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Council for Trade in Goods
1 November 1996

REPORT OF THE COUNCIL FOR TRADE IN GOODS TO THE GENERAL COUNCIL

Introduction

This report has been established in accordance with the statement by the Chairman of the General Council, at the meeting on 16 April 1996, with regard to "Reporting Procedures for the Singapore Ministerial Conference". It covers the period from 1 January to 4 November 1996;[1] it comprises a Section I: factual part, and a Section II: conclusions and/or recommendations. The report also covers the activities of the subsidiary bodies of the Council for Trade in Goods (hereinafter referred to as "the Council"), as outlined under item 19(a).

In carrying out its task, the Council has held eight regular meetings. The minutes of these meetings, which remain the record of the Council's work, are contained in documents G/C/M/8 to 15.

The following subject matters which were raised and/or acted upon in the Council are included in the report:

[1]The report of the Council for Trade in Goods for 1995 is contained in Section IV of document WT/GC/W/25.

SECTION I: FACTUAL PART

1. Observer status for International Intergovernmental Organizations (G/C/M/8 to 14)

1.1 At its meeting of 29 January 1996, the Council agreed 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 the current meeting of the Council be invited to its next meeting on an ad-hoc basis. The organizations concerned were: FAO, IMF, ITCB, OECD, UN, UNCTAD, World Bank and the WCO.

1.2 At its meetings of 14 February 1996, 19 March 1996, 22 May 1996 and 5 July 1996 the Council agreed to invite the same organizations on an ad-hoc basis to its next respective meeting.

1.3 At the meeting of 25 July 1996, the Chairman pointed out that at its meeting of 18 July 1996, the General Council had approved the "Guidelines on Observer Status for International Intergovernmental Organizations". In light of this decision he proposed to hold informal consultations on which International Intergovernmental Organizations would be granted observer status in the Goods Council.

1.4 At its meeting of 19 September 1996, the Council agreed that pending the outcome of further consultations, the organizations which had been following the Council' s meeting up to now on an ad-hoc basis, could attend future meetings of the Council on an ad-hoc basis.

2. Election of Chairperson of the Council (G/C/M/8)

2.1 At its meeting of 14 February 1996, the Council unanimously elected Ambassador Narayanan, as Chairman of the Council for 1996.

3. Appointment of Officers for the Committee on Agriculture, Committee on Sanitary and Phytosanitary Measures, Working Party on State-Trading Enterprises, Working Group on Notification Obligations and Procedures (G/C/M/8)

3.1 At its meeting of 14 February 1996, the Council approved the appointments of the following Chairpersons: Committee on Agriculture: Mr. D. Tulalamba (Thailand); Committee on Sanitary and Phytosantiary Measures: Mr K. Bergholm (Finland); Working Group on Notification Obligations and Procedures: Mr. A Shoyer (United States); Working Party on State Trading Enterprises: Mr. P. May (Australia).

3.2 At its meeting of 14 February 1996, the Council took note of the results of the consultations held by the Chairman on Chairpersons for 1996 for the other subsidiary bodies as follows: Committee on Technical Barriers to Trade: Ms. C. Guarda (Chile); Committee on Market Access: Mr. J. Saint-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 Practices: 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).

3.3 The Council also agreed that the question of Vice-Chairpersons should be handled at the level of the Committees themselves through a process of consultations.

3.4 A number of delegations stated that future consultations on Chairpersons should be initiated as early as possible, they should be more transparent, and the principle of rotation should be the rule wherever possible. The point was also made that in the future the question of the Vice-Chiarmanship should be settled in the context of such consultations.

4. Approval of Rules of Procedure of the Committees on Agriculture, Anti-dumping Practices, Safeguards, Subsidies and Countervailing Measures (G/C/M/10)

4.1 At its meeting of 22 May 1996, the Council approved the rules of procedure of the Committees on Agriculture (G/AG/W/22), Anti-Dumping Practices (G/ADP/W/135/Rev.1), Safeguards (G/SG/W/59/Rev.1) and Subsidies and Countervailing Measures (G/SCM/W/143/Rev.1).

5. Letter from the Chairman of the Committee on Trade and Development (G/C/M/10 and 13 and Corr.1)

5.1 At the meeting of 22 May 1996, the Chairman informed the Council that the Chairman of the Committee on Trade and Development (CTD) had sent a letter to him requesting information on the implementation of development-related provisions in those Uruguay Round Agreements dealt with by the Council. This information was necessary for the review to be conducted by the CTD. He had sent a letter to the chairpersons of the various subsidiary bodies of this Council requesting them to give him information on the work done in this area. After receipt of this information, he would take further action on the basis of the information provided.

5.2 At the meeting of 19 September 1996, the Chairman informed the Council that the responses to the letter he had sent to the Chairpersons of the subsidiary bodies of the Council had been received and forwarded to the Chairman of the CTD. The Secretariat had made a compilation of those responses in document WT/COMTD/W/16 and Addendum. The matter was now under consideration in the CTD.

6. Circulation and Derestriction of Council Documents (G/C/M/13 and Corr.1)

6.1 At the meeting of 19 September 1996, the Chairman drew the Council's attention to the decision taken by the General Council at its meeting of 18 July 1996 on "Procedures for the Circulation and Derestriction of WTO documents" (WT/L/160/Rev.1). The Council took note of the decision.

7. Availability of documents in Spanish (G/C/M/13 and Corr.1)

7.1 At the meeting of 19 September 1996, the representative of El Salvador, also on behalf of GRULAC, expressed concern at the fact that documents were not made available in the Spanish language in time for meetings. Another representative stated that the same problem had arisen regarding documents in French.

