

# WORLD TRADE ORGANIZATION

RESTRICTED

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## COUNCIL FOR TRADE IN GOODS 29 January 1996 and 14 February 1996

### MINUTES OF MEETING

Held in Centre William Rappard  
on 29 January 1996 and 14 February 1996

Chairman: Mr. M. Endo (Japan)

The proposed agenda, contained in document G/C/W/37, was adopted without any amendments.

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The Chairman welcomed delegations to the meeting of the Council for Trade in Goods which was convened by WTO/AIR/248. He noted that in accordance with the agreement reached at the last meeting of the Council on 1 December 1995, the following Organizations had been invited to this meeting of the Council namely: FAO, IMF, ITCB, OECD, UN, UNCTAD, World Bank and the World Customs Organization. He proposed that pending the adoption of criteria and conditions for observer status for International Intergovernmental Organizations in the WTO and unless a delegation raised an objection, those Organizations invited to this meeting of the Council for Trade in Goods be invited also to the next meeting.

## **1. Malawi - Renegotiation Schedule LVIII**

### **- Extension of the waiver**

1.1 The Chairman drew the Council's attention to a communication from Malawi, circulated in document G/L/51, in which it requested an extension of a waiver which had been granted to it in the context of the renegotiation of its schedule under the Harmonized System. In this connection, a draft decision had been circulated in document G/C/W/31. Malawi's request had been before the Council at its last meeting, but it was agreed that as the request had reached the Council at a late stage, it would be preferable to revert to this matter at this meeting by which time Members would have had more time to consider the request and the text of the draft decision.

1.2 There was no discussion on Malawi's request for an extension of a waiver

1.3 The Council for Trade in Goods approved an extension of the waiver granted to Malawi until 30 June 1996, and recommended that the draft decision contained in document G/C/W/31 be forwarded to the General Council for adoption.

## **2. Customs Union between Turkey and the European Community**

### **- Communication from the parties to the Customs Union (WT/REG22/N/1)**

2.1 The Chairman drew the Council's attention to the communication from the parties to the customs union contained in document WT/REG22/N/1, which indicated the entry into force on 1 January 1996 of the Customs Union between Turkey and the European Community. He understood that the text of the Agreement had been notified to the WTO Secretariat and would be circulated shortly.

2.2 The representative of the European Communities stated that the customs union which was notified by the European Community and Turkey on 22 December 1995 (WT/REG22/N/1), had a long history. The European Economic Community and Turkey had agreed to the formation of a customs union as part of the "Ankara Agreement" signed on 12 September 1963, which established a wider association between the European Economic Community and Turkey. This was followed by a Supplementary

Protocol signed on 23 November 1970, and a Complementary Protocol and an Interim Agreement signed on 30 June 1970. All these agreements were examined in detail in the GATT. The parties to these agreements had provided information to other GATT contracting parties on a regular basis.

2.3 The agreements notified on 22 December 1995 formed part of a package intended to finalize the establishment of the customs union. The overall package consisted of two main parts: firstly there was the Decision 1/95 of the EC/Turkey Association Council. Within this Agreement there was a second Decision 2/95 which established a transitional regime for certain sensitive products. The latter Decision only concerned measures which would be taken by Turkey. These two Decisions were circulated to WTO Members in the form in which they were approved by the EC/Turkey Association Council. Secondly, the Community and Turkey were entering into an agreement establishing a free trade area for products covered by the European Coal and Steel Community (ECSC) Treaty. This agreement had been initialled and would be concluded and notified shortly.

2.4 Decision 1/95 was taken by the Association Council established under the framework of the 1963 Ankara Agreement. At that time, the Agreement excluded coal and steel products which have, as a result, always been treated separately. The forthcoming Coal and Steel Agreement would be transitional, as the ECSC Treaty was supposed to expire at the end of the year 2002, when Decision 1/95 might provide the relevant framework for all trade in goods. It was clear to the Community, that Decision 1/95 and the forthcoming agreement on coal and steel products would need to be considered together. They formed a single package covering all sectors, and set out the steps needed to bring to fruition the 1963 commitment to establish a customs union.

2.5 The EC delegation was convinced that these agreements, taken together were consistent with the obligations of Members under the provisions of Article XXIV of GATT 1994 and the Memorandum of Understanding on the Interpretation of Article XXIV. He noted that the coverage was comprehensive; no sector would be excluded. Furthermore the agreements for coal and steel, and for certain other products, reflected a combination of special circumstances. These agreements were limited in duration and covered only a small number of products.

2.6 The representative of Turkey stated that, as had already been communicated to the Director-General of the World Trade Organization, the Customs Union between Turkey and the European Community had entered into force on 1 January 1996. The progressive establishment of the Customs Union, in accordance with the Association Agreement between Turkey and the European Economic Community signed at Ankara on 12 September 1963 and the Supplementary Protocol thereto dated 23 November 1970, had thus been completed.

2.7 It was his delegation's considered view that the Customs Union between Turkey and the Community was in full conformity with the WTO rules both in letter and spirit. It went without saying that entry into force of the Customs Union represented a turning point in relations between Turkey and the European Union.

