

**Council for Trade in Goods
7 July and 16 October 2000**

MINUTES OF THE MEETING

Held in the Centre William Rappard
on 7 July and 16 October 2000

Chairperson: Ambassador C. Pérez del Castillo

This meeting of the Council for Trade in Goods (CTG) was convened by Airgram WT/AIR/1344. The proposed agenda contained in document G/C/W/218 was adopted.

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The meeting was adjourned and resumed on 16 October 2000 in order to finalize Item I "TRIMs Agreement: Requests for extension of the transition period pursuant to Article 5.3".

I. TRIMS AGREEMENT: REQUESTS FOR EXTENSION OF THE TRANSITION PERIOD PURSUANT TO ARTICLE 5.3

Before opening the floor for discussion on this item, the Chairman referred to the tabular summary of documents appearing in the footnote to Item 1 of the Agenda. He said that the Secretariat had prepared this table simply for information purposes, to indicate which documents referred to which country in the question and reply process relating to requests for extensions of the TRIMs transition period.

The representatives of Argentina and Mexico were grateful for the explanation, and the representative of Mexico said no agreement had ever been reached to the effect that the question and reply exercise was part of the procedures that Members had to follow. The tabular summary did not in any way validate any type of procedure that had not been previously agreed.

The Chairman said that the Council had before it requests for extensions of the transition period for the elimination of TRIMs which had been notified pursuant to Article 5.1. These requests had been submitted by nine Members pursuant to Article 5.3 of the TRIMs Agreement. He recalled that the Philippines had formally submitted a request for an extension of this transition period at the CTG meeting of 15 October 1999, and that at its meeting of 24 January 2000, the CTG had also considered requests from Argentina, Chile, Colombia, Malaysia, Mexico, Pakistan and Romania. The Council had recently received a request from Thailand for the extension of its transition period, and a communication had also been submitted by Chile to modify its initial request for an extension of the transition period.

The Chairman then recalled that at its meeting on 5 April 2000 the CTG had agreed: "That the Members, having made requests and wishing to hold consultations with other Members might do so with the blessing of this Council; any written exchange of questions and replies should be submitted for the information of all Members. Second, the Chairman of the CTG would hold informal consultations of the CTG as appropriate, with the understanding that during informal meetings it would be in the hands of all Members to decide the breadth of the discussion. At its next formal meeting the CTG would review progress in all respects of these requests." (G/C/M/43 paragraph 2.16.).

Since the CTG meeting in April the Secretariat had circulated written replies from Chile, Colombia, the Philippines, Malaysia and Romania to questions that had been submitted by some delegations. The matter of the transition period provided for in the TRIMs Agreement had also been the subject of consultations within the framework of the General Council, and, as a result of these consultations, the General Council had adopted on 8 May 2000 a decision which, *inter-alia*, called on the CTG to give positive consideration to the requests that had been made in conformity with Article 5.3 and had mandated the CTG Chairman to hold informal consultations in order to facilitate the process and strengthen its multilateral character. Pursuant to this Decision, he had recently held several series of informal consultations. To sum up, there had been a process of an exchange of information and consultations with regard to the requests that had been made pursuant to Article 5.3, and, as agreed at the last meeting, the task now was to review progress in this process. However, before reporting on the consultations he had held, he asked the representatives of Thailand and Chile to introduce their communications.

The representative of Thailand said that it had notified the TRIMs Committee in 1995 of certain investment laws and regulations related to trade. Since then the Thai Government had taken the necessary steps to ensure progressive structural adjustment by gradually bringing these measures into conformity with the TRIMs Agreement. As a result, local content requirements for the assembly of motor vehicles and engines had been successfully eliminated on 1 January 2001. However, taking into account its development, financial and trade needs, Thailand had been facing difficulties in eliminating the local content requirement for the manufacture of ready-to-drink milk. A number of

factors, both external and internal, had affected Thailand's transitional process for the elimination of TRIMs as notified. During the transition period, Thailand had suffered the worst economic crisis in its history, severely setting back its economic and development goals. The crisis that began in 1997 resulted in a serious setback, creating difficulties in implementing appropriate structural adjustment for the dairy sector within the timeframe envisaged in the TRIMs Agreement. Notwithstanding the severity of the crisis and despite having to operate under such unfavourable conditions, Thailand had fully complied with the obligation regarding the elimination of trade-related investment measures with respect to the automotive industry. This underscored Thailand's commitment to implement in good faith its obligations under the TRIMs Agreement. Such meaningful and significant progress should be duly recognized, and Thailand's continued efforts in working towards successful elimination on the remaining measure should be acknowledged. This request for an extension of its only remaining trade-related investment measure was based on the need for more time to effectively carry out structural adjustment in order that Thailand could successfully bring the sector fully in line with the commitments under the TRIMs Agreement. He noted with satisfaction the recent progress on the issue of the TRIMs transition period under the Chairman's able guidance in his informal consultations. He believed that developing countries should be provided with the necessary flexibility to implement their development policies to help reduce economic disparities with which they were faced. The efforts and progress demonstrated by developing-country Members over the past five years in faithfully implementing their commitments under the TRIMs Agreement must be fully recognized and taken into account when considering their requests for extension. He also wished to recall that in the 8 May Decision, the General Council had agreed to direct the CTG to give positive consideration to individual requests while underscoring the need to preserve the multilateral character of the process. No conditions over and beyond the existing obligations should be imposed upon those Members seeking extension. He said that his delegation had been having bilateral consultations with Members interested in Thailand's request and that he would be able to report on the result of these consultations in due course.

The representative of Chile said that it had originally requested an extension of the transition period until 31 May 2000. However, there had been a delay with legislative proceedings because of unforeseen internal difficulties and Chile had needed to amend its request to extend the period to 31 December 2000.

The representative of the United States appreciated Thailand's presentation concerning its dairy TRIM but had procedural concerns due to the lateness of the request. That said, she noted that the United States had consulted with Thailand and was examining the substance of its request in the hope that in continued consultations they would be able to have a positive approach to Thailand's needs with respect to the domestic dairy situation.

The representative of New Zealand said that his delegation had had consultations with Thailand on a bilateral basis. New Zealand also had some difficulties with the procedural issues involved but was looking at this request in a sympathetic manner. It would continue its dialogue with Thailand.

The representative of Mexico said his delegation had not had bilateral contacts with either Thailand or Chile. It was concerned about holding consultations, especially in one case, because it was not entirely sure that from a procedural point of view the requests corresponded to Mexico's interpretation of Article 5 of the TRIMs Agreement. This was something it was hoping to be able to clarify bilaterally.

The representative of Canada said that while Canada was looking positively at the substance of Thailand's request, it, too, had procedural questions as to whether or not this request could be considered through the CTG process in accordance with Article 5.3 of the TRIMs Agreement.

The representative of Australia indicated that Australia had had consultations with Thailand and was prepared also to give its request sympathetic and positive consideration on a substantive basis; however, Australia, too, had some procedural questions that probably should be answered as soon as possible.

The representative of Brazil said that unlike other Members, Brazil had not had bilateral consultations with Thailand or Chile, or with any of the countries which were requesting extension of the transition period. Nevertheless, his delegation noted that Thailand had raised a very interesting procedural question.

The representative of Malaysia questioned why Members were raising procedural concerns relating to Thailand's request for an extension of the transition period. There was no deadline in Article 5.3 for submitting requests, and certainly no language saying that such a request should have been submitted before 31 December 1999. Thailand had a genuine problem in that more time had been needed for internal consultations. Malaysia, therefore, could not accept debate over whether Thailand's application could be considered under the CTG's process or some other process.

The representative of Japan said his delegation, too, had had bilateral consultations with Thailand. Japan fully sympathized with the problems Thailand was facing in the dairy sector, but, like some of the previous speakers, and contrary to Malaysia's position, Japan had some difficulty on procedural grounds.

The representative of Mexico wished to clarify that his comments had not been referring to Thailand. His delegation understood that when in May this year the General Council had adopted the Decision on the transition period for TRIMs, it had taken into account the misgivings that certain delegations had had at the time regarding the date on which the request for the time extension had been submitted. His delegation had participated in that Decision and had understood that the interests of Thailand were duly covered.

The representative of Hong Kong, China said that the procedural question that some delegations had raised actually involved the interpretation of Article 5.3 and was a systemic one. Once bilateral consultations had brought some conclusions, then perhaps the CTG or even the General Council should take an opportunity to look at this systemic matter at a later stage.

The representative of the Philippines said that the 8 May Decision of the General Council divided Members into two groups: i.e., Members who had requested an extension, and Members who had not yet requested an extension. The Decision had been taken on 8 May, so Members desiring an extension should be categorized according to which group they fell in as of that date.

The representative of Switzerland said that his delegation found Thailand's request to pose a procedural problem which Switzerland would be looking at as soon as possible.