8. Committee on Market Access

Semi-annual report of the Committee (G/C/M/11)

8.1 At its meeting of 5 July 1996, the Council took note of the report made by the Chairman of the Market Access Committee (G/MA/4) concerning (1) implementation of HS96 changes; (2) other waivers; (3) establishment of consolidated loose-leaf schedules; (4) non-tariff matters; (5) Integrated Data Base; and (6) Report of the Committee to the Council in connection with the Singapore Ministerial Meeting.

9. Agreement on Subsidies and Countervailing Measures

State of play concerning subsidy notifications - lack of compliance with subsidy notification requirements under Article 25.2 of the Agreement on Subsidies and Countervailing Measures (G/C/M/10)

9.1 At the meeting of 22 May 1996, the representative of the EC conveyed concern about the lack of compliance by Members with their notification obligation under Article 25.2 of the Subsidies Agreement.

10. Working Party on State Trading Enterprises (G/C/M/14)

10.1 At its meeting of 15 October 1996, the Council took note of the communication from the European Communities circulated in G/STR/W/33. The EC requested the Council to refer its submission to the Working Party on State Trading Enterprises for its consideration. The Council agreed to revert to this matter at an appropriate time.

11. Customs Unions and Free-Trade Areas: regional agreements
(G/C/M/8, 9, 10,11 and 13 and Corr.1)

11.1 At its meeting of 29 January 1996, the Council took note of the information provided by the Chairman 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 being held by the Chairman of the General Council concerning the nature and terms of reference of the new body. The Council agreed that the question of establishment of separate Working Parties would have to be reviewed in light of the final decision on this issue.

11.2 At its meeting of 19 March 1996, the Council took note of a decision taken by the General Council to establish a Committee on Regional Trade Agreements (WT/L/127) which would carry out the examination of such agreements in accordance with the procedures and terms of reference adopted by the Council and which would thereafter present its report to the Council for appropriate action.

(a) Customs Union between Turkey and the European Community (EC) (G/C/M/8)

11.3 At its meeting of 29 January 1996, the Council took note of the communication (WT/REG22/N/1) from the parties, indicating the entry into force on 1 January 1996 of the Customs Union between Turkey and the EC. The Council established a Working Party to examine the Agreement.

(b) 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 (G/C/M/8)

11.4 At its meeting of 19 March 1996, the Council took note of the notification from the parties to the Agreement (WT/REG23/N/1), indicating the entry into force on 1 July 1993 of the Agreement (WT/REG23/1). The Council established a Working Party to examine the Agreement.

(c) Agreement between the Swiss Government, of the one part, and the Government of Denmark and the Home Government of the Faroe Islands, of the other part, on free trade between the Faroe Islands and Switzerland (G/C/M/9)

11.5 At its meeting of 19 March 1996, the Council took note of the notification from the parties to the Agreement (WT/REG24/N/1), indicating the entry into force on 1 March 1995 of the Agreement (WT/REG24/1). The Council adopted the terms of reference under which the Committee on Regional Trade Agreements should examine this Agreement.

(d) Agreement between the Government of Norway, of the one part, and the Government of Denmark and the Home Government of the Faroe Islands, of the other part, on free trade between the Faroe Islands and Norway (G/C/M/9)

11.6 At its meeting of 19 March 1996, the Council took note of the notification from the parties to the Agreement (WT/REG25/N/1), indicating the entry into force on 1 July 1993 of the Agreement (WT/REG25/1). The Council adopted the terms of reference under which the Committee on Regional Trade Agreements should examine this Agreement.

(e) Agreements between the Czech Republic and Bulgaria, and the Slovak Republic and Bulgaria (G/C/M/9)

11.7 At the meeting of 19 March 1996, the representative of the Czech Republic, speaking also on behalf of the Slovak Republic and the Republic of Bulgaria, informed the Council of the signing in December 1995 of the free trade agreements between the Czech Republic and Bulgaria and between the Slovak Republic and Bulgaria. These agreements had been applied on a provisional basis since 1 January 1996 and would be notified to the WTO when the ratification processes in each of the signatory states had been completed.

(f) Preferential tariff treatment for the countries of former Yugoslavia (G/C/M/9)

11.8 At the meeting of 19 March 1996, the representative of the EC informed the Council that his delegation intended to ask for a waiver from obligations under Article I of the GATT in order to grant the countries of former Yugoslavia preferential access to the Community market for a limited period of time.

(g) EFTA-Estonia, EFTA-Latvia, EFTA-Lithuania Free Trade Agreements (G/C/M/10)

11.9 At the meeting of 22 May 1996, the representative of Iceland on behalf of the EFTA countries and Estonia, Latvia and Lithuania informed the Council that the EFTA states and Estonia, Latvia and Lithuania respectively had concluded Free Trade Agreements in December 1995. The Agreements were expected to enter into force or to be applied on a provisional basis as of 1 June 1996. The content and structure of the Agreements were similar to the free trade agreements which had been concluded between the EFTA states and the Central and Eastern European countries with certain adjustments reflecting recent developments. The Agreements would be notified under Article XXIV: 7(a) of GATT 1994.

(h) Enlargement of the Central European Free Trade Agreement (CEFTA) (G/C/M/10)

11.10 At the meeting of 22 May 1996, the Slovak Republic on behalf of the parties to the Central European Free Trade Agreement (CEFTA) and Slovenia informed the Council that the text of the CEFTA had been complemented by provisions of Article 39 (a) which allowed for accession to the CEFTA by other countries. On this basis, the Republic of Slovenia had signed the Agreement on Accession

with the four parties on 25 November 1995. The Agreement was being applied on a provisional basis and would enter into force once ratification procedures in the countries, parties to this Agreement, had been completed.