2.8 The Customs Union would not only result in the further strengthening of commercial and economic ties between the parties but would also put Turkey closer to full integration in the European Union, an objective which had already been set in the 1963 Ankara Agreement.

2.9 As to the main aspects of the Customs Union: it covered industrial and processed agricultural products. The European Coal and Steel Community products would be subject to a free trade arrangement within this framework.

2.10 As of 1 January 1996, Turkey had eliminated customs duties and other charges and duties having equivalent effect on industrial products for the EC to achieve the free movement of goods within the

Customs Union. Moreover, Turkey had started to apply the Community's Common Customs Tariff rates for imports of industrial products originating from third countries. The Mass Housing Fund charges levied by Turkey on imports of industrial products were completely abolished on 31 December 1995 on an m.f.n. basis.

2.11 In addition to that, the legal and practical rules of the Community's Common Commercial Policy, including competition rules, safeguard rules, prevention of dumped or subsidized imports, management of quantitative restrictions and tariff quotas, standardization and conformity assessment, protection of rights against illicit commercial practices, would be applied by Turkey.

2.12 Turkey had recently adhered to the international instruments on Intellectual and Industrial Property Rights and had started to bring its legislation in line with the TRIPS Agreement's requirements.

2.13 The representative of Canada stated that in December 1995, Canada had encouraged both parties to notify the Agreement along with the required trade documentation in order to assess the impact on Canada's trade interest and to permit Canada to engage in Article XXIV:6 consultations, as necessary, before tariff concessions were modified or withdrawn. While a one-page communication had been submitted to advise WTO Members of the entry-into-force of the Agreement, the details were still not available. In addition to tariff issues, Canada was particularly interested in knowing how Turkey would adopt the European Union's tariff rate quotas and how the Agreement would apply to agricultural goods. Canada was concerned about a possible repetition of the difficulties that had been encountered in previous enlargements which in fact her delegation had thought had been addressed in the most recent case of enlargement. She reiterated the need for full transparency and timely submission of information.

2.14 The representative of Malaysia, while congratulating the parties for the entry into force of the customs union agreement, said that Malaysia, the Philippines, Singapore and Thailand would be affected by the unilateral measures imposed by Turkey, particularly on textiles. The WTO did not prevent Members from engaging in the formation or joining any customs union of their choice. However, there were specific provisions that had to be observed, and Article XXIV clearly stated that there should not be barriers raised to trade of others who were not part of the customs union. His delegation did not have a problem with Turkey wanting to be associated with the European Union. However, there had been an oversight on the part of Turkey as regarded its obligations under Article XXIV. The unilateral imposition of quotas by Turkey on certain textiles and clothing items from some countries was a serious breach of WTO rules and in particular the Agreement on Textiles and Clothing. It did not augur well for the implementation of the latter Agreement which was aimed at the eventual integration of this sector into the multilateral trading system. There were bound to be problems associated with the customs union; but, it was unfair for Turkey to transfer perceived costs to others. His delegation therefore wished to see Turkey rescind the unilateral imposition of quotas on certain textile products and urged the Turkish Government to comply with the relevant provisions of the WTO and the Agreement on Textiles and Clothing. His delegation reserved its rights to pursue this matter under those Agreements.

2.15 The representative of the United States stated that his delegation continued to support regional economic integration in Europe, and therefore strongly supported the conclusion of the Customs Union between the European Union and Turkey and welcomed the notification of the Agreement to this body. However, his delegation had concerns that certain WTO provisions and obligations were not being met by the parties to this Agreement, and more generally in other agreements to which the EU was a party. The GATT and now WTO rules covering customs unions and free trade areas were designed to make sure that regional integration complemented the multilateral trading system. This Agreement was a customs union which entailed modifications of tariff bindings of the parties to this agreement. Article XXIV:6 clearly stated that countries must notify the agreement and that compensation negotiations must be commenced before tariff concessions were modified or withdrawn. This was the second customs

union notified by the EU in the past year and the second time that this obligation had been ignored. He enquired when the parties intended to provide the trade and tariff data required by WTO Members to evaluate the effect of this agreement, and when they intended to begin Article XXIV:6/XXVIII negotiations.

2.16 His delegation had pointed out in a recent TPRM meeting that the EU had perpetuated a pattern of not coming close to fully liberalizing agriculture in its regional agreements. Many of these agreements and arrangements were with countries for which agriculture would be expected to be an area of comparative advantage, and which could contribute very significantly to economic growth. The new customs union excluded not only agricultural items, but also, as previously mentioned, steel. His delegation looked forward to the thorough and prompt review of this agreement.