The representative of Venezuela informed Members that Venezuela had not had bilateral consultations with Thailand. His delegation joined the countries that had adopted a flexible attitude *vis-à-vis* Thailand's request. The CTG should adopt a positive approach to Thailand's request. If delegations had indicated a preference for multilateral flexibility with regard to these requests, then Thailand's request should be treated positively.

The representative of Thailand thanked Mexico for recalling the discussions held during the drafting of the 8 May General Council Decision. In that consultation the problem had been discussed, and he believed the 8 May Decision had solved any ambiguity. As pointed out by the Philippines, Thailand had followed the required procedure as set out in the TRIMs Agreement and his delegation considered that the Decision of the General Council on 8 May had clarified the situation. He also thanked Venezuela for having expressed a flexible attitude toward Thailand's request. Without

prejudice to individual Members' views, Thailand was willing to sit down and discuss further its request. His delegation very much hoped that Members would accord Thailand the opportunity to adequately address the substance rather than dwelling on the procedural aspect of the request.

With respect to the comment by the Philippines on the two groups of Members treated in the 8 May Decision, the representative of the United States added that the first group involving those requesting extensions presupposed that the requests were consistent with the terms of the TRIMs Agreement. Therefore, her delegation's interpretation would be consistent with the legal regime already existing in the Agreement itself. That said, the United States was looking sympathetically at Thailand's request, and its sympathy toward their request would include its examination of the procedural question as well.

In response to the United States delegation, the representative of the Philippines said there was certainly significance in the fourth bullet point of the 8 May Decision. It referred to those Members who had not yet requested an extension as of the date 8 May. The "yet" was significant in this respect. If it were in accordance with interpretation of the United States, the word "yet" would not have been used. The representative of the United States said that her delegation was fully aware of the "yet" in paragraph 4, and that her previous comments still stood.

The Chairman suggested that the Council take note of the requests made by Thailand and Chile and of the comments made by delegations. He then went on to inform the Council about the consultations he had had in accordance with the 8 May Decision of the General Council on questions regarding the transition period provided for in the TRIMs Agreement. Initially he had had consultations with the group of Members which had submitted requests, and subsequently with a larger number of delegations. Over this period there had been a series of consultations among interested parties, which had made it possible to shed light on a number of important points. In his consultations, delegations had said that they were ready to take constructive positions in consonance with the Decision of the General Council, but they still had differing views, especially about the duration and the terms of the extension of the transition period. Although some Members had suggested that the CTG could examine draft decisions on some of the requests, this suggestion had not met with any general support. His impression was that the subject was not sufficiently mature for the CTG to take specific action, so in these circumstances he felt he needed to continue with informal consultations, in conformity with the 8 May Decision of the General Council. In these consultations he would retain the multilateral nature of the exercise and would attempt to make progress so as to bring the process to a timely conclusion soon. However, this new round of consultations could only be positive if delegations demonstrated greater flexibility. He hoped that, as a result of such consultations, it would be possible in the very near future to submit draft decisions for adoption by the CTG. In this regard, from a procedural standpoint, his preference would be to leave the present meeting of the CTG open on this particular issue so as to be able to reconvene it as soon as possible and as circumstances warranted. Otherwise the CTG could close the present meeting and leave open the possibility of convening an extraordinary meeting for the purpose he had just described. Nevertheless, this latter option would imply meeting certain deadlines and requirements which from a practical point of view would not help the CTG towards an early decision. Therefore, he favoured the first option, i.e., that the CTG suspend the present meeting regarding this particular item. He then asked for comments.

The representative of the United States remained interested in resolving all the legitimate extension requests through the Article 5.3 process and felt that such an approach would ensure that all the individual needs of the requesting Members could be addressed. Her delegation had participated in the exchange of questions and answers and also had had bilateral meetings with countries eligible for an extension through the Article 5.3 process. It was prepared to continue with these dialogues with the goal of finding a satisfactory solution. She said the United States could support Romania's request for an extension in the automobile sector until November 2001 because it was limited with regard to the timeframe as well as its application. Additionally, the CTG had been

informed that the non-conforming measure was based on a contract that would expire and that Romania had repealed the law on which the contract was based. For these reasons there was no need to require any form of expedited dispute settlement which might be a necessary component for some other requests. There were additional issues which her delegation had talked to Romania about and that still needed to be resolved, in particular regarding the shipbuilding sector. Concerning Chile's request, Article 5.3 did not seem applicable. Her delegation noted Chile's representation that it was merely requiring time to complete its domestic process to remove the TRIMs, and as such the United States supported Chile's expectation to complete its legislative process by 31 December 2000, which would bring Chile into conformity with its WTO obligations. Her delegation remained open for further consultations with Chile. Having had consultations with some other trading partners, she could report that these two specific cases were ripe, and the United States was working quickly on other cases to facilitate the Chairman's consultations and the work of the CTG. Mexico's case also seemed close to resolution. If other delegations were comfortable proceeding according to the Chairman's first option, the United States would as well.

The representative of Japan expressed gratitude for the Chairman's initiative to find an early resolution to this question of the extended transition period on TRIMs based on Article 5.3 of the TRIMs Agreement. Like some of the other interested parties, Japan also had had a series of bilateral – as well as plurilateral – consultations with those Members that had tabled their requests and that had responded to Japan's questions in order to find the earliest possible resolution of the matter. His delegation encouraged the Chairman to continue with the consultation process. For the purpose of information sharing on where Japan stood with respect to specific requests, like the United States, Japan was in a position to accept the request for extension as far as Romania was concerned for its TRIMs in the automobile area. It was a specifically time-bound request, and the conditions that Japan had wanted to see had been fulfilled. On Chile, Japan, too, had the impression that the Chilean Government had tried in earnest to abolish the TRIMs as early as possible. Japan believed that the time-period the Chilean Government was requesting was a matter of a technical nature in order to complete a legal process which took slightly more time than they had foreseen. Japan was therefore viewing this sympathetically and should be able to agree on it. As to other requests, Japan was looking at them seriously to find solutions. Regarding the Chairman's suggestion to suspend the meeting on item 1 of the Agenda, Japan would support his efforts to find an early solution to this problem.

The representative of Malaysia, on behalf of the ASEAN Member countries, reiterated that it was the legal and procedural right of all developing-country Members to seek recourse to Article 5.3 of the TRIMs Agreement. Several Members had had reason to do so. Despite ASEAN's repeated calls not to do so and the multilaterally-agreed criteria adopted by the General Council on 8 May 2000, it was regrettable that bilateral conditionalities continued to be imposed on several Members as part of possible agreements on the requested extensions. ASEAN urged all Members of the WTO to exercise reason and understanding regarding the concerns of developing countries and to refrain from imposing any form of conditionalities. It was important for WTO Members at this phase to look at requests of developing-country Members in a pragmatic and objective manner since this would contribute greatly to enhancing the confidence-building efforts. This was a time for the WTO and its Members to show that the WTO was truly a multilateral institution, sensitive to the concerns of all Members, particularly those of its developing-country Members. The WTO could not have a system where some Members were being subjected to conditions for merely seeking justified extensions of their transition periods. ASEAN urged the Chairman to continue consultations on this matter and wished to place on record its appreciation for his untiring efforts thus far. ASEAN also wished to reiterate the importance of the multilateral character of the exercise and the need to find multilateral solutions as soon as possible for the applicants. ASEAN could agree with the proposal to suspend the discussion on item 1 until a future date.

The Chairman said that he was suggesting to suspend the present meeting on this item alone because he felt that at this time the individual cases were not sufficiently ripe for decision.

Considerable progress had been made, and through some additional consultations the CTG could be in a position to reconvene in the present meeting in the near future, so as to take certain specific decisions.

The representative of the European Communities stated that, on the specific cases, his delegation believed there were three that were ready for decision or nearly so. If the CTG had to suspend its meeting because of the general situation, his delegation would put on record that it was perfectly willing to reach agreement on extensions of time for three cases. The first was Chile, whose case involved a very short-term extension to cover the legislative process. The second was Romania, where, like others, the EC had no difficulty in agreeing to extend the transition period regarding the automobile sector for a more limited period. In fact, in both this and the ship-building sector, there had been major industrial developments that really had changed the nature of this request and its significance. The third case that the EC would be ready to agree upon was the request by the Philippines. The EC was willing to have an extension of that transition period up to the end of 2001. His comments were the result of the bilateral and plurilateral consultations the EC had had with countries in all three cases.