(i) Europe Agreements between the European Communities and the Czech Republic, and the European Communities and the Slovak Republic (G/C/M/10)

11.11 At the meeting of 22 May 1996, the Chairman informed the Council that the Europe Agreement between the EC and the Czech and Slovak Federal Republic, had been replaced by separate Agreements with each of the successor states. The examination of these Agreements (WT/REG18/6 and 7) would take place in the Committee on Regional Trade Agreements.

(j) Free-Trade Agreement between the Czech Republic and Romania (G/C/M/11)

11.12 At its meeting of 5 July 1996, the Council took note of the notification from the parties to the Agreement (WT/REG26/N/1), which also indicated that since the entry into force of the Agreement (WT/REG26/1), the parties had agreed to accelerate the elimination of customs duties on most industrial products (WT/REG26/2). In 1995, the Council had been informed that this Free Trade Agreement, signed on 24 October 1994, was being applied provisionally since 1 January 1995, and was to be established over a transitional period ending not later than 1 January 1998. The Council adopted the terms of reference under which the Committee on Regional Trade Agreements should examine this Agreement.

(k) Free-Trade Agreement between the Slovak Republic and Romania (G/C/M/11)

11.13 At its meeting of 5 July 1996, the Council took note of the notification from the parties to the Agreement (WT/REG27/N/1), which also indicated that since the entry into force of the Agreement (WT/REG27/1), the parties had agreed to accelerate the elimination of customs duties on most industrial products (WT/REG27/2). The Council had been informed in 1995, that this Free Trade Agreement, signed on 24 October 1994, was being applied provisionally since 1 January 1995, and was to be established over a transitional period ending not later than 1 January 1998. The Council adopted the terms of reference under which the Committee on Regional Trade Agreements should examine this Agreement.

(l) Free Trade Agreement between the EFTA States and Estonia (G/C/M/13 and Corr.1)

11.14 At its meeting of 19 September 1996, the Council took note of the notification from the parties to the Agreement (WT/REG28/N/1), indicating that the Free Trade Agreement (WT/REG28/1) was signed on 7 December 1995 and had been applied on a provisional basis as of 1 June 1996, pending ratification by the parties to the Agreement. The Council adopted the terms of reference under which the Committee on Regional Trade Agreements should examine this Agreement.

(m) Free Trade Agreement between the EFTA States and Latvia (G/C/M/13 and Corr.1)

11.15 At its meeting of 19 September 1996, the Council took note of the notification from the parties to the Agreement (WT/REG29/N/1), indicating that the Free Trade Agreement (WT/REG29/1) was signed on 7 December 1995 and had been applied on a provisional basis as of 1 June 1996, pending ratification by the parties to the Agreement. The Council adopted the terms of reference under which the Committee on Regional Trade Agreements should examine this Agreement.

(n) Free Trade Agreement between the EFTA States and Lithuania (G/C/M/13 and Corr.1)

11.16 At its meeting of 19 September 1996, the Council took note of the notification from the parties to the Agreement (WT/REG30/N/1), indicating that the Free Trade Agreement (WT/REG30/1) had been applied on a provisional basis as of 1 August 1996, pending ratification by the parties to the Agreement. The Council adopted the terms of reference under which the Committee on Regional Trade Agreements should examine this Agreement.

12. Waivers under Article IX of the WTO Agreement

(a) Harmonized System - Requests for extensions of waivers

Bangladesh, Bolivia, Guatemala, Jamaica, Morocco, Nicaragua, Sri Lanka (G/C/M/11)

12.1 At its meeting of 5 July 1996, the Council considered requests by Bangladesh (G/L/77), Bolivia (G/L/78), Guatemala (G/L/86), Jamaica (G/L/79), Morocco (G/L/80), Nicaragua (G/L/81) and Sri Lanka (G/L/83) for an extension until 30 April 1997 of waivers already granted in connection with their implementation of the Harmonized System.

12.2 The Council approved the texts of the draft decisions on the waiver extensions in G/C/W/40 (Bangladesh), G/C/W/41[2] (Bolivia), G/C/W/48[3] (Guatemala), G/C/W/42 (Jamaica), G/C/W/43 (Morocco), G/C/W/44 (Nicaragua) and G/C/W/46 (Sri Lanka), and recommended their adoption by the General Council.

(b) Malawi - Renegotiation of Schedule LVIII (G/C/M/8)

12.3 At its meeting of 29 January 1996, the Council considered a request by Malawi (G/L/51) for an extension, until 30 June 1996, of the waiver granted to it in connection with the renegotiation of its Schedule. The Council approved the text of the draft decision (G/C/W/31) on the waiver extension, and recommended its adoption by the General Council.

(c) Senegal - Renegotiation of Schedule XLIX (G/C/M/11)

12.4 At its meeting of 5 July 1996, the Council considered a request by Senegal (G/L/82) for an extension, until 30 April 1997, of the waiver granted to it in connection with the renegotiation of its Schedule. The Council approved the text of the draft decision (G/C/W/45) on the waiver extension, and recommended its adoption by the General Council.

(d) Zambia - Renegotiation of Schedule LXXVIII (G/C/M/11)

12.5 At its meeting of 5 July 1996, the Council considered a request by Zambia (G/L/84) for an extension, until 30 April 1997, of the waiver granted to it in connection with the renegotiation of its Schedule. The Council approved the text of the draft decision (G/C/W/47) on the waiver extension, and recommended its adoption by the General Council.

[2] G/C/W/41/Corr.1 in Spanish.

[3] G/C/W/48/Corr.1 in Spanish.

