate the two headings in a number of new headings, resulting in unjustified duty increases in the Community's main export items. This had been done for purely commercial policy reasons and had not been required by the Harmonized System transposition. (2) Fabrics of wool and manmade fibre mixtures entered the United States under TSUS 338.15 as long as they were chief value wool, at a duty rate of 15 per cent. The United States had decided to change the basis of this definition from chief value to chief weight, again, for purely commercial policy reasons, with no change required by the Harmonized System itself. In the Community's view, this change had not been carried out correctly and would impair its GATT rights and adversely affect its trade. Over a period of 18 months, the United States had refused the Community's offer to negotiate. The Community believed that the United States should have specifically invoked Article XXVIII in order to negotiate compensation with the principal suppliers of the products subject to increased duties. Therefore, the Community fully reserved its GATT rights, including those provided for in Article XXVIII:3, and asked that the Council revert to this matter at its next meeting and that the United States consider submitting this case to GATT's arbitration procedure.

The representative of the United States said that the Community and the United States had held, over a number of months, bilateral discussions following the cessation of formal negotiations over the United States' and the Community's transposition of their respective tariff schedules to the Harmonized System. The United States believed that it had conducted its negotiations in good faith, and that they provided a balanced result which was fully consistent with the General Agreement and with the agreed objectives in L/5470/Rev.1. Overall, the average rate of duty under the US tariff schedule and under the Harmonized System was identical, at 3.13 per cent average ad valorem equivalent; this figure spoke for itself. There had been a number of changes in the duty levels on textiles and apparel. These changes were directly attributable to the United States' implementation of internationally accepted practices designed to promote

transparency, certainty and predictability in classification. Trading partners had long urged the United States to adopt such clearer classification criteria, and had gone so far as to notify the previous nomenclature system as a non-tariff barrier. The United States expected that trade could and would adjust quickly to these new, clearer criteria. With all the changes that were required in the textiles and apparel sectors, the United States' average rate of duty in those sectors was only .05 per cent higher under the Harmonized System than under the TSUS. The United States had negotiated in good faith with the Community in order to redress impairments resulting from this extensive reclassification and had fully compensated it for the impairment it contended to be facing. He would forward to his authorities the Community' suggestion that this matter be put to arbitration; should binding arbitration be agreed, it was likely that the United States would want to include the outstanding issue of kraft paper -- on which the Community had reneged on its Tokyo Round commitments in its own transposition exercise.

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

16. Canada - Measures on exports of unprocessed salmon and herring - Follow-up on the Panel report (L/6268)

The representative of the United States, speaking under "Other Business", recalled that in November 1987, a panel had found Canada's restrictions on exports of unprocessed salmon and herring to be in violation of its GATT obligations, and that in March 1988, the Panel's report had been adopted. At that time, Canada had stated that it would eliminate the export restrictions and replace them with landing and inspection requirements, effective 1 January 1989. His country was concerned about the replacement measures Canada might be envisioning and, as stated at the March 1988 Council meeting, reserved its rights to object if the measures chosen did not bring Canada into conformity with its GATT obligations. He asked Canada to inform the Council at the present meeting of its intentions regarding the replacement measures, in order to give the United States an opportunity to review and comment on them in GATT prior to their implementation on 1 January, and in order to avoid a situation in which Canada's GATT obligations might conflict with measures which had already been implemented.

The representative of Canada said that his delegation maintained the position it had taken at the March 1988 Council meeting. The measures found by the Panel to be GATT-inconsistent would be removed. The intent of any new measures which Canada might implement would clearly not be to restrict trade, but to ensure that its basic fishery management and

conservation requirements were met. Canada was and would be consulting closely with interested parties prior to the finalization and implementation of these measures.

The Council took note of the statements.

17. United States - Agricultural Adjustment Act
- Thirty-first annual report (L/6442)

The representative of the United States, speaking under "Other Business", informed the Council that his country had submitted the thirty-first annual report under the Decision of 5 March 1955 (BISD 3S/32). The report would soon be circulated to contracting parties as document L/6442.

The Council took note of the statement.

18. Australia/New Zealand Closer Economic Relations Trade Agreement (ANZCERTA)
- Biennial report

The representative of Australia, speaking under "Other Business", informed the Council that his delegation would shortly submit the biennial report on the operation of the Australia/New Zealand Closer Economic Relations Trade Agreement, prepared jointly by the two parties to the Agreement. The report covered the period 1 October 1986 to 30 September 1988, and included the outcome of a comprehensive review of the Agreement conducted in 1988.

The Council took note of the statement.

19. Communication from the United States concerning the relationship of internationally-recognized labour standards to international trade

The Director-General, speaking under "Other Business", referred to his comments at the Forty-Fourth Session of the CONTRACTING PARTIES regarding the relationship of internationally-recognized labour standards to trade (SR.44/2), a subject which had been on the Council's agenda on numerous occasions in 1988. Representatives would recall that while a commonly acceptable way of handling this question had yet to be found, he had expressed his intention of discussing some personal ideas with delegations principally concerned, with a view to suggesting possible approaches, hopefully at the present meeting. He trusted that Council members would understand that the circumstances of the past few weeks had not allowed him the opportunity to discuss these ideas as he would have liked, and proposed

to resume this process by the beginning of 1989. In the meantime, he and Mr. Blanchard, Director General of the International Labour Office, were in contact on this matter.

The Council took note of this information.

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

The Chairman, speaking under "Other Business", recalled that at its meeting in September 1988, the Council had established a panel to examine the matter referred to the CONTRACTING PARTIES by Australia in document L/6373. He informed the Council that agreement had been reached on the Panel's composition, as follows:

Chairman: Mr. K. Broadbridge

Members: Mr. E. Rosselli
Mr. W. Jozwiak

The Council took note of this information.

21. Export of Domestically Prohibited Goods

The Chairman, speaking under "Other Business", recalled that at the recent Ministerial meeting in Montreal, the Chairman of the Trade Negotiations Committee, in his concluding statement, had referred to the subject of "Export of Domestically Prohibited Goods", and had suggested that "the GATT Council be requested to take an early, appropriate decision for the examination of the complementary action that might be necessary in GATT, having regard to the work that was being done by other international organizations." (MTN.TNC/8(MIN), page 12.) He informed representatives that this subject, which was covered in the regular GATT work program, would be included on the Agenda of the next Council meeting.

The Council took note of this information.

22. Appointment of presiding officers of standing bodies
- Consultations to be conducted by the Council Chairman

The Chairman, speaking under "Other Business", recalled that at the CONTRACTING PARTIES' Forty-Fourth Session, the Council Chairman had suggested that "in future, at the first Council meeting each year, on the basis of a consensus which would have emerged from consultations, the Council Chairman should propose the names of the presiding officers of the

Committee on Balance-of-Payments Restrictions, the Committee on Budget, Finance and Administration and the Committee on Tariff Concessions for the current year. This would not preclude the re-appointment of an incumbent. The Council Chairman would have formally announced beforehand, at a Council meeting or by means of a document, his intention to carry out consultations, open to all delegations, and he would have conducted them so as to ensure the transparency of the process." (SR.44/2). The CONTRACTING PARTIES had taken took note of that suggestion.

In the light of the foregoing, he announced his intention to carry out such consultations. He would ask the Secretariat to make the necessary arrangements and to contact delegations in January 1989. These consultations would be open to all delegations.

The Council took note of this information.