The representative of Romania thanked the United States, Japan and the EC for judging in a clear and positive manner its request for an extension of the transition period for its TRIMs. His delegation was satisfied that the request for the automobile industry had not had any condition imposed upon it and that what Romania was requesting had been well understood. He emphasized that the measures that Romania was still maintaining for its ship-building industry had the same character as the ones regarding its car industry. In fact, Romania had changed its legislation for the investment regime from 1996, and the two investment objectives in question had been pursued through old legislation which had been in force prior to 1995. Romania also had a very precise deadline for the ship-building industry, and the measures that were subject to conditionality that had been allowed through legislation would end at a very specific time. At the same time, the new legislation gave no room for any new or further TRIMs as it contained no TRIMs. He expressed appreciation to the countries that had accepted to enter into consultations with his delegation and stressed that Romania was open to further consultations. His delegation was confident that special attention would be given to the second part of Romania's request. Most of the investment had made significant changes to the shape of Romania's industry, and Romania relied on the support of WTO Members to allow it to continue its process of transition to a market economy and to make reforms not only in these two sectors but in others too.

The representative of the Philippines thanked the delegation of the EC for its willingness to accede to the Philippine request. He noted that the EC had said that it was willing to accept the request provided that the extension would be until the end of 2001. In that regard, he wished to remind the CTG that the Philippine request was for five years, and whilst expressing its gratitude to the EC, his delegation had to express its view that the Philippines needed five years. His delegation considered that the purpose of the CTG processes from here on should be to give effect to the 8 May Decision of the General Council. The Decision unequivocally directed the CTG to take into account any kind of particular difficulties, including internal and external, encountered by developing countries in implementing the provisions of the TRIMs Agreement and the development, financial and trade needs of the country in question. In this regard, the Philippines, like others, had formally explained its particular difficulties and had expressed its legitimate development, financial and trade needs. Those explanations and expressions were on record. The Decision likewise unequivocally directed the CTG to take into account such elements and "to give positive consideration to individual requests". The word "positive" qualified the word "consideration". There was a significant distinction between just giving consideration and giving positive consideration. He noted that some Members had expressed a willingness to grant the extensions subject to what they called a "reasonable" time-limit. Whatever that so-called reasonable time-limit might be, the imposition of pre-established criteria was in complete disregard of the respective particular difficulties and needs of each applicant, and it was therefore contrary to the letter and spirit of the General Council's Decision.

Other conditions had been imposed in the course of bilaterals but had not actually been proposed formally as multilateral conditions. As far as he could recall, no single delegation had put forward a proposal in the CTG regarding such conditions. If a proposal containing conditions should be made, that proposal would have to be assessed and decided upon collectively. The Decision stressed the multilateral character of the process. The situation therefore was as follows: the Philippines had explained its particular difficulties and had elaborated on its needs. The CTG had not agreed on any condition for the granting of the requests. On the other hand, the CTG had instructions from the General Council to give positive consideration to them. He reiterated his delegation's view that the CTG had no choice but to give such requests positive consideration. Nevertheless, should the CTG in the future still be unable for any reason to decide on the requests by consensus, Rule 33 of the Rules of Procedure of the CTG itself provided "where a decision cannot be arrived at by consensus, the matter at issue shall be referred to the General Council for decision". The General Council had already decided and that Decision stood unless the General Council itself decided otherwise.

The representative of Pakistan expressed appreciation for the Chairman's efforts in trying to amicably resolve this issue. He wished to comment on the state of play. Questions had been posed to Pakistan by the EC, the United States and Japan, and its capital was engaged in preparing its responses to the questions, which would be made available as and when they were ready. Pakistan would fully support the Chairman's proposal for suspending the meeting on this particular item as for some cases the decisions were not yet ripe. Pakistan would be willing to engage in further consultations in this regard.

The representative of Canada thanked the Chairman for his work in trying to move this issue forward. Canada concurred on the importance of moving forward on the legitimate TRIMs requests and also shared the hope of finding early solutions and taking early decisions on as many of these requests as possible. In that regard, Canada could indicate at the present meeting that, for the reasons set out by the United States and Japan, Canada, too, could support the request by Romania with regard to an extension until November 2001 in the case of automotive goods. Likewise, with regard to Chile, Canada understood the circumstances Chile found itself in trying to finalize its legislation process for the removal of TRIMs, and could support providing some time to allow Chile to complete that process. Otherwise, Canada was prepared to engage with others to see if the CTG could move forward on the other requests.

The representative of Cuba congratulated the Chairman for his constructive efforts in trying to find an overall solution to this important matter. Cuba's position was simple to express: Cuba gave its full endorsement to the statement by ASEAN because it would be just for extensions to be granted to any such countries requesting them for development reasons, and there should not be any procedural issues or matters of substance which would delay a solution to this problem.

The representative of India joined other delegations in expressing gratitude to the Chairman for his efforts to find a meaningful and satisfactory solution for this difficult TRIMs issue. India could support the Chairman's proposal to suspend the present CTG meeting enabling him to complete the consultations regarding the TRIMs issue and coming back to it when the CTG would be resumed. This would give him additional time to have further consultations and to find a solution. Having said that, he wished to mention that the 8 May Decision of the General Council envisaged various types of situations. At present the Chairman was dealing with only one particular type of situation. It was India's expectation that in due course the CTG would deal with the other types of situations contemplated by the 8 May General Council Decision. India supported the statement by Malaysia on behalf of ASEAN on this important issue. His delegation had always said since 1996 that this organization could not divorce itself from the concept of equity. The ASEAN statement highlighted the need for the CTG's keeping in view equity considerations so that the developing countries who had some problems would be enabled to overcome their problems and meet their developmental aspirations.

The representative of Chile thanked the Chairman for his hard work on this issue. Chile welcomed the consultations which he intended to continue to find a solution which would satisfy all Members. He pointed out that it was July, and the CTG still had not reached any consensus on this issue. This pointed to the fact that there was something happening in the WTO in the way in which the Membership handled business and took decisions, which obviously was not the Chairman's responsibility because he had done everything possible to push this through. Therefore Chile hoped that these new consultations would give greater speed to the process and end the uncertainty for governments, and for the business operators concerned. Chile thus supported the Chairman's proposal that the CTG suspend the present meeting on this item. He thanked all the delegations who had expressed views on Chile's request, and he reiterated that his Government was making all necessary efforts to put itself into conformity with its obligations under the TRIMs Agreement. On the point raised by the United States regarding conformity with Article 5.3, he reserved his delegation's right on this and said he would continue holding bilateral consultations with those delegations that considered it necessary.

The representative of Mexico added his thanks to the Chairman for his efforts in handling this matter which in itself was rather sensitive and complex. Mexico had had some contacts with its counterparts as a Member having requested an extension of the original transition period under the TRIMs Agreement. It had not initiated contacts nor had it been contacted by any other Member making such a request for an extension. On this latter point, Mexico, as a Member which might or might not give its agreement to other Members for an extension, had noted that at least two of these requests did not concern trade-related investment measures which seemed to meet the requirements contained in Article 5, in particular paragraphs 1 and 4. Therefore, such requests required a different type of procedure, one that was distinct from the requests that had been made in the appropriate time and in the appropriate way under Article 5, particularly paragraphs 1 and 4. In his delegation's view, such requests would fall under the provisions of paragraph 4 of the General Council Decision, and pursuant to the terms of that paragraph, under the auspices of the General Council, the Chairman should hold consultations to see how to proceed. That, in particular, seemed to be the case of the request made by Chile. Mexico did not have any problem in terms of the substance of that request. There had been delays and there was a need to find a prompt solution in order for that country's Government as well as its business operators not to have further uncertainty. This additional time should be granted. Mexico's concerns related to the procedure to be followed, which seemed not to fall so much to the CTG but rather to the General Council, which was the only body empowered to grant exemptions or waivers. Mexico was still considering the other requests that had been submitted by other Members. Regarding its request for an extension, Mexico had on repeated occasions indicated both in bilateral contacts as well as multilaterally, that it was willing to assume commitments such as those that were discussed in some of the draft guidelines, which never actually saw the light of day. Mexico's case involved only one TRIM. This TRIM had existed prior to the entry into force of the TRIMs Agreement. It was a TRIM which Mexico intended to eliminate on 31 December 2003 and which since the date of its establishment had contained a gradual dismantling mechanism. Mexico had no interest in extending the transition period any further than 31 December 2003. He thanked the United States for its comments and said that it was unfortunate that other important trading partners of Mexico had not yet taken a position on this request. Finally, Mexico could support the idea of suspending this meeting of the CTG so long as there would be no meeting during the summer break when it would be difficult for there to be the necessary quorum to take important decisions.

The representative of Venezuela cautioned that expectations should be tempered while consultations were still pending. There were different opinions with regard to the terms and the duration of transition periods. It was premature to draw any conclusions and it therefore would be appropriate to suspend the present meeting regarding the treatment of this item so as to avoid prejudging the results of the consultations.