(e) Decision on the introduction of Harmonized Commodity Description and Coding System (HS) changes into WTO schedules of tariff concessions on 1 January 1996 (G/C/M/11)

12.6 At its meeting of 5 July 1996, the Council considered the draft of a decision (G/MA/W/6) concerning a waiver, which related to the HS96 changes to be introduced in Member's tariff schedules on 1 January 1996. A waiver had appeared necessary for those Members finding it necessary to consult or negotiate under Article XXVIII of GATT 1994 as a result of the HS96 changes. The Council approved the extension of the time-limits set out in the draft decision and agreed that it be transmitted to the General Council for adoption.

(f) Waivers falling under paragraph 2 of the Understanding in Respect of Waivers of Obligations under GATT 1994 (G/C/M/11, 13 and Corr.1 and 14)

12.7 At its meeting of 19 September 1996, the Council took note of the concerns voiced by one delegation regarding the important number of requests for extensions of waivers from the obligations under paragraph 1 of Article I of GATT 1994. In the view of this delegation, stricter conditions applied under the WTO than under GATT 1947 for the granting of waivers or their possible extensions.

(i) Cuba - Paragraph 6 of Article XV of GATT 1994 (G/C/M/11 and 13 and Corr.1)

12.8 At its meeting of 5 July 1996, the Council considered the request for an extension of a waiver by Cuba (G/L/89) with respect to paragraph 6 of Article XV of the GATT 1994. The Council agreed to revert to this issue, as appropriate, in the light of the outcome of further consultations that were in progress.

12.9 At its meeting of 19 September 1996, the Council took note of the statement by the Chairman that the consultations had led to an understanding that waivers falling under paragraph 2 of the Understanding in Respect of Waivers of Obligations under GATT 1994 should follow the procedure set out in paragraph 3 of Article IX of the WTO Agreement. The Council approved the draft decision (G/C/W/51/Rev.1) on the waiver extension, and recommended its adoption by the General Council.

(ii) United States - Former Trust Territory of the Pacific Islands (G/C/M/13 and Corr.1)

12.10 At its meeting of 19 September 1996, the Council considered a request by the United States (G/L/101) for an extension of the waiver from its obligations under paragraph 1 of Article I of GATT 1994. The Council approved the draft decision (G/C/W/53) on the waiver extension and recommended its adoption by the General Council.

(iii) United States - Imports of Automotive Products (G/C/M/13 and Corr.1 and 14)

12.11 At its meeting of 19 September 1996, the Council considered a request by the United States (G/L/103 and Corr.1) for an extension of the waiver granted in connection with imports of automotive products. In light of one delegation's request for further information on this waiver request, the Council agreed to revert to this matter at its next meeting.

12.12 At its meeting of 15 October 1996, the Council approved the draft decision (G/C/W/55) on the waiver extension and recommended its adoption by the General Council.

(iv) United States - Andean Trade Preference Act (G/C/M/13 and Corr.1)

12.13 At its meeting of 19 September 1996, the Council considered a request by the United States (G/L/102) for an extension of the waiver granted in connection with the Andean Trade Preference Act.

The Council approved the draft decision (G/C/W/54) on the waiver extension and recommended its adoption by the General Council.

(v) Canada - CARIBCAN (G/C/M/13 and Corr.1)

12.14 At its meeting of 19 September 1996, the Council considered a request by Canada (G/L/100) for an extension of the waiver granted in connection with CARIBCAN. The Council approved the draft decision (G/C/W/52) on the waiver extension and recommended its adoption by the General Council.

(vi) European Communities (G/C/M/13 and Corr.1)

- European Communities - Fourth ACP-EEC Convention of Lomé

12.15 At its meeting of 19 September 1996, the Council considered a request by the EC and the Governments of the ACP States which were also WTO Members (G/L/107 and 108) for an extension of the waiver granted in connection with the Fourth ACP-EEC Convention of Lomé. The Council approved the draft decision (G/C/W/58/Rev.1) on the waiver extension and recommended its adoption by the General Council.

- France - Trading Arrangements with Morocco

12.16 At its meeting of 19 September 1996, the Council considered a request by the EC (G/L/107 and 109) for an extension of the waiver granted in connection with France - Trading Arrangements with Morocco. The Council approved the draft decision (G/C/W/59/Rev.1) on the waiver extension and recommended its adoption by the General Council.

(vii) South Africa - Base Dates under Article I:4 (G/C/M/13 and Corr.1)

12.17 At its meeting of 19 September 1996, the Council considered a request by South Africa (G/L/104) for an extension of the waiver granted in connection with base dates under Article I:4 of the GATT. The Council approved the draft decision (G/C/W/56/Rev.1) on the waiver extension and recommended its adoption by the General Council.

(viii) Zimbabwe - Base Dates under Article I:4 (G/C/M/13 and Corr.1)

12.18 At its meeting of 19 September 1996, the Council considered a request by Zimbabwe (G/L/106) for an extension of the waiver granted in connection with base dates under Article I:4 of the GATT. The Council approved the draft decision (G/C/W/57/Rev.1) on the waiver extension and recommended its adoption by the General Council.

13. Issues raised concerning Members' trade practices

(a) Brazilian Measure concerning the automotive sector (G/C/M/8, 9 and 10)

13.1 At its meeting of 29 January 1996, the Council took note of the information provided by Brazil, that after negotiations with Mercosur, the Brazilian Government had sent to Congress a Provisional Measure 1235 that dealt with the automotive sector.

13.2 At the meeting of 19 March 1996, the representative of Brazil informed the Council that it had submitted to the Secretariat on 15 March 1996, a request for a waiver (G/L/68) from certain WTO

obligations as a consequence of the adoption of a special regime concerning investment measures in the automotive sector.