2.17 The representative of Hong Kong stated that Hong Kong fully respected the rights of WTO Members to form customs unions or free trade areas in accordance with relevant multilateral instruments. His comments would be directed to a specific issue only, which had arisen in the implementation of the Customs Union between Turkey and the European Union. Starting from 1 January 1996, quantitative restrictions had been imposed by Turkey on the imports of a range of textiles and clothing products from Hong Kong and, as his delegation understood, from a total of 25 suppliers. The imposition of these quantitative restrictions was unilateral and without prior notification. Hong Kong had written to the Turkish authorities requesting details of this measure and their justification by reference to WTO agreements. The response received to date had not provided satisfactory answers to the questions raised. Hong Kong had very serious concerns about the Turkish action in the context of Article XXIV of GATT 1994, as well as other GATT Articles and the Agreement on Textiles and Clothing. It was not Hong Kong's intention to enter into a discussion on legality at this point of time. There were established procedures under the WTO system for such purposes, which would ensure that Members' rights were protected and their obligations observed. Members' attention, however, was drawn to the Preamble to the Understanding on the Interpretation of Article XXIV of GATT 1994, the fourth paragraph of which reaffirmed that in the formation or enlargement of economic integration agreements, the parties should to the greatest possible extent avoid creating adverse effects on the trade of other Members. It would be difficult to think of a more adverse effect than the imposition of discriminatory quantitative restrictions which offended the fundamental principles of the WTO. His delegation urged that the action taken by Turkey be rescinded, and reserved its WTO rights to take the matter further.

2.18 The representative of India stated that his delegation associated itself with the statement made by the representative of Hong Kong. His government was still examining this issue, and therefore his remarks would be preliminary in nature at this stage. His delegation wished to convey the considerable concern felt regarding the quota regime imposed unilaterally by the Government of Turkey on the exports of textile products from India to Turkey. India's exports of textile products to Turkey did not face quantitative restrictions before 1 January 1996. It was not clear under what provisions the Government of Turkey had introduced this measure, which went against the letter and spirit of the liberalization of trade in the textile and clothing sector embodied in the Agreement on Textiles and Clothing. His delegation requested Turkey to rescind the recently introduced quota restrictions on textiles and clothing exports of India.

2.19 The representative of Australia stated that his delegation welcomed this Agreement between the European Union and Turkey for the mutual expansion of trade. But he wished to support the comments made particularly by Canada and the U.S. early in the discussion with relation to the necessity to provide full transparency of the trade effects on other third country suppliers as a consequence of the formation of customs unions. The points had been very well made of the requirements in Article XXIV for full detailed information of potential changes in tariff commitments to be notified in advance of their implementation so that Article XXIV:6 negotiations could be effectively carried out to safeguard the interest of third countries. It was regrettable that in this case, once again, it had

not been possible for interested countries to begin the process of negotiating their trade interests in relation to this particular agreement.

2.20 The representative of Pakistan expressed his delegation's understanding and appreciation of Turkey's natural disposition to forge closer relations with the European Community, as it was situated in close proximity to the vast market. Pakistan therefore congratulated Turkey on the realization of its objective to form a customs union with the European Community. Turkey was a friendly and fraternal country - and anything which would contribute to the prosperity of the Turkish people was welcome to Pakistan. His delegation would follow, with deep interest, the examination of the detailed provisions of the customs union in relation to the relevant requirements of the GATT/WTO. Pakistan therefore encouraged the parties to the customs union to notify, promptly, the complete details of the arrangement. He hoped that the details would encompass information on all aspects of the arrangement, in addition to those relating to tariffs. As Pakistan awaited receipt of the detailed information for examination in a working party, which his delegation would recommend the Council should agree to establish at today's meeting, his delegation had noted with a certain disappointment that, in a departure from the letter and spirit of the GATT 1994 provisions on Customs Unions and Free-trade Areas, the formation of the EC/Turkey Customs Union had resulted in raising discriminatory barriers against the trade of third countries including Pakistan's. There were valid questions about the compatibility of such restrictions with the requirements of the relevant provisions of GATT 1994. Pakistan had been pursuing discussions to emphasize that for free circulation of Turkish textile products in the European Union market, these restrictions were not necessary. Unfortunately it had not been possible to achieve this objective. Therefore, Pakistan was obliged to reserve its GATT rights in that regard.

2.21 The representative of Peru stated that like other delegations, his delegation was concerned by the unilateral application of textile quotas by Turkey, which affected Peru's trade. His delegation, therefore, wished to reserve its rights under the WTO.

2.22 The representative of Korea stated that his delegation shared the concerns expressed by various speakers concerning the Turkish government's unilateral textile import restriction measures which had come into effect at the beginning of 1996. As one of the major textile suppliers of the Turkish market, the Republic of Korea had a substantial interest in this matter. It was the Korean view that these import restrictions were inconsistent with the WTO Agreement, and might have a trade restrictive effect on textiles and clothing trade. In this regard, Korea wished to reserve its rights under the WTO.

2.23 The representative of Brazil stated that his delegation recognized the importance and significance of the agreements that had been reached between Turkey and the European Union. His delegation shared the concerns expressed by other delegations regarding the introduction by Turkey of quantitative restrictions on imports of textiles and clothing. As of 1 January 1996, exports of some textiles products from Brazil were subject to new quotas in Turkey. While his delegation fully recognized the difficulties of the process of harmonization of trade policies as a result of the establishment of a customs union, his delegation had doubts on whether the introduction of new quantitative restrictions could be validly justified by the formation of a customs union. His delegation would follow this issue with particular interest.