The representative of Colombia wished to draw the Council's attention to the fact that his delegation had responded to the questions of three delegations, and was about to meet with one of these delegations and hoped to do so as soon as possible with the two other delegations. Colombia's request had no procedural complications and was consistent with what was set out in Article 5.3 of the TRIMs Agreement. Colombia's request related to the essential development of its agricultural sector in the programme of substituting for illegal crops, upon which would depend its progress in its movement towards peace. He thanked the Chairman for his efforts and supported the proposal to suspend the present meeting on this particular item until the appropriate time.

Regarding the discussion on how to proceed, the representative of the United States said her delegation could not support a suspension of all issues until some future date. The process in the CTG should not be such that there would be indefinite delays and the CTG would not address those issues that needed to be addressed very expeditiously. Therefore, similar to the interventions by Mexico and Venezuela, the United States supported the Chairman's continued consultations in order to enable the CTG to reconvene at short notice to move on ripe cases as they evolved. The United States did so without prejudice to its rights under the TRIMs Agreement and other WTO Agreements. Regarding some earlier comments concerning views on the process, the United States wished to reassert its right to examine each request in accordance with Article 5.3, and it did not see the Decision as suggesting in any way that the Membership was to operate outside of Article 5.3. Article 5.3 did not require Members to refrain from having assurances that TRIMs would indeed be eliminated. The United States had shown, and would continue to show, sympathetic and positive consideration to all legitimate requests so long as concerns about assurances were met. She thanked those delegations with whom her delegation had consulted and who had given the United States confidence by way of their assurances that there was a specific programme to come into conformity with not only the TRIMs Agreement but also GATT 1994. Her delegation looked forward to any next steps that would quickly resolve some of the issues. Her delegation took note of Colombia's intervention concerning its procedural complication and noted that the United States was working in a positive way and had received information from Colombia that would help it to resolve its procedural concerns with respect to that country.

The representative of Brazil indicated his delegation's satisfaction that Members were at last in a multilateral framework discussing this subject. However, it seemed everyone had different readings of what was taking place and under what legal cover. It seemed appropriate to suspend the meeting until further consultations could take place. Some delegations were saying that some requests were ripe for decision. Since his delegation had not been involved in any bilateral discussions with the requesting country Members, it was difficult to gauge what the degree of ripeness was and to what extent a decision would necessarily have to be a multilateral one. Until his delegation was fully briefed on what was ripe or not, and what was included under this rather vague definition, he had to reserve Brazil's position.

The representative of Argentina said continued consultations appeared to be the best route at this time. For the purpose of transparency, his delegation wished to report that it had continued its contacts with delegations which had put forward questions at the last formal session of the CTG. Consequently, he believed there was progress in assessing Argentina's request. His delegation had also taken note of the procedural points which had been raised by delegations and would be reflecting on them. He supported the Chairman's proposal to leave this item open. He reiterated his delegation's position that this process was a multilateral one in the context of the CTG, and similarly, that the decision the CTG would take on these requirements would also have to be of a multilateral nature.

The representative of Korea thanked Romania for explaining that its request was specific, with a time-limit. His delegation supported giving this request favourable and positive consideration, particularly as the request came out of the need to honour a private contract. Turning to the Chilean

request, he noted that the request was simply to accommodate domestic legal procedures which might justify favourable consideration by the CTG.

The representative of Hong Kong, China said that Hong Kong, China was not a major exporter of automobiles nor of agricultural products, but the process had indeed created certain systemic concerns for his delegation which it felt obliged to raise at the present meeting. As the delegate of Brazil had mentioned, the CTG had heard some new information at the present meeting that delegations had not yet been able to consider. For example, the Philippines had mentioned some bilateral conditions. He underlined the concern that the process throughout should be multilateral in character. That was the wording in the 8 May General Council Decision, but his delegation's impression was that the multilateral process had been somehow held hostage to the bilateral process, and the bulk of the Membership had not been involved in those bilateral consultations; at the same time, the CTG had heard feedback from those consultations to the effect that there were some concerns that should be of interest to the wider Membership. His delegation would have tremendous difficulty endorsing any position by the CTG with respect to any conditions that were not envisaged in Article 5.3 of the TRIMs Agreement nor the intention of the process. He urged the CTG Chairman to ensure the process' multilateral character, and that if he discovered certain matters that were not envisaged in Article 5.3, he should bring them to the attention of the CTG at an early, rather than later, stage. Another systemic concern was the legal certainty of the process. It seemed that most, if not all, of the applications had been submitted in accordance with the procedures set out in the TRIMs Agreement. However, there had been consultations under the DSU requested by a major delegation with one of the applicants during the period when its application was still being considered by the CTG. That created a big problem in legal certainty. There was no guarantee that before the approval of other applications similar procedures would not be initiated, and if that should happen, it would be a further drain on the system. With respect to the Chilean application which now requested an extension until the end of 2000, he cautioned that if the CTG process of considering the request should continue beyond that particular time, the Council was actually giving a *de facto* extension, but the legal conformity questions would still be unanswered. The CTG had to give a sense of urgency to the process. The Chairman's proposal to adjourn this agenda item with a view to arriving at some concrete results in the near future was a good suggestion. His delegation was pleased to hear at least some positive indications with respect to some of the applications, even though it was not involved in the bilateral consultations. From what had been said during the meeting, it seemed that at least a few applications had reached a stage of maturity for possible positive decisions in the near future. In this regard, his delegation wondered whether it would be helpful, during the period where this agenda item would be adjourned, either for those delegations or for the Secretariat to produce some draft decisions so that this Council might have speedy decisions on those applications when it resumed on this agenda item.

The representative of the United States said that Article 5.3 of the TRIMs Agreement could not have envisioned *de facto* extension on these requests and that this process should not in any way facilitate *de facto* extensions. Therefore she reiterated interest in seeing the Chairman proceed with consultations that the CTG might reconvene as necessary to quickly address some of these issues. Again, the United States' position was without prejudice to its rights under all WTO Agreements.

The representative of Switzerland said that, like other delegations, his welcomed a multilateral debate on this matter. This enabled the Members who had not had any bilateral consultations with requesting countries to be kept abreast of the situation. Solutions to the requests submitted should be found on an individual basis in the light of Article 5.3 of the TRIMs Agreement. Switzerland supported the Chairman's proposal to suspend the present meeting so as to reach an agreement as quickly as possible in the context of his ongoing consultations.

The representative of Mexico referred to the suggestions to the effect that the Secretariat might prepare some draft decisions in cases where it was felt that ripeness had been achieved. Mexico was of the view that draft decisions for extensions should come from the interested parties

themselves and certainly not from the Secretariat or from the Chair of this Council unless prior to the preparation of such drafts there were a CTG decision to the effect that one was dealing with a sufficiently ripe case that the Council collectively requested the Chairman to prepare a draft. This was where the multilateral nature of the approach adopted in the General Council Decision in May should be imposed. At this point, it did not seem appropriate for there to be any draft decision for any request.

The Chairman said that the discussion had been fruitful. First, it had asserted the multilateral nature of this process and had brought transparency to bear so that all Members could be clear as to what the situation was and as to what had transpired in bilateral consultations. Second, there was support for the Chairman to continue consulting so as to make progress with this process. Third, the option to suspend the meeting for this purpose also had the Council's support. At this particular juncture there was a willingness on the part of most countries to grant the requests, though there were still certain differences regarding terms, procedures, and time limits, which would be the subject of his ongoing consultations. The issue as to whether cases were ripe or not or when they would be right for submission to the CTG would also be dealt with in consultations. He suggested that the Council take note of all the statements and that those statements should be used to guide the Chairman in his ongoing consultations. He would reconvene this Council at the appropriate time. It was so agreed.

At the resumed meeting on 16 October 2000, the Chairman said that since the General Council last May entrusted him with the task of facilitating the process leading to a solution acceptable to all on the question of requests for extensions of the TRIMs transition periods, he had spent a great deal of time in bilateral and plurilateral consultation with groups of interested countries. Throughout this process, and in keeping with the mandate received, he had taken particular account of the need to preserve and reinforce the multilateral nature of this process. Throughout his consultations he had found a willingness on all sides to find a solution which would be acceptable and thus enable the process to move forward. It was on the basis of this willingness, and the progress noted in consultations that he had decided not to close, but to suspend, the meeting of the Council on 7 July, so that the meeting could be reconvened at an appropriate time when there was a glimpse of a solution to the question of requests for extensions. Despite the efforts deployed throughout the month of July, and the additional progress made, it had not been possible to reach a solution to re-convene the Council before the summer recess. At the beginning of September, he had resumed the consultation process and, contrary to his expectations, some elements that were agreed or were in the process of being agreed before the summer, had been reopened or challenged. This had not made any major progress possible in this process. He felt that certain difficulties that had appeared in the bilateral meetings, if they were not properly resolved, could paralyse this entire exercise. Despite these difficulties, he continued to think that there was political will to resolve this problem at a multilateral level. In the last few days informal discussions had taken place about certain proposals of a general nature that introduced additional elements that might make progress possible. He appealed to all parties involved to continue to persevere in a constructive and flexible frame of mind which would be a valuable input to the process of confidence-building at the WTO. He was ready to continue with his good offices and ready to renew the consultation process if Members considered it appropriate in order to reach a consensus that took account of the interests of all parties.