13.3 At the meeting of 22 May 1996, Brazil informed the Council that, following informal consultations with interested WTO Members, it had withdrawn its request for a waiver (G/L/75), presented on 15 March 1996, regarding the Brazilian automotive regime.

(b) US draft bill concerning the definition of "domestic industry" in the area of safeguards (G/C/M/8)

13.4 At the meeting of 29 January 1996, the representative of Mexico expressed concern regarding a draft bill that was passed in the US Senate concerning the definition of "domestic industry" in the United States legislation in the area of safeguards when dealing with perishable agricultural products.

(c) US - "Cuban Liberty and Democratic Solidarity Act of 1996" (G/C/M/9)

13.5 At the meeting of 19 March 1996, the representative of Cuba voiced concern at the signing into law by the US President of the "Cuban Liberty and Democratic Solidarity Act of 1996", which in the view of Cuba harmed the interests of third-country WTO Members due to its extraterritorial effects".

(d) Ban on exports of wild-harvested shrimps to the US (G/C/M/9 and 10)

13.6 At the meeting of 19 March 1996, the representative of the Philippines, also on behalf of the ASEAN countries, informed the Council that following the decision of the US Court of International Trade on 29 December 1995, exports of wild-harvested shrimps to the US after 1 May 1996 would be embargoed if the exporting country did not adopt sea turtle conservation programs comparable to the US program.

13.7 At the meeting of 22 May 1996, the representative of Hong Kong expressed concern on this matter, and requested further information from the United States.

(e) US Narcotics Control Trade Act (G/C/M/9)

13.8 At the meeting of 19 March 1996, the representative of Mexico informed the Council of a US draft Bill which if it became law could cause problems to US trading partners. The Bill would oblige the US government to impose trade sanctions on those countries which it felt were not doing enough to act against the production or traffic in illegal narcotics.

(f) Impairment by the European Community of Tariff Treatment of High Technology Products (G/C/M/10)

13.9 At the meeting on 22 May 1996, the United States informed the Council that on 2 May 1996, it had requested consultations with the EC concerning tariff treatment being applied to high technology products, i.e. Local Area Network (LAN) equipment and personal computers with television capability (G/L/73).

(g) Argentine footwear (G/C/M/11)

13.10 At the meeting of 5 July 1996, the United States representative stated that in September 1995, Argentina had enacted decrees which established specific duties for imports of footwear, textiles and apparel. In the view of the US, these specific duties violated Argentina's tariff bindings, and its obligations under the Customs Valuation Agreement.

(h) US request for Consultations concerning Restrictive Business Practices in the Japanese Photographic Film and Paper Market (G/C/M/13 and Corr.1)

13.11 At the meeting of 19 September 1996, the US representative stated that his government had requested consultations on this matter with Japan pursuant to the CONTRACTING PARTIES' Decision of 1960 on "Restrictive Business Practices: Arrangements for Consultations" under the GATT (BISD 9S/170).

(i) EC proposal on "Trade Facilitation" (G/C/M/15)

13.12 At the meeting of 1 November 1996, under "Other Business", the representative of the European Communities drew attention to a proposal submitted by his delegation on trade facilitation (G/C/W/67). This proposal covered the question of simplification and harmonization of trade procedures in order to arrive at lower trade barriers and improved market access.

14. Agreement on Preshipment Inspection

(a) Commencement of Operations of the Independent Review Entity (G/C/M/10 and 15)

14.1 At the meeting of 22 May 1996, the Chairman informed the Council that the Independent Review Entity under the Agreement on Preshipment Inspection, established by Decision of the General Council (WT/L/125/Rev.1) at its meeting of 13 December 1995, had become operational as of 1 May 1996 (G/PSI/IE/2).

14.2 At the meeting of 1 November 1996, the Chairman informed the Council that since the Independent Review Entity (IE) had become operational, the IE had received no applications requesting independent review.

(b) Review under Article 6 of the Preshipment Inspection (PSI) Agreement (G/C/M/13 and Corr.1 and 14)

14.3 At the meeting of 19 September 1996, the Chairman informed the Council that Article 6 of the PSI Agreement provided for a review of the provisions, implementation and operation of this Agreement by the Ministerial Conference at the end of the second year from the date of entry into force of the WTO Agreement. However there was no specific body designated to conduct such a review. The Council agreed to the Chairman's proposal to consult informally on the question of the body to be designated to conduct the review as well as the timing of the exercise.

14.4 At its meeting of 15 October 1996, the Council recommended that the General Council acting on behalf of the Ministerial Conference in accordance with Article IV:2 of the Agreement establishing the World Trade Organization, set up a Working Party under the Council with the following terms of reference: "to conduct the review provided for under Article 6 of the Agreement on Preshipment Inspection and to report to the General Council through the Council, in December 1997."[4]

(c) Notifications (G/C/M/15)

14.5 At its meeting of 1 November 1996, the Council had before it documents concerning information on the notifications submitted by Members under the Agreement. Pursuant to Article 5 of the Agreement, 35 Members had notified their laws and regulations by which they had put the Agreement into force

[4]See 1 of "Section II: Conclusions and/or Recommendations".

as well as other laws and regulations relating to preshipment inspection (G/PSI/N/1, Add.1, Add.2, Add.3, and Add.4). Of these, 3 Members had notified laws and regulations putting the Agreement on Preshipment Inspection into force; 13 Members had notified other laws and regulations relating to preshipment inspection; and 19 Members had notified that they had no laws or regulations relating to preshipment inspection.