2.24 The representative of Argentina stated that his delegation would like to take part in the work of any body established to examine the agreement between Turkey and the European Union establishing a customs union.

2.25 The representative of the European Communities stated that he wished to thank all delegations which had voiced their support for the integration process and which had highlighted the fact that Turkey and the EU have now established a customs union. This was a political development and he thanked those delegations who had seen it in this light. As regarded the other comments made, he had taken

note of those comments. He could understand the regret expressed by certain delegations with regard to the lack of certain documentation, and this situation would be remedied as soon as possible. As regarded the repercussions of this customs union on trading partners, he believed that in the past neither the establishment of the European Community nor its subsequent enlargement, nor this particular customs union with Turkey had adverse effects. On the contrary, he believed this customs union could have nothing but positive repercussions for the Community's trading partners and for the liberalization of world trade in general.

The Council for Trade in Goods took note of the statements made.

2.26 The Chairman recalled that at the last meeting of the General Council, a decision was taken, in principle, to establish a Committee dealing with regional trading matters. Consultations were currently being held by the Chairman of the General Council concerning the nature and terms of reference of that new body. The question of establishment of separate working parties would have to be reviewed in light of the final decision on this issue. Nonetheless, since no final decision on that had been taken at this stage, he proposed that the Council proceed in the usual manner and set up a working party with the following terms of reference and membership:

Terms of reference:

"to examine, in light of the relevant provisions of the GATT 1994, the Customs Union between Turkey and the European Community and to submit a report to the Council for Trade in Goods."

He added that his statement concerning the understanding made under agenda item 7 of the meeting of the Council for Trade in Goods on 20 February 1995, and contained in document WT/REG3/1, applied *mutatis mutandis* to this working party.

Membership:

"The Working Party would be open to all Members of the WTO indicating their wish to serve on it."

He proposed to consult with delegations on the question of Chairperson for the Working Party.

The Council for Trade in Goods so agreed.

3. **Agreement between the Government of Denmark and the Home Government of the Faroe Islands, of the one part, and the Government of Iceland, of the other part, on free trade between the Faroe Islands and Iceland**

- Notification from the parties to the Agreement (WT/REG23/N/1 and WT/REG23/1)

3.1 The Chairman drew the Council's attention to the notification from the parties to the Agreement contained in document WT/REG23/N/1, which indicated the entry into force on 1 July 1993 of the Free Trade Agreement between the Government of Denmark and the Home Government of the Faroe Islands, on the one part, and the Government of Iceland, on the other part. The text of the Agreement was circulated as document WT/REG23/1.

3.2 The representative of Denmark stated that, as indicated in the notification, the Agreement had entered into force on 1 July 1993, and contained provisions relating to free trade in goods between

Iceland and the Faroe Islands in the sense of Article XXIV of GATT 1994. The Agreement was in full conformity with WTO rules. Additionally, two other similar agreements were being processed, namely one with Norway and one with Switzerland. They would be notified as soon as certain technical details had been finalized.

3.3 The representative of Iceland stated that this Agreement was simply a formalization of an existing state-of-affairs, as free-trade had been the practice between Iceland and the Faroe Islands for quite a long time. Faroese products were treated as Danish products for customs purposes, and Icelandic products in fact, enjoyed a similar right of passage into Faroese territory.

The Council for Trade in Goods took note of the statements.

3.4 The Chairman recalled that at the last meeting of the General Council, a decision was taken, in principle, to establish a Committee dealing with regional trading matters. Consultations were currently being held by the Chairman of the General Council concerning the nature and terms of reference of that new body. The question of establishment of separate Working Parties would have to be reviewed in light of the final decision on this issue. Nonetheless, since no final decision on that had been taken at this stage, he proposed that the Council proceed in the usual manner and set up a working party with the following terms of reference and membership:

Terms of reference:

"to examine, in light of the relevant provisions of the GATT 1994, the Agreement between the Government of Denmark and the Home Government of the Faroe Islands, on the one part, and the Government of Iceland, on the other part, and to submit a report to the Council for Trade in Goods."

He added that his statement concerning the understanding made under agenda item 7 of the meeting of the Council for Trade in Goods on 20 February 1995, and contained in document WT/REG3/1, applied *mutatis mutandis* to this working party. It was also understood that, during the examination, due account would be taken of the intrinsic differences between customs unions and free-trade areas.

Membership:

"The Working Party would be open to all Members of the WTO indicating their wish to serve on it."

The Chairman proposed to consult with delegations on the question of Chairperson for the Working Party.

The Council for Trade in Goods so agreed.

#### **4. Brazilian Measure concerning the automotive sector**

4.1 The representative of Brazil, speaking under "Other Business", stated that on 14 December 1995, after negotiations within MERCOSUR, the Brazilian Government had sent to Congress Provisional Measure 1,235 that dealt with the automotive sector. The Provisional Measure was regulated by Decree No. 1,761, published in the Official Gazette on 27 December 1995 which, in turn, was regulated by a Ministerial Order dated 5 January 1996. On 12 January 1996, Provisional Measure 1,235 was re-issued under number 1,272. The translation of the pertinent legislation from Portuguese to one of WTO's official languages was being finalized and Brazil would soon notify it to the WTO.