The representative of the European Communities supported the Chairman's willingness to continue the consultations. He deplored the fact that Members had not yet reached the point of taking decisions on individual cases. He believed that solutions were within reach and in the informal consultations some progress had been made in recent days. His delegation would continue to consult to find mutually acceptable solutions for all cases which were on the table and hoped that this would be possible within a matter of weeks and not months.

The representative of Japan shared the Chair's assessment of the issues. His delegation had been discussing informally with the interested parties and had been looking at each case with the

pragmatism and flexibility required to solve this problem. There had been certain progress on some of the cases and he was of the impression that a solution to a certain number of requests was in sight.

The representative of Mexico said that his authorities had been very clear with respect to the security that this exercise could provide so that the extension of the time-limit could be a guarantee not only for Mexico, but also for other parties, in keeping with the provision of the TRIMs Agreement. His delegation was prepared to continue with its efforts. He looked favourably at the prospect of the Chairman continuing to work on this matter in search of solutions acceptable to all concerned. He believed it was important to obtain results in the near future because, as other delegations had already said, this was a very important element within the framework of confidence building in the multilateral system.

The representative of Chile supported the idea of continuing informal consultations so as to reach a mutually satisfactory solution.

The representative of Malaysia supported the Chairman's approach and his delegation was ready to consult with him. Malaysia had said many times that it was totally opposed to any kind of conditionalities being imposed to the TRIMs issue.

The representative of Canada said that his delegation was continuing to engage in the informal discussions and wished to indicate at this stage that Canada would continue to attempt to be as flexible as possible in the interests of advancing a resolution of the requests for these extensions. Therefore, he encouraged the Chairman to continue his consultations.

The representative of Colombia recalled that Colombia's request was fully in compliance with the conditions in the TRIMs Agreement. His country was facing particular difficulties in immediately dismantling the TRIM that had been notified and he appealed to Members that in the consultations underway a satisfactory solution be reached on a multilateral basis.

The representative of Argentina shared the Chair's assessment of this process, which had two very important elements: confidence building and the efforts to find a multilateral solution to the problem of the extension of TRIMs. He supported continued efforts in holding consultations and informed Members that his delegation had participated in all sorts of meetings in Geneva - bilateral, multilateral and plurilateral - and at the same time Argentina had also been visiting capitals of those countries which had submitted questions.

The representative of India said that India's position on this issue was well known to all Members. She reiterated the importance that India attached to finding a multilateral solution to the problems underlying the TRIMs Agreement that many developing country Members had put forth, not just in this body, but in other bodies as well. She regretted the delay that had been taking place in finding solutions, particularly in the light of certain developments in other bodies of the WTO.

The representative of the United States said that her delegation remained interested in resolving all the legitimate TRIMs extension requests through the Article 5.3 process. Such an approach would ensure that individual needs of those countries which had made a request could be addressed. Her delegation would continue the dialogue with the goal of finding what she considered a satisfactory solution. The United States expected, as with any transition issues, that assurances would be provided that these requests, if granted, would not harm the interests of other trading partners. While quite clearly Article 5.3 was a right, it did embrace also the right of other Members to have such assurances and not be required to just accept requests without assurances. This had been a long process and she was hopeful in the future that some of these requests could be addressed in a manner that would be acceptable to a number of the requesting Members.

The representative of the Philippines said that in their original submission embodying a request for an extension, the Philippines had sufficiently demonstrated through real and objective evidence its particular difficulties in implementing at this point the provisions of the TRIMs Agreement. The Philippines had continuously pursued bilateral consultations with interested Members and would continue this process, particularly in light of the previous statements made by some interested trading partners. However, there had as yet been no substantive deliberations on the merits of the Philippine case, as required under Article 5.3. As reiterated in the 8th May Decision of the General Council, Members had the obligation to examine the Philippines' request in accordance with the mandate given to the Goods Council under that decision. He emphasized this in light of the fact that the United States had formally requested the Dispute Settlement Body for the establishment of a panel under Article 7.1 of the DSU. In this light, and mindful of the expressed provisions of Article 5.3 of the TRIMs Agreement, he earnestly looked forward to the CTG's consideration of the Philippine request.

The representative of Brazil reiterated his interest in a solution based on multilaterally agreed criteria satisfactory to all Members. He also encouraged and supported the Chairman, to continue informal consultations with all the Members that had expressed an interest in this issue.

The representative of Hong Kong China supported continued efforts to conduct consultations on this matter. Although Hong Kong China did not have any direct trade interest in regard of the applications in hand, it did find significant systemic interest - multilateralism - as arising from the examination to date. His delegation would also monitor closely developments in the Dispute Settlement Body.

The representative of Pakistan looked towards a multilateral solution to the problem in the light of the 8th May Decision of the General Council and his delegation would be willing to engage in any sort of consultations, be it bilateral, plurilateral or multilateral. He was hopeful that under the Chairman's leadership the CTG would be able to come to a mutually acceptable solution at a multilateral basis.

The representative of Romania said that his delegation lent its support to the Chair's efforts and willingness to continue in consultations, with a view to finding multilateral solutions. He was confident that a solution could be found which would take into account Romania's particular needs, which had been well-demonstrated in bilateral contacts.

The representative of Thailand referred to Thailand's request made under Article 5.3 of the Agreement. He hoped that with consultations and with the Chair's good efforts in this area, Members would be guided by the 8th May Decision which provided that positive consideration should be given to those Members who had made a request. Thailand was actively pursuing consultations with other Members, and was actively working on questions received.

The representative of the United States, referring to the comments made by the delegation of the Philippines, said that her delegation had held many consultations with individual countries, and in particular with the Philippines. In those consultations she had been hopeful for a solution, but instead there had been delays that had shown that no real solution was in sight. She personally had held these consultations and tried to work with the delegation under difficult circumstances. The Article 5.3 process was not indefinite with respect to individual cases as the transitions had long expired. Her delegation had exercised due restraint for nearly a year, and she hoped the 5.3 process would not be used as a *de facto* extension. In the case of the Philippines, or any other country, her delegation was holding consultations to find a solution before a panel was established.

The representative of Mexico reiterated the importance of reaching a solution acceptable to all, and in particular to those directly involved. Otherwise, Members would be in a situation of uncertainty which was not good for anyone. His delegation's understanding was that Members did

have the right to make such a request and this was clearly established in Article 5 of the TRIMs Agreement. While there was no reply either one way or the other from the Council for Trade in Goods to these requests which were submitted at the appropriate time and in the appropriate conditions, he did not know what status the transition period was in. He did not want to leave the impression that Mexico, having made its request appropriately, was now in breach of its obligations. If there was any mistake in the system, it was that the Council for Trade in Goods had been unable to give a reply up to the present as to the status of Members' requests. Ways to obtain a reply were clearly set out in the WTO Agreement. In his delegation's view, any country having made a request in the appropriate way and time was exercising a right and complying with its obligations. He wanted this to be clearly understood and would hold a debate on this if necessary

The representative of the Philippines, in response to the intervention of the United States, said it was only proper to put in perspective the relationship between formal proceedings in the Council for Trade in Goods, and the various bilateral, plurilateral or informal multilateral discussions that had been going on. Those discussions were not meant as substitutes to the process in the CTG. Those bilateral discussions were intended to facilitate the multilateral discussion of each individual case in the Council for Trade in Goods. Delays could be perceived as intended or unintended, but any so-called delays in the bilateral process had no effect on this multilateral process. His delegation had been the first to make a request, answer all the questions promptly and at each meeting of the Council for Trade in Goods, expressed its readiness to discuss the particular trade, financial and development needs of the Philippines. No single delegation had ever questioned the figures and evidence presented; a good case had been made for an extension of five years, and there was no intervention on the record which rebutted the assertion of the Philippines. Finally, the rules of procedure of the Council of Trade in Goods stated that if a matter could not be resolved in the CTG by consensus, it had to be elevated to the General Council. He was not asserting that now, but it was food for thought for future processes.

The Chairman noted there had been a very broad-ranging and useful exchange of views which showed that there did exist a willingness to find solutions which took into account the interests of all parties and a sense of urgency to continue work in that direction. He intended to renew consultations immediately and continue to work towards a solution. He proposed that the Council note all the statements made and revert to this issue in its November meeting.

It was so agreed.