15. Working Group on Notification Obligations and Procedures

(a) Status of work in the Working Group (G/C/M/9)

15.1 At its meeting of 19 March 1996, the Council took note of the report provided by the Chairman of that Group on the status of work in the Group. The Group had identified four general subjects for examination namely: (1) duplication of notification obligations; (ii) simplification of data requirements and the standardization of formats; (iii) improvement in the timing of the reporting process; and (iv) possible assistance to some developing countries in meeting their notification obligation. The Council took note of the report.

(b) Report of the Working Group on Notification Obligations and Procedures (G/C/M/14)

15.2 At its meeting of 15 October 1996, the Council considered the report of the Working Group (G/L/112) and took the following action on the recommendations contained in the report:

(1) it agreed to request the Committee on Agriculture to consider the modified notification formats contained in the draft revision to document G/AG/2, as set out in document G/NOP/W/15 and to request the Committee on Subsidies and Countervailing Measures to consider the modified notification formats contained in draft revision to document G/SCM/6, as set out in document G/NOP/W/15. Both Committees should consider the modified notification formats with a view to achieving greater coherence and efficiency in the notification system;

(2) it agreed to request the General Council to take the necessary steps to eliminate the notification obligations in the Decisions of the GATT 1947 CONTRACTING PARTIES relating to import licensing procedures (L/3756 and SR/28/6)[5]. The Council also agreed to refer the Decisions of the GATT 1947 CONTRACTING PARTIES relating to quantitative restrictions and non-tariff measures (BISD 32S/92-93 and BISD 31S/227-228), and to Marks of Origin (BISD 7S/30-33) to the Market Access Committee, and to retain the Decision on Liquidation of Strategic Stocks (BISD 3S/51) in the Council, for further consideration;

(3) it agreed that a comprehensive listing of notification obligations and the compliance therewith by all WTO Members be maintained on an ongoing basis and be circulated semi-annually to all Members. The Council also agreed to an updating of the listing of notifications received, as set out in Annex III to the report of the Working Party, prior to the Singapore Ministerial Meeting;

(4) it agreed to consider the preparation of general guidelines for the bodies under its purview, providing for the regular review of questionnaires and formats and of the situation as regards compliance with notification obligations;

(5) it agreed to forward the to the Committee on Trade and Development the recommendation that "active consideration be given …to the development of a special programme of assistance to developing country Members and particularly to the least-developed country Members providing more

[5]See 2 (a) of "Section II: Conclusions and/or Recommendations".

intensive technical assistance, possibly with the participation of other organizations, focusing on the development of systems and structures required to respond to notification obligations";

(6) it agreed to request the Ministerial Conference or the General Council to consider the establishment, at an appropriate time, of a body with a mandate to review the notification obligations and procedures throughout the WTO Agreement. Alternatively, consideration might be given to the establishment of a body, or the extension/modification of the mandate of the current Working Group, to conduct, at an appropriate time, a further comprehensive review of the notification obligations and procedures in the agreements in Annex 1A of the WTO Agreement. It was suggested that future work also encompass matters relating to the Central Registry of Notifications, electronic transmission of notifications and further work on the notifications handbook[6].

15.3 In connection with the last recommendation, one delegate stated that his delegation preferred the establishment of a body to conduct at the end of 1998 a comprehensive review of notification obligations and procedures in all the agreements covered by the WTO and not just those in Annex 1A.

16. Implementation of the Agreement on Textiles and Clothing (ATC) and related matters (G/C/M/11, 12, 13 and Corr.1, 14 and 15)

16.1 The Council, at the request of some Members, discussed the implementation of the Agreement on Textiles and Clothing and related matters pursuant to Article IV:5 of the WTO Agreement and in preparation for the Singapore Ministerial Conference. The discussion took place on 5 July, 25 July, 19 September and 15 October 1996.

16.2 The Council's discussion was based on written contributions by Pakistan on behalf of the ASEAN Members of the WTO, i.e. Brunei Darussalam, Indonesia, Malaysia, Philippines, Singapore and Thailand; and Hong Kong, India, Korea and Pakistan (G/L/92); the United States (G/L/95 and Add.1); and the European Communities (G/L/97). The Council also had before it the report of the Textiles Monitoring Body (G/L/113).

Issues and Problems

16.3 The full account of the discussions in the Council was provided in the minutes of its meetings (G/C/M/11-14). The key issues and problems identified were the following:

(i) Integration Programmes

16.4 Recalling that a central feature of the ATC was the progressive character of the integration process, concerns were expressed that the first stage of integration programmes implemented by four importing Members on 1 January 1995 had not been commercially meaningful as none of the products integrated (except one product (work gloves) by one Member) had been subject to quantitative restrictions. Moreover, these products had been concentrated in relatively less value-added areas. The first stage integration had therefore not meaningfully improved access to these markets. There were no indications that the second stage integration on 1 January 1998 would be more commercially meaningful. The integration programmes should contain a mixture of restrained and unrestrained products, and a balanced proportion of sensitive and non-sensitive products with greater emphasis on clothing. Only integration programmes on these lines would ensure a smooth transition to the GATT/WTO disciplines, in the interest of both restraining and exporting Members.

16.5 In response, it was stated that the choice of products to be integrated at each intermediate stage was a matter for each individual Member to decide. This could, with perfect legitimacy, result in

[6]See 2 (b) of "Section II: Conclusions and/or Recommendations".

products being integrated which were not subject to restrictions. Specific proposals had been made in the negotiations, providing for mandatory integration of restrained products, but these proposals had not been retained. The requirements stipulated in the ATC had been fully met. A number of products to be integrated or being proposed for integration at Stage Two were subject to quantitative restrictions. The growth factors which were also required in the ATC were having a very significant impact on quota levels, both in terms of liberalization and their contribution to continuous adjustments and increased competition in the markets of restraining Members. Furthermore, the ATC contained a provision for early elimination of restrictions, which one Member had made use of. In addition, it was stated that pursuant to Article 7, Members should take such actions as may be necessary to abide by GATT 1994 rules and disciplines so as, *inter alia*, to achieve improved access to exporting Members' markets for textiles and clothing products as part of the integration process.