4.2 According to the new legislation, assembling companies and manufacturers of vehicles and auto parts could benefit from a reduction of tariff on capital goods and inputs to be used in their production, if they complied with certain requirements related to net exports and to certain ratios regarding purchases of goods manufactured in Brazil. Brazil was aware of the implications of that legislation to its WTO obligations and expressed its readiness to maintain informal consultations with interested trading partners on the best way to comply with them. It was the Brazilian intention, in that regard, to seek a waiver from certain obligations, as foreseen in Article IX:3 of the Marrakesh Agreement establishing the World Trade Organization.

4.3 The representative of Korea, thanking the Brazilian delegate for informing the Council of this measure, said that Brazilian Decree N 1,761 was a matter of serious concern for Korea. Korea would study carefully the documentation to be submitted by Brazil, in order to examine the implications of this measure on Korea's exports of automotive products to Brazil. Korea understood the difficulties Brazil was facing with regard to its automobile policy within MERCOSUR. However, many other WTO Members were also confronted with problems. If an exception was made for one Member at this stage, it would not be possible to reject similar claims made by other Members. It was particularly important at this time for this fledgling institution not to set any precedent undermining its rules and principles. Regarding the effect of the Brazilian measure on the specific interests of Korea, although a further detailed study needed to be conducted, Korea's preliminary assessment was that the Brazilian measure would have a negative impact on the commercial interests of Korea in both the short run and the long run. Korea therefore reserved every right under the WTO until this matter was resolved in a satisfactory manner.

4.4 The representative of the United States thanked the Brazilian delegate for informing the Council of its intentions in this important matter. His delegation was currently reviewing the question with US industry and Congress, with a view towards formulating the US position.

4.5 The representative of Mexico, thanking the Brazilian delegate for the information provided, said that this was a matter of interest for Mexico and was being studied carefully in order to evaluate Mexico's position in this respect.

4.6 The representative of Japan, thanking the Brazilian delegation for the information provided, said that Japan had been repeatedly expressing serious concern regarding the Brazilian measures which, in Japan's view, would constitute a violation of GATT 1994, the TRIMs Agreement and the Subsidies Agreement. Japan had taken note of the Brazilian statement in which the Brazilian delegation had suggested its intention to request a waiver thus implying that the Government of Brazil regarded its measures or at least certain of them as inconsistent with the relevant provisions of the WTO Agreement. Japan wished Brazil to specify the measures in question as well as the provisions which Brazil felt the measures were violating. The Brazilian request for a waiver would need to be examined carefully in light of the relevant provisions of the WTO Agreement. Japan wished to reserve, already at this stage, its rights under the WTO Agreement.

4.7 The representative of Canada stated that her delegation was pleased to hear of Brazil's full cooperation and transparency in providing further information which might be required regarding its automotive investment regime. Her delegation intended to review in detail the new regime as set out in Decree 1,761 and Provisional Measure 1,235. In the interim, Canada wished to reserve its rights under the WTO.

4.8 The representative of the European Communities thanked Brazil for the information provided. In the statement, the representative of Brazil had stated that his country was conscious of the implications of this legislation, which was being translated and would be circulated very shortly. The Community's would study the legislation carefully before giving its position on this matter.

4.9 The representative of Argentina, speaking also on behalf of Paraguay and Uruguay, expressed understanding and sympathy with the statement made by the representative of Brazil. The transitional measures were adopted by the Brazilian Government with a view to the common regime which would govern the automotive sector in MERCOSUR as of 1 January 2000. Brazil had demonstrated with this announcement that it was making the necessary efforts to fulfil its obligations in the framework of the WTO. All the member countries of MERCOSUR would participate constructively in the process of consultations proposed by Brazil.

The Council took note of the statements.

## **5. US draft bill concerning the definition of "domestic industry" in the area of safeguards**

5.1 The representative of Mexico, speaking under "Other Business", stated that on 26 January 1996, the Senate of the United States had approved the proposed Law S. 1463 by means of a "unanimous consent agreement", in other words, without prior committee consideration, floor debate or vote. According to reports, this bill would be submitted in the course of this week to the House of Representatives, where it would follow a similar procedure.

5.2 The draft bill redefined the term "domestic industry" as contained in United States' legislation on safeguards. Rather than using the definition contained in existing United States' legislation which corresponded to Article 4.1(c) of the WTO Agreement on Safeguards, the bill established that, where one or more domestic producers produced a like or directly competitive perishable agricultural product during a particular season, the United States authorities could limit "domestic industry" to the said producers if those producers sold all or almost all of their output of that product in that season and the demand for that product was not met, to a substantial degree, by other domestic suppliers of the product producing it in a different season. In other words, where a perishable product was produced in two different states of the Union and one state produced it in winter and the other in summer, the United States could implement a safeguard measure to protect the winter producers without taking account, when determining the existence of injury or threat of injury, of the output of the state producing the product in the summer. Mexico considered that the definition in the bill was clearly inconsistent with the WTO obligations of the United States, as was shown by the fact that existing legislation had to be changed in order to be able to act in this way, and the United States International Trade Commission had unanimously ruled against a request for safeguards by domestic industry that had features of this new definition. This was not a bilateral matter. If the draft bill became law, and other WTO Members followed the same path, there was a serious danger that other WTO Members might apply safeguard measures of this sort against products such as vegetables, citrus fruits, apples, fish, shellfish, etc.. Mexico reserved the right to include this matter on the agenda of this Council or of the General Council to assert its rights under WTO rules, if the need arose, and was willing to provide further information or documentation to those delegations interested in the matter.