II. REVIEW OF THE OPERATION OF THE TRIMS AGREEMENT UNDER ARTICLE 9

Turning to Item 2 of the Agenda: "Review of the Operation of the TRIMs Agreement", the Chairman read out Article 9 of the TRIMs Agreement. He recalled that at the CTG's meetings in January and April, Members had been invited to submit papers regarding the scope and format of the review at such time as they deemed appropriate. To date no submissions had been received.

The representative of India noted that the CTG had formally launched this review at the meeting held on 15 October 1999. His delegation expected to submit a paper for the consideration of this Council as early as possible.

The representative of the United States said the Article 9 review process was a part of the balance struck at the end of the Uruguay Round and therefore it was important that it take place. The United States, too, might be submitting a paper for further discussion. One possible topic for the review to address was the utility of additional disciplines on performance requirements. A study of this issue might prove useful.

The representative of the European Communities said that to his knowledge his delegation did not intend to submit a paper. Effectively the major issue under review was what the CTG had discussed extensively at the present meeting, in other words the question of how difficult it was for some parties to respect obligations and the need for extensions of time. He had been surprised to hear some of the discussion in terms of what exactly Article 5 said because this was secondary. The substantive obligations of this Agreement had existed for many years in the form of Articles III and XI of the GATT and the TRIMs Agreement was an elaboration of those basic provisions with slightly more detail regarding the process. It was somewhat paradoxical that three countries who had requested extensions had been told by some Members that they were quite willing to agree to this, but that their developing-country colleagues seemed to have put a halt on that process. Members should reflect on what exactly they were trying to achieve.

The representative of Pakistan said that at the CTG's last meeting his delegation had made a proposal which had not seemed to elicit any objection. Developing countries, due to capacity constraints, had had a problem in carrying out this review, which for them was an extremely important one. A good deal of their social and economic development was linked to this review, but due to their constraints they were having problems. In the light of this situation, Pakistan had made a suggestion that the CTG might request the UNCTAD Secretariat to help developing countries in particular to carry out this review. It could be a joint UNCTAD/WTO study. A precedent for such a study had been set in the Council for Trade in Services where the UNCTAD Secretariat had been requested to carry out a joint study with the WTO to assess trade in services. That joint study had proved to be quite helpful for Members, especially for developed-countries, and it was on those same lines that Pakistan was making this particular proposal.

The representative of Malaysia supported the views expressed by Pakistan. If there was no objection at this meeting, the CTG should take the decision to proceed with this study, rather than to have it discussed again at its next meeting. The representative of India also supported the suggestion made by Pakistan. He had thought that a decision on this had been made at the last meeting and that there would be a communication to UNCTAD from the Members requesting that secretariat to prepare a paper.

The representative of the United States said her delegation expected that Members would engage in a study of this issue, but it was not able at the present meeting to concur with commissioning a paper from UNCTAD. The CTG might explore – perhaps in an informal meeting – whether a joint UNCTAD/WTO study should be done and what the parameters of such a study might be. It was important to note that the CTG had not seen any papers or suggestions coming from the Members, and that the WTO was a member-driven Organization. That said, her delegation was open to perhaps an informal meeting that the Chairman might hold to discuss how the CTG might go about doing this study in line with the proposal from Pakistan and others.

The representative of Venezuela said that although Pakistan's suggestion seemed a good one, his delegation would like to add that the CTG should be open not only to the possibility of an UNCTAD paper but also to a paper by any other organization that might assist the CTG's analysis of this topic. His recommendation was to leave this open for UNCTAD plus any other organization that had been working on or studying these issues and that could make an input to help the CTG in its collective review.

The representative of the European Communities said that the notion that Members required the CTG to endorse a request to the UNCTAD Secretariat to carry out a study was novel since the CTG was not actually required to endorse an idea. Pakistan, with the support of India and others, could simply make this request if they so wished. Then, one of those delegations could circulate it for the Council's information. To his knowledge, in the previous meeting, the idea of a "joint" study had not been mentioned. He would have thought the effective way for delegations to have this study would be to go directly to UNCTAD and request them to do it.

The Chairman said he did not see any difficulty, in terms of substance, in having UNCTAD conduct such a study. However, at least one delegation had requested further information regarding what type of parameters or terms of reference this study would have, before it would be able to give the go-ahead to such an idea. That delegation had suggested that the Chairman hold consultations with any interested delegations. He therefore suggested that he meet with interested delegations to try to reach an understanding on the terms of reference of this study. As had been stated by the EC the other track to follow would be for any interested delegation to contact UNCTAD directly. This had been done in the past and he did not see any difficulties in that. Considering some comments that had been made in this respect, it would be difficult to take a formal decision at the present meeting.

The representative of Cuba said his delegation also supported Pakistan's proposal. The representative of Egypt said his delegation, too, supported Pakistan on having a study done. The Chairman might perhaps conduct informal consultations so the CTG could agree on the parameters or the terms of reference for such a study. That, of course, would help the CTG Members in its further consideration of this suggestion. In response to the delegation of the EC, the representative of Pakistan said the idea behind the joint study was primarily to share resources. UNCTAD had been extremely helpful in the past and had always been willing to carry out such studies for the WTO. The UNCTAD Secretariat also had immense experience in the field of TRIMs. They had been involved in the TRIMs negotiations, and as an implementation topic, TRIMs had been discussed in the General Council.

The representative of the United States reiterated that her delegation would entertain an information meeting under the Chairman's good offices to explore what exactly was being suggested concerning a joint UNCTAD/WTO study. Her delegation would then be able to ascertain as to whether or not it could support the idea, and it would also like to see what had been done in the Council for Trade in Services. The United States supported Pakistan's concerns regarding resources and said that it had been a big promoter of doing more work with other institutions in the area of capacity-building and technical assistance. Her delegation hoped that the discussions the Chairman would hold would bring about a happy medium for such a joint study.

The Chairman proposed that the Council take note of the statements and keep on the table the invitation to Members to submit papers regarding the scope and format of the review. This issue would be on the agenda for the CTG's next meeting. As to the proposal by Pakistan, the CTG would revert to this item at its next meeting, and informal consultations would be held by interested delegations in the intervening period.

It was so agreed.

III. REQUEST FOR A WAIVER FOR THE APPLICATION OF THE EU AUTONOMOUS PREFERENTIAL TREATMENT TO THE COUNTRIES OF THE WESTERN BALKANS

The Chairman drew the Council's attention to the communication from the European Communities contained in document G/C/W/178 containing a request for a waiver. This request for a waiver had been before the Council for its consideration at its April meeting. A draft decision granting this waiver extension has been circulated in the same document to assist the Council in its consideration of this request.

The representative of the EC said that the political background to this was well known and he had the impression that it was well understood. Free and open trade in this particular region would help more general reconstruction after the events of recent years. It is also well known that this was really the continuation of special arrangements the EC had had with countries in this region for some

time, so it was not new. His delegation had had requests from two partners for information and it had been provided but he had been led to believe that in one case that information had gone astray.

The representative of the United States apologised because his delegation did have some difficulties with the information supplied in its transmission between Geneva and Washington. He was hoping that the EC would help recreate the material so that his delegation could come back to this matter at the next meeting and have its response.

The Chairman said that there was no consensus on the request and it was agreed that the CTG would revert to this item at its next meeting and that informal consultations be held by interested delegations in the intervening period.

IV. REQUEST FOR A WTO WAIVER – NEW ACP-EC PARTNERSHIP AGREEMENT

The Chairman reported on his consultations on the ACP-EC waiver request. Since the first discussion of the subject in the CTG meeting of 5 April, he had held an open-ended informal meeting on 18 April. His summary of the discussion of that meeting was circulated in a written report (dated 26 April 2000) which he had made as Chairman on his own responsibility. He had convened another open-ended informal meeting on 18 May in order to hear views on the outstanding procedural issues. Also, during the whole of the intervening period since the beginning of April he had held intensive consultations with a broad range of interested parties.

His impression from these meetings and consultations was on the one hand positive; in the sense that no Member objected to the granting of tariff preferences for ACP countries and all delegations with whom he had consulted were, in principle, ready to grant a waiver at the appropriate time.

On the other hand, however, the predominantly procedural problems that had been identified at the 18 April meeting had persisted. Despite the intensive efforts of all concerned parties it had been very difficult to make any real progress on how to carry out the examination of the waiver request under Article 9.3(b) of the WTO Agreement. For some delegations, the key problem was that the waiver requested in the documents before the CTG (i.e. the request itself in G/C/W/187, the draft decision in G/C/W/187/Add.2 and the full text of the Partnership Agreement in G/C/W/204) did not contain the necessary documentation with respect to the preferences accorded to bananas. In his efforts to find a pragmatic way forward, he had attempted to seek agreement that the CTG should conduct the examination of the waiver request on the understanding that any report to the General Council concerning the waiver request would only apply to bananas when delegations had examined the waiver request for the preferential treatment to be granted to bananas based on a full description of that treatment. However, consensus on this approach had not been possible. At the informal meeting on 18 May he had said then that unless matters changed he would only be able to report to the General Council at an appropriate time that there were procedural problems which had not allowed the CTG to enter in a substantive consideration of the waiver request. Today he had to reiterate this view.