16.6 It was also argued that integration had a separate purpose and had not been designed as the primary means of liberalization. In response, it was argued that the ATC contemplated integration to proceed in parallel with increased growth rates; in addition, both these processes were also designed to achieve progressive liberalization of trade.

(ii) Use of Transitional Safeguards

16.7 Concerns were expressed that the introduction of transitional safeguard measures would have a restrictive as well as a disruptive effect on trade, even if they were subsequently rescinded. They could also frustrate the integration process. The ATC's transitional safeguard was a deviation from GATT 1994, because it was selective and discriminatory in nature. The ATC recognized the exceptional nature of the transitional safeguard and provided for it to be applied "as sparingly as possible, consistently with the provisions of this Article and the effective implementation of the integration process" (Article 6.1). However, in the first year of the ATC, one WTO Member had notified the invocation of this clause in respect of 24 cases within the space of a few months against no less than 14 WTO Members, which were all developing countries. In the case of seven of these actions which came in the form of dispute cases before the TMB, three had been rescinded after the TMB found no justification for them. Three actions had been brought before the Dispute Settlement Body, of which two were currently being examined by panels. The fragile grounds on which Article 6 had been invoked in these cases was also borne out by the fact that in another seven cases, the requests for consultations or the measures adopted had been withdrawn even before they could be reviewed by the TMB; this included an action where imports of a product had already been restrained from the Member concerned. An unduly large number of restraints were still in place. The transitional safeguard had thus been used in violation of this important provision, and also contrary to the "objective of further liberalization of trade" referred to in the preamble to the ATC.

16.8 In response, it was stated that any Member had the right to invoke safeguard measures. All the invocations referred to had been consistent with ATC procedures and were justified. A number of measures had been rescinded and at present 11 restraints were in place. Requests for consultations were made to give time for trade to adjust and to prevent damage in the market and once this was achieved the measures were rescinded. The TMB recommendations had been heeded. The concept of "sparingly" was a relative one and should also be seen in the light of the fact that the Member in question was a huge importer. The existence of this provision helped to proceed with greater confidence in going ahead with the integration process. The overall effect of what had happened seems not to be discouraging for the future of the integration process. Over the last nine months the particular Member had made only one request for consultations under this Article. As a result, the total number of requests for consultations had been considerably lower than in 1995. It was also argued that the use of Article 6 was not exceptional in nature. In the negotiations specific proposals had been made that would have avoided the use of discriminatory measures, but these proposals had not been retained.

(iii) Bilaterally Agreed Arrangements

16.9 It was stated that a fundamental concept of the ATC was to strengthen the multilateral disciplines in the field of textile and clothing trade with a view to ensuring final integration of the sector into the GATT/WTO rules. It was recalled that, in the context of safeguard measures, a number of bilateral arrangements had been notified. Concern was expressed that though under the ATC the TMB was required to determine whether these bilateral arrangements had been justified in accordance with the provisions of Article 6, some of these had not been subsequently confirmed by the TMB as being in conformity with the provisions of the ATC. The absence of endorsement by TMB of a safeguard action did not make the safeguard action legal. Thus, the integrity of the multilateral rules and disciplines was weakened.

16.10 In response, it was stated that Article 6 made explicit provisions for bilaterally agreed restraint measures, and some other Articles also provided that Members consult with a view to reaching mutually agreed solutions. In the absence of confirmation by the TMB, a safeguard action did not become illegal. During the negotiations a proposal had been made for mandatory endorsement of safeguard actions by the TMB. This proposal had not been retained.

16.11 In response, it was pointed out that Article 6.9 of the ATC provided for a TMB determination as to whether bilaterally agreed restraint measures were in accordance with the provisions of Article 6.

(iv) Functioning of the Textiles Monitoring Body

16.12 It was recalled that the TMB was required to supervise the implementation of the ATC, to examine all measures taken under it and their conformity therewith, and to take the actions specifically required of it by the ATC (Article 8.1). Before raising a textile matter in the Dispute Settlement Body, it had first to be raised at the TMB. Concerns were expressed that, in order to retain the confidence of all Members, there was a particular need to enhance transparency of the TMB's functioning, and to ensure *ad personam* participation by its members so as to ensure impartiality. The TMB had recognized that in a few cases it could not arrive at a consensus decision on matters brought to it, and, therefore, could not fulfil its mandate. This, apart from having an adverse impact on trade, had seriously modified the balance of rights and obligations of the ATC. The TMB should ensure that such situations did not arise in future. The TMB should give adequate reasons for its recommendations or, where recommendations should have been made but were not made, the main reasons underlying the TMB's failure to discharge its functions should have been made known. This would have enhanced the effectiveness and accountability of the Body as a whole and would have further strengthened the confidence of WTO Members that the way TMB functions was fair. Those Members which maintained a permanent seat in the Body had the advantage of maintaining an "institutional memory" on points which could be revisited in the future, unlike other Members whose representatives served in the TMB on a rotating basis. Greater transparency would provide rotating members with a better understanding. In reviewing safeguard measures, the TMB had, on occasions, failed to point out substantive as well as procedural inconsistencies in measures taken. Its review process had not always taken place within ATC disciplines. The TMB should also make available notifications received by it to all WTO Members without delay. Under Article IV:5 of the WTO Agreement, the Council "shall oversee the functioning of the Multilateral Trade Agreements in Annex 1A."