5.3 The representative of Canada stated that her delegation shared the concerns expressed by Mexico about the bill that was passed in the US Senate on 26 January 1996. It appeared that this legislation was inconsistent with United States' obligations under the WTO with respect to the definition of "domestic industry". As Mexico had pointed out, this was an issue of serious concern. Her delegation would encourage the United States to review this situation, and to ensure that any legislation that was enacted would be consistent with its WTO obligations.

5.4 The representative of Chile stated that his delegation shared the concern already mentioned by Mexico and Canada with respect to this bill, which changed the definition of "domestic industry" in the United States' legislation in the area of safeguards when dealing with perishable agricultural products. Chile believed that this would be incompatible with the safeguard obligations of the WTO and would weaken the proof of damage.

5.5 The representative of Australia stated that his authorities would also be very concerned if anything should be done in terms of passing legislation in the United States that would make the application of Article 4 of the Safeguards Agreement more protective, and certainly any action that would be at variance with the United States' obligations under that Agreement. Clearly, there was need for more information, but he wished to register his delegation's concern on that point at this meeting this morning.

5.6 The representative of Argentina stated that as providers of perishable products to the US market, his delegation shared the concern expressed earlier by other delegations. Currently, this was only a bill before the Congress, and the only thing that could be done would be for Members to encourage the executive branch to try and convince Congress of the inconsistency of the measure under discussion and the multilateral rules of the WTO.

5.7 The representative of New Zealand stated that this issue had only just come to New Zealand's attention and his delegation had not had the opportunity to fully study its implications. Nonetheless, as an exporter of perishable agricultural products to the US market, his delegation shared the concerns voiced, in particular that a departure from the provisions of Article 4 of the Safeguards Agreement may be in prospect. Like Canada and Argentina, New Zealand would hope that the US administration would be able to review this situation and would seek, to the best of its ability, to ensure the consistency of legislation with its WTO obligations.

5.8 The representative of Guatemala stated that his delegation wished to state its concern regarding the United States' bill to change the definition of "domestic industry" under safeguards. His delegation supported the statement made by the delegation of Mexico and reserved the right to revert to this matter in forthcoming meetings.

5.9 The representative of Brazil stated that more information on this matter was required. Even at this stage, his delegation shared the concerns expressed by other delegations on this issue.

5.10 The representative of Peru shared the concerns expressed by other delegations on this issue.

5.11 The representative of Malaysia, speaking on behalf of the ASEAN countries, thanked Mexico for bringing this matter to the attention of Council Members. ASEAN countries would be interested to know of further developments and reserved their rights to pursue this matter.

5.12 The representative of the European Communities stated that his delegation was grateful for the information provided by Mexico and asked the United States' delegation to provide Members with further information and background relating to this measure.

5.13 The representative of Colombia, like other countries that exported perishable products, shared the concern voiced regarding this bill, and invited the Government of the United States to ensure that any modifications to its safeguard legislation would be consistent with its obligations under the WTO.

5.14 The representative of the United States stated that his delegation had taken note of the statements made, and would report to his authorities the concerns expressed on this particular issue. The relevant information would be made available as requested.

5.15 The Council for Trade in Goods took note of the statements, and suspended the meeting to enable the Chairman to finalize consultations regarding Chairpersons of subsidiary bodies of the Council for Trade in Goods. The meeting was resumed on 14 February 1996.

**6. Appointment of Officers for the: Committee on Agriculture; Committee on Sanitary and Phytosanitary Measures; Working Group on Notification Obligations and Procedures; Working Party on State Trading Enterprises**

6.1 The Chairman stated that the "Guidelines for the Appointment of Officers to WTO bodies" contained in document WT/L/31 and approved by the General Council on 31 January 1995, provided that the Chairperson of the Council for Trade in Goods would conduct consultations on the appointment of the chairpersons of bodies to Group 6(A) which comprised the subsidiary bodies of the Council for Trade in Goods. Accordingly, he had conducted consultations and had a slate of Chairpersons to recommend to the Council. While all the other subsidiary bodies of the Council for Trade in Goods had provisions in their respective Agreements or in their Rules of Procedures requiring them to elect their own chairpersons, the four subsidiary bodies mentioned under this agenda item did not have such provisions; therefore, the Council for Trade in Goods had to appoint those chairpersons.