He did not think that it could be possible to make a report on the substance of this matter to the General Council very soon. On the other hand, the issue could not remain on the agenda indefinitely without informing the General Council on where matters stood. In light of this situation, he suggested that it would be appropriate that he provide, on his own responsibility, to the General Council a factual description of the current situation.

The representative of Paraguay thanked the Chairman of the Council for Trade in Goods for the way in which he was trying to find both procedural and substantive solutions. The delegation of Paraguay objected to the Partnership Agreement because it considered it discriminatory: by granting advantages to a group of 71 ACP countries, it was harming, through this discrimination, 38 or 39 WTO developing country Members. He welcomed the fact that the EU granted advantages to

developing countries, and wished that other developed countries would give special and differential treatment to developing countries. But this should not be discriminatory towards a smaller group of countries than those receiving advantages, many of which were more developed than Paraguay. He accepted regional agreements or agreements among similar countries, but agreements such as this one of partnership between the EU and ACP countries, which was much bigger, ceased to be regional agreements within the meaning of the Marrakesh Treaties. For this Agreement not to be discriminatory, the EU should grant other advantages to developing countries that were not covered by this arrangement. In his view, this should happen before the delegation of Paraguay could agree to the requested waiver. Finally, he noted that in its written replies relating to the review of its trade policy, the EU had stated that it would evaluate the impact of the Partnership Agreement on third countries, especially developing countries, and he hoped that it would do so, in order that Paraguay might give its agreement to the Partnership Agreement.

The representative of Ecuador said that at the meeting of 5 April his delegation had made a clear statement to the effect that it did not agree with the way in which this request for a waiver had been put forward by the EC and the ACP countries. His delegation had on that occasion stated that it would not join the consensus in taking a decision which would make it possible to initiate the examination of the request for the waiver, because it felt that the documents at that point in time were not appropriately and duly presented. Above all, when his delegation subsequently received the information required, the documents did not meet one of the fundamental requirements established in paragraph 1 of the Understanding in Respect of Waivers and Obligations under the GATT 1994. Consequently his delegation was still waiting for this shortcoming to be remedied. In his account of the situation regarding the waiver request, the Chairman should add this particular point, which was not only an issue of procedure but also a fundamental issue which could give rise to a systemic problem within WTO. With regard to the Chair's proposal made during the last informal meeting, he had ventured to raise a question in order to clarify within what framework Members would contemplate the Chairman's report to the General Council.

The Chairman replied that that it would be a personal and a factual report and it would not be in accordance with what was laid down in Article 9.3(b) of the Marrakesh Agreement. The representative of Ecuador's position on that suggestion was that if this was the understanding, he could accept the suggestion but with the small addition that the factual report was not being made under Article 9.3(b) and would not necessarily have to be at the next General Council. He felt it was premature to speak to the next General Council to make this report; it could be left for a General Council in the future.

The representative of the European Communities said that he thought that in the informal discussions it had been effectively agreed on how to proceed. As a factual matter, the CTG was at an impasse. There had been efforts on all sides to find a compromise and they had not succeeded. His delegation was willing to have this matter examined, discussed and questioned, and finally decided at a later date when everyone was ready. Without any hesitations he supported the Chairman's suggestion. He did have to make two remarks: one was that it was wrong for delegations to negotiate with the Chairman about a statement that he would make on his own responsibility. He did not believe that the Chairman could include any reference to the views of any delegation without causing difficulties. He had every confidence that the Chairman would be fair, balanced and factual. The representative of Ecuador had said that in his delegation's view the requirements of paragraph 1 of the Understanding on waivers had not been respected. As it was clear that he did not share that view, it would be difficult for the Chairman to put one delegation's point and not to reflect others. His delegation had provided 600 pages of information in the official languages, which was not strictly required by the provisions of the WTO. The Understanding required a description of the measures proposed which was to provide preferential access. Secondly with respect to specific objectives, the EC aimed to bring this trade relationship progressively fully into line with the WTO given that the levels of development of the partners was varied. The EC had made it clear that it needed, on a transitional basis, an extension of time for this to be realised which addressed the third requirement

which was to explain the reasons why the EC could not achieve the objectives in a way that was fully compatible with the WTO. The Ambassador of Paraguay had referred to the Agreement as creating enormous discrimination. He knew that this pattern of trade relationships had existed for twenty years and that in every waiver decision that had been taken since 1947 there was a clause which allowed a country, notwithstanding the waiver, to use its rights under Article 22 and 23 of the Dispute Settlement Understanding. This was the way in which specific adverse impacts on country x or product y had been dealt with and he suggested that there was no danger that Paraguay's interests would be harmed. Paraguay would still have those rights under any foreseeable waiver decision that would be taken in this matter.

The Chairman requested that delegations try to avoid at this formal meeting entering into a lengthy debate, repeating positions of the various parties which were well known to all. Second, regarding the factual report he intended to send up to the General Council under his own responsibility, would describe the situation and the reasons for being in such a situation. It would be a balanced report and, as had been stated, he did not intend to negotiate the text with any delegation.

The representative of Honduras stated that in the factual report there should be an explicit reference to the fact that the European Union had not fulfilled the request of paragraph 1 of the Understanding in Respect of Waivers and Obligations under the General Agreement on Tariffs and Trade 1994, namely that the applicant should describe the measure in question. With regard to document G/C/M/43, containing the minutes of the Council meeting of 5 April 2000, he noted that the content of the minutes did not properly reflect what his delegation had said specifically when the delegation of Guatemala asked the Chairman's predecessor for permission to revert to one of the agenda items adopted at that meeting. He wished to place on record his disagreement with the Chairman's decision, which did not take into account the concerns voiced by his delegation during the discussion.

The representative of Guatemala said that in the factual report reference should be made to the legal foundation of his delegation's objection, where in paragraph 1 of the Understanding on waivers, there was an obligation to describe the measure. This requirement to describe the measure could not be side-stepped; consequently his delegation maintained that this matter should not be brought to the General Council until they had had a chance to see the complete request for the waiver.

The representative of Bolivia stated that his concerns were virtually identical to those stated by Paraguay. Bolivia was concerned at the systemic aspects in so far as the PA represented one of the discriminatory systems set up in parallel to this system due to the large number of countries that will be part of this new system.

The representative of Jamaica said that in the circumstances, the most helpful course would be to allow the Chairman to make a factual report on his own responsibility to the next General Council and thereby allow some time for new developments and goodwill to help the process to move forward. He emphasized that the ACP countries received with great sympathy the Chair's proposal made on 18 May as it had the merit of not prejudging the process and just as importantly would have allowed the CTG to start consideration of a waiver request that would benefit a large number of countries, many of them least-developed countries. Secondly, he noted that the ACP-EC Partnership Agreement was signed in Cotonou on 23 June; the delay in considering the waiver request did harm to the economic prospects of countries whose trade share on average was 0.02%, slightly above the trade share which the WTO considered as low enough to constitute the minimum threshold for assessing contributions. ACP Ministers in Cotonou had expressed a deep concern at the delay in considering the waiver request. Thirdly, ACP countries would not accept approaches or language that sought to stipulate at the outset and to interpret unilaterally, without any firm basis in precedent, the information that needed to be provided in accordance with the Understanding in respect of waivers. Such efforts sought unreasonably to prejudge the process and to set parameters for the consideration of the request that departed from the stated legal requirements. He believed that once documentation

relevant to preferential access for ACP bananas was considered, the Membership as a whole would be able to determine whether the legal requirements of the WTO Agreements had been met and would be in a position to bring the process to a conclusion as appropriate.

The representative of Ecuador proposed that the CTG declare itself in informal session given the different nuances that existed. It might be better once several delegations had had the chance to check back with capitals and had received their instructions in the light of the Chairman's proposal to resume the formal meeting. The Chairman, however, saw no need to revert to an informal session because his proposal had in general terms received a favourable welcome. Up to now he had not seen any opinion expressed against proceeding in this way, with the exception that some delegations had made suggestions for the text that the Chairman would submit to the General Council under his own responsibility. After having heard all parties' positions, he would be as careful as possible to avoid difficulties for one side or the other. Going back to an informal session now to discuss a Chairman's proposal did not seem to be the most appropriate avenue, although of course he remained in Members' hands for any decision. The representative of Ecuador reserved the right to revert to this topic and make further comments if necessary after having heard the views of other Members on his proposal.

The representative of the Philippines said that the CTG had heard expressions of regret from ACP countries on why the process was taking long. He noted that Members were in this impasse because what the EC was giving away to the ACP countries, it was taking away from other developing countries. Preferences were valuable only to the extent that other developing countries were being discriminated against. All he was asking was also an equal understanding from the ACP countries in respect of the plight of non-ACP developing countries.

The representative of Cuba was surprised that the discussion on this item had been reopened following the intensive consultations held two days before. His delegation considered that the least that could be done was to submit a factual report to the General Council in the Chairman's personal capacity. Subsequently, he could resume consultations in September, according to the negotiating situation. Cuba attended, as an observer, the signing of the Cotonou Agreement in Benin on 23 June 2000, which was considered a positive step because it was aimed at furthering the economic and social development of the ACP countries. He considered the comments of some delegations to the effect that the ACP/EU Partnership Agreement was discriminatory to be unjust. In plurilateral trade agreements Members should apply the pragmatic principle of "variable geometry", because these agreements stemmed from different causes, be it historical, political, or geographical. What was important was that they should produce benefits for the developing countries concerned. In this regard, a parallel might be drawn with other projected intraregional and subregional agreements, which included highly developed countries with a significant weight in world trade as well as developing countries. Nevertheless, one view that might be taken in this regard was that although they were clearly discriminatory, because they did not cover all the countries which should be included, they should not be prevented from being implemented because they may be considered to benefit the trade of many of them.

The representative of Panama could support the Chairman's proposal and said that recognizing that the content of the report was a matter for the Chairman's own discretion he wanted to see in it a reference to the point about the failure to meet the requirements of the Understanding on waivers. He was reassured that the report was not being made under Article 9 of the WTO Agreement and consequently could not in any way draw conclusions about this process, nor prejudice the positions or legal arguments of any party to this dispute.

The representative of St. Lucia supported the Chairman's proposal. She said that the Central American and ANDEAN pact countries benefitted overall from virtually identical preferences to those of the ACP in terms of tariff treatment under the EC's super-GSP. The list of products was different but the overall benefit conferred was basically the same.

The representative of Jamaica, in response to the points raised by the Philippines, said he would not wish it to be felt or imputed that the ACP countries lacked understanding of the costs and benefits involved in global trade, or indeed could conceivably be unsympathetic to the plight of developing countries as a whole. As was well-known, there were a large number of preferential and free-trade arrangements currently in existence, and all had some impact on the trade of developing countries and of developed countries. More importantly, the process he was seeking to engage in was one set down in the Agreement in Marrakesh, and which provided quite clearly for the possibility of derogations from MFN treatment. That was not a gift but a right to be sought. It could of course be rejected which was the right of the membership. To seek that right should not in any way be conceived as somehow going contrary to the interests of other countries. Having been denied the right to have that process start was what he was unsympathetic to.

The representative of the United States said that it would be very unfortunate if the CTG could not proceed in a uniform way to meet each concern in the manner agreed recently at an informal meeting.

The representative of Colombia expressed support for the proposal made as this was the most appropriate way of reflecting what was happening currently. His delegation was sure that the content of such a report would be balanced and adequately reflect what had transpired throughout this process.

The representative of Mexico also supported the proposal which, he had no doubt, would be judicious in reflecting the various positions and fully describing the problems with which Members were faced. He also agreed that this should take place under Other Business on the General Council's agenda which of course had its own significance. The most important thing was for the Chairman to continue the consultations on an informal basis to help Members decide the terms and conditions that could be granted to a waiver which has been requested. He was not questioning the fact that ACP countries could continue to enjoy preferences which was nothing new. On previous occasions his delegation had always approved a waiver request. But he felt that the CTG required a detailed technical exercise here because if it was not careful in preparing the terms of this waiver then it could be faced with problems in the future. To make progress it was necessary to have a waiver which should be sufficiently clear as to what was being accepted.

The representative of Canada expressed her delegation's full support for the proposal. The representative of Australia said that her delegation had complete faith in the Chairman's ability to present a factual report which would be balanced and would see the interests of all. She did not see that his proposal has been compromised or "nuanced" in any way, and therefore shared his view that reversion to informal mode would not be necessary.

The representative of Ecuador recalled that at the recent informal meeting the Chairman had confirmed that his report to the General Council would not be made in the framework of what was set forth in Article 9.3(b) of the Marrakesh Agreement. If this was still the case, he had no objection in accepting the Chairman's proposal. At no point had the Ecuadorian delegation been attempting to negotiate texts on factual reports or even suggest that the Chairman should include certain points of importance such as the non-observance of paragraph 1 of the Understanding on Waivers. This was the cause of the impasse. In the waiver request the measure was not described, nor would it be described in respect of bananas. The CTG was still faced with a systemic problem and this had to be reflected in any report which the Chairman saw fit to make before the General Council.

The Chairman proposed that the CTG take note of the statements made and confirmed that he would make a factual report to the General Council on his own responsibility.

V. EC/France – Trading Arrangements with Morocco: Request for Extension of the Waiver

The Chairman drew attention to the communication from the European Communities contained in document G/L/357 containing a request for an extension of a waiver. Pursuant to Article IX.3(b) of the WTO Agreement, this request for a waiver extension was before the Council for its consideration; a draft decision granting this waiver extension had been circulated in document G/C/W/194 to assist the Council in its consideration of this request. At the meeting in April, one delegation was not able to go along with the proposal as it needed more time to consult on this matter.

After the delegation concerned had signalled its agreement, the Chairman proposed that the Council approve the request for a waiver extension by the European Communities and recommend that the draft decision granting this waiver extension and contained in document G/C/W/194 be transmitted to the General Council for adoption.

It was so agreed.

VI. Request for a WTO Waiver – Turkey: Preferential Treatment for Bosnia-Herzegovina

The Chairman drew attention to the communication from Turkey contained in document G/C/W/217. This contained a request for a waiver which is before the Council for its consideration. A draft decision granting this waiver extension had been circulated in the same document to assist the Council in its consideration of this request.

The representative of Turkey said that in the context of the commitment in applying EC policies, Turkey had applied autonomous trade measures for Bosnia-Herzegovina as from 13 June 1999. According to these measures and in general terms, industrial goods originating in B-H were introduced into Turkey without quantitative restrictions or equivalent measures and on a duty-free basis, as was the case in the EC. Numbers 1 and 2 were an exception to the rule because the elements in Annex 1 also entered free within the quotas allocated and there was no preferential treatment for those listed in Annex 2. The textiles products were subject to quantitative restrictions. Consequently it was necessary to request a waiver from the provisions of paragraph 1, Article 1 of GATT 1994 till 31 December 2006. In terms of the exceptional situation, the economic and social situation in B-H, such measures were justified in themselves. Turkey intended to extend these measures to other countries such as Albania, Croatia, the Federal Republic of Yugoslavia and the Former Yugoslav Republic of Macedonia. Turkey was willing to hold consultations on this draft decision.

The representative of the United States announced its interest in holding consultations on this.

The Chairman suggested that the Council revert to this matter at its next meeting and that in the intervening time any interested delegations hold informal consultations.

It was so agreed.

VII. Trade-Related Technical Assistance: Customs Valuation Model Work Programme (Communication from the European Communities)

In presenting the communication contained in G/VAL/W/71, the representative of the European Communities said that the document constituted an oral statement made in the Customs Valuation Committee. The purpose of having this on the agenda was simply that the CTG might be willing to take note of the idea of a model that might be usable in one or two other cases. The purpose

of this was to make the provision of technical assistance more efficient, effective, coordinated and more integrated.

The representative of the United States noted that the Customs Valuation Committee was doing important work in the customs valuation area. It supported the EC's point with respect to the need for an enhanced commitment from, and coordination with, international organizations in the technical assistance area. The level of resources was certainly important but so was the effective use of those resources and the avoidance of duplication.

The Council took note of the statements made.

VIII. APPOINTMENT OF OFFICERS FOR SUBSIDIARY BODIES OF THE COUNCIL – COMMITTEE ON SANITARY AND PHYTOSANITARY MEASURES

The Chairman recalled that among the slate of Chairpersons announced by the General Council on 8 May 2000 Mr. Shishir Priyadarshi (India) was confirmed as Chairperson of the SPS Committee. Mr. Priyadarshi had unfortunately had to decline this assignment, due to his unavailability in Geneva. Following informal consultations, he proposed the nomination of Mr. S.I.M. Nayyar (Pakistan) as Chairperson of the SPS Committee. The proposal was informally approved by the Council for Trade in Goods on 19 June 2000. On the basis of the understandings reached, Mr. Nayyar was elected as Chairman by the SPS Committee by acclamation. It was mentioned at the informal meeting that Mr. Nayyar's election would be formally confirmed today. The Council so agreed.

IX. OTHER BUSINESS

The next meeting of the Council was scheduled to take place on 16 October 2000.