6.2 He reported on the results of his consultations on chairpersons for 1996 for subsidiary bodies of the Council for Trade in Goods as follows:

Committee on Agriculture: Ambassador D. Tulalamba (Thailand);

Committee on Sanitary and Phytosanitary Measures: Ambassador K. Bergholm (Finland);

Committee on Technical Barriers to Trade (TBT): Ambassador C. Guarda (Chile);

Committee on Market Access: Mr. J. St-Jacques (Canada);

Committee on Customs Valuation: Mr. P. Palecka (Czech Republic);

Committee on Import Licensing: Mr. C. Mbegabolawe (Zimbabwe);

Committee on Rules of Origin: Mr. Osakwe (Nigeria);

Committee on Anti-Dumping: Mr. O. Lundby (Norway);

Committee on Subsidies and Countervailing Measures: Mr. V. Do Prado (Brazil);

Committee on Safeguards: Mr. A. Buencamino (Philippines);

Committee on Trade-Related Investment Measures: Mr. V. Notis (Greece);

Working Group on Notification Obligations and Procedures: Mr. A. Shoyer (US);

Working Party on State Trading Enterprises: Mr. P. May (Australia).

6.3 The Council appointed Ambassador Tulalamba, Ambassador Bergholm, Mr. May, and Mr. Shoyer as chairpersons for the Committee on Agriculture, the Committee on Sanitary and Phytosanitary Measures, the Working Party on State Trading Enterprises, and the Working Group on Notification Obligations and Procedures respectively, and took note of the nominations of the other persons mentioned as chairpersons for the other subsidiary bodies.

6.4 The Chairman proposed that with respect to Vice-Chairpersons of subsidiary bodies of the Council for Trade in Goods, the practice established in 1995 should be followed, i.e. the question should

be handled at the level of the Committees themselves through a process of consultations undertaken by the respective Chairpersons.

6.5 The Council for Trade in Goods so agreed.

6.6 The representative of Mexico stated that his delegation had asked for the floor first to convey its satisfaction on the fact that plurilateral, open consultations had been held in order to reach an understanding on the list of chairpersons that had been read out. He wished to have placed on record the concern felt by his delegation about the re-election of chairpersons. Although this was not inconsistent with the guidelines for the election of officers, it did nonetheless seem rather inconsistent with the principle of rotation. His delegation was not questioning the quality of the people involved, but Mexico wished to see the principle of rotation retained. In those cases where the Marrakesh Agreement established that the Committees "shall elect their Chairmen and Vice-chairmen", his delegation wished to see, at the time these chairmanship posts were filled, also the nominees for Vice-Chairmanship, if it were felt necessary that a Vice-Chairman be elected. In other words, Mexico reserved the right to give formal endorsement to the election of Chairperson at the time when the nominees of Vice-Chairmen's posts had been decided, if it were decided that a Vice-Chairman should be elected.

6.7 The representative of Colombia thanked the Chairman for having carried out a process in order to reach agreement, and also congratulated those representatives who had been elected on the basis of consensus to chair committees and working groups. He fully agreed that the abilities and the experience which had been accumulated by these Chairpersons would be useful in helping them guide the work of these committees and working groups in a very intelligent and useful manner. However, his delegation associated itself with the concern voiced by the representative of Mexico. It was also his view that there should be as broad a rotation as possible without this necessarily implying that in certain special cases a re-election in one or more posts was not possible, in order to serve the general interest. He was aware that it was not an easy exercise to try and satisfy all delegations. It would seem advisable that the new Chairman of the Council for Trade in Goods would begin his round of consultations on Chairpersons earlier so that some of the pitfalls that had appeared on this occasion could be avoided.

6.8 The representative of Pakistan associated his delegation with the points made by the representatives of Mexico and Colombia.

6.9 The representative of Cuba thanked the Chairman for his efforts over the last few days which had permitted a solution. He believed that some of the things mentioned during unofficial consultations should be reiterated. His delegation's preference would be that at the end of 1996, the process should be initiated on a much more transparent basis, and above all that the principle of rotation should be applied. He believed that Members would work very well with the Chairpersons who had been elected on the basis of the recommendation by the Chairman of the Council for Trade in Good for the subsidiary bodies of the Council. He also wished to take the opportunity to thank his Latin-American colleagues, who had aspirations to certain posts in the subsidiary bodies of the Council, for the flexibility they had shown to enable a consensus to be reached. Members should keep this fact in mind when they considered the appropriateness of electing vice-chairpersons for certain committees, and also as regarded the consultation process for the election of officers for 1997.

6.10 The representative of El Salvador stated that his delegation agreed with the statement made by the representative of Mexico, particularly with regard to the process of consultations. He hoped that in the future, consultations would be transparent, open and plurilateral. His delegation shared the concerns expressed to the effect that there had been massive re-elections. While he was sure that the re-elected Chairpersons would continue to do excellent work, the principle of rotation had to be applied.

6.11 The representative of the European Communities stated that his delegation was pleased that a solution had finally been found. There were plenty of excellent candidates to be proposed as Chairpersons, but in the end a balance had to be found. The process that was being finalized at this meeting showed the importance of consultations being held in a transparent way. With respect to vice-chairpersons, this issue was to be dealt with once the question of chairpersons was settled; there should be no linkage between the two.

6.12 The representative of Egypt thanked the Chairman for the efforts made to solve this problem of election of Chairpersons. The solution, which established a balance between the various regional groups, was satisfactory to his delegation. His delegation was happy to see Africa getting a modest share in the distribution of offices, being represented by Nigeria as far as Rules of Origin were concerned, and Zimbabwe, as far as Import Licensing Procedures were concerned. It was also important that the principle of rotation be maintained.

6.13 The Council for Trade in Goods took note of the statements.

6.14 Before taking up agenda item 7, the Chairman, this being the last meeting under his chairmanship, provided an overview of the work of the Council during 1995.

6.15 The Council for Trade in Goods, pursuant to paragraph 5 of Article IV of the WTO Agreement, had approved on 31 July 1995 its Rules of Procedure, which were largely based on the rules of procedure of the General Council. The subsidiary bodies of the Council for Trade in Goods had, wherever possible, based themselves on the Rules of Procedure adopted by the Council for Trade in Goods, and in this respect, a strong element of harmonization and clarity had been introduced into the functioning of the various subsidiary bodies.

6.16 In the context of implementation of the Uruguay Round results, the Council at its first meeting had established the Working Party on State Trade Enterprises and the Working Group on Notification Obligations and Procedures. The work of the latter Group would be instrumental in streamlining the process of notifications. However, he emphasized the concern regarding the less than full compliance by Members with notification requirements under Agreements within the competence of this Council. As he had already stated when introducing the Council's report to the General Council last year, the WTO system relied primarily on mutual surveillance as a means to ensure implementation. If notification obligations were not complied with, there was no basis on which the relevant WTO bodies could review the measures of Members and the system broke down. Therefore he urged all WTO Members to make maximum efforts to fulfil their notification obligations promptly.

6.17 Another issue linked to the implementation of the Uruguay Round results was the establishment of the Independent Review Entity under the Preshipment Inspection Agreement. This Agreement had not been fully operational as of 1 January 1995 because of a lack of consensus on the status and location of the Independent Review Entity to be established under its Article 4. This issue was resolved in December 1995 when the Council forwarded for approval to the General Council the Draft Decision regarding the operation of the Independent Entity.

6.18 During 1995, the Council had also dealt with unfinished Uruguay Round business, namely the approval and transmission to the General Council for approval of the Schedules of Concessions on Goods of least developed countries, who had until 15 April 1995 to submit such Schedules, and the Schedules of Concessions on Goods of countries covered by the Decision on Finalization of Negotiations on Schedules on Goods and Services. The process of submission, verification and approval of Schedules on Concessions on Goods which had commenced under the Uruguay Round had now been finally concluded.

6.19 Other issues addressed by the Council in 1995 included Article XXIV working parties and their terms of reference. A number of regional trading arrangements had been notified under Article XXIV of GATT 1994, with the result, that the Council had established a number of working parties to examine these agreements. A Decision had been taken by the General Council on 6 February 1996 to establish a Committee on Regional Trade Agreements. This Committee would carry out the pending work of the Working Parties that had already been established by the Council for Trade in Goods.

6.20 The Council had also dealt extensively with requests for waiver extensions in connection with the introduction of the Harmonized System or the renegotiation of Schedules. These were waivers granted under Article XXV of GATT 1947 and still in force on the date of entry into force of the WTO Agreement. The Council had also forwarded for approval by the General Council the draft Decision on the Introduction of 1996 Harmonized System changes into WTO Schedules of Tariff Concessions which granted a waiver to a number of Members listed in the annex of the decision. This waiver would expire on 30 June 1996, and it was hoped that the Members concerned would complete this exercise by then.

6.21 He recalled that at its meeting of 31 July 1995, the Council had considered an agenda item concerning the status of Members of the Textiles Monitoring Body. The Chairman of the Textiles Monitoring Body, on behalf of the Body, had informed him, at that time, of discussions the TMB had held, when developing and adopting its own working procedures, with respect to the perceived need of the Body to re-assert the fact that the TMB members discharge their functions on an *ad personam* basis. He had indicated that he would be consulting with Members on this matter, on the basis of a proposal provided by the TMB. However, it appeared that this issue was now being discussed in the broader context of the Dispute Settlement Body and its discussions on the "Code of Ethics", which was why this matter had not been reverted to during the course of 1995.

6.22 The Council for Trade in Goods took note of the report.

## **7. Election of Chairperson for the Council for Trade in Goods**

7.1 The Chairman recalled the Chairman of the General Council had carried out informal consultations on a slate of names for appointment as chairpersons to the different WTO standing bodies in accordance with the established Guidelines for Appointment of Officers. These proposed nominations were approved by the General Council at its meeting in December 1995.

7.2 On the basis of the understandings reached, he proposed that the Council for Trade in Goods elect H.E. Ambassador Narayanan (India) as Chairman of this body by acclamation.

7.3 The Council for Trade in Goods unanimously elected Ambassador Narayanan, Chairman for the Council for Trade in Goods for 1996.