16.13 In response, it was stated that the TMB had done its job under difficult circumstances; one had full confidence in its competence and integrity. The TMB had succeeded, by a systematic approach, in setting certain standards for assessing the justification of the existence of serious damage. The TMB's role and responsibilities as established by the ATC should be recognized. The view that the TMB had erred in procedures and substance on some occasions could not be shared. Some of the TMB's problems were due to ambiguities in the ATC itself. The TMB was a quasi-judicial body, therefore, there were reasonable limits to how transparent it could be. The TMB had acknowledged problems

with decision-making and had mentioned as possible factors the circumstances of its establishment, the large number of disputes it had faced and tight time-constraints under which it often operated. Its reports had to be carefully crafted and if more transparency was requested then the reports would have to be more detailed, which would in turn also increase the TMB's workload and difficulties with respect to decision-making. Despite best efforts and certainly good faith efforts, the TMB had faced cases the nature of which required time - it was unfair to criticise this. One could only urge that it make greater efforts and hope that its members could overcome divergencies of views and enhance TMB's ability to reach consensus. The TMB's report to the Council had facilitated increased transparency, which should be encouraged.

16.14 It was also stated that the degree of acceptance or compliance with TMB recommendations would be one important element in any assessment of its functioning. It was argued that the fact that one Member declined to follow a TMB recommendation affirming a Member's safeguard action undermined the ATC's assumption that Members would follow the TMB's recommendations.

16.15 In response, it was pointed out that the ATC did not require governments to comply with TMB recommendations but to endeavour to accept them in full and that it would be wrong to imply that affected exporting Members should not exercise the dispute settlement rights under Article 8.10.

(v) Treatment of Small Suppliers and Least Developed Countries

16.16 With respect to small suppliers, it was recalled that, according to Article 1.2, meaningful increases in access possibilities must be provided for small suppliers, using the provisions of Articles 2.18 and 6.6(b). Concern was expressed that the only way to determine if the provisions were being complied with was to receive notifications from Members imposing or maintaining restrictions, indicating the way in which "meaningful increases" in access possibilities were being implemented.

16.17 In response it was stated that the Members were abiding now and would continue to abide by their obligations to small suppliers.

16.18 It was recalled that the ATC provided that, to the extent possible, exports from a least-developed country Member might also benefit from the provisions of Article 2.18 (concerning improved growth in quota levels) so as to permit meaningful increases in access possibilities for such Members. Provisions on special treatment of LLDCs had also been provided in the preamble, in the footnote to Article 1.2 and in Article 6.6(a). These provisions did not specify the precise modalities for according such treatment, but one way might be to review the quotas in place, including more favourable growth rates. In the Marrakesh Declaration, Ministers had recognized the importance of the implementation of special provisions for the LLDCs and had declared their intention to continue to assist and facilitate the expansion of their trade and investment opportunities. They had agreed to keep under regular review by the Ministerial Conference and the appropriate organs of the WTO the impact of the results of the Uruguay Round on the LLDCs with a view to fostering positive measures to enable them to achieve their development objectives. Positive measures were required to stop the further marginalization of LLDCs, whose integration into the global trading system would be in the interest of all WTO Members.

16.19 In response, it was stated that Members were abiding now and would continue to abide by the best endeavour provisions in favour of LLDCs. One Member added that although it maintained restraints on certain textile exports of an LLDC Member, that Member, although being a very large supplier, had unusually free access and benefitted from initial quota growth rates in excess of 8 per cent. Another Member added that it had no restraints on LLDCs and that it applied zero tariffs.

(vi) Particular Interests of Cotton-Producing Countries

16.20 Recalling that according to Article 1.4 "the particular interests of the cotton producing exporting Members should, in consultation with them, be reflected in the implementation of the provisions of this Agreement", it was pointed out that, as was clear from the quoted wording, the onus of consultations was on the importing Member integrating products into GATT 1994. Concern was expressed that no such consultations had been notified, nor held. The TMB had received no notifications relating to the implementation of this provision. It should have sought information from the Members concerned. Therefore the requirements of this provision had not been fulfilled and the particular interests of cotton-producing exporting Members had not been reflected in the implementation of the provisions of the ATC.

16.21 In response it was stated that this provision had been faithfully implemented. No specific consultations had been requested from any Member with respect to this provision. Some Members had held consultations with a number of countries which they considered to be relevant to Article 1.4. There was no obligation to notify the TMB and no Member had taken this issue to the TMB.

(vii) Rules of Origin

16.22 It was recalled that according to the ATC the introduction of changes, such as changes in practices, rules and procedures, should not upset the balance of rights and obligations between the Members concerned; adversely affect the access available to a Member; impede full utilization of such access; or disrupt trade under the ATC (Article 4.1). The Agreement on Rules of Origin (ARO) further provided that pending the completion of the work programme for harmonization of origin rules, Members should ensure, *inter alia*, that their rules of origin were not used as instruments to pursue trade objectives directly or indirectly. Concerns were expressed that one Member had implemented changes in its origin rules for textile and clothing products as an instrument of trade policy. This was contrary to the provisions of the ARO as well as Article 4 of the ATC, and had introduced great uncertainty and unpredictability with adverse effects on the exports of a large number of Members. Corrections to this situation were necessary. The harmonization of the rules of origin had been mandated by the ARO to be undertaken at the multilateral level; the fact that the Member concerned had harmonized its rules of origin relating to imports of textiles and clothing products unilaterally demonstrated that it had proceeded contrary to the relevant provisions of the ARO and the ATC. This development was very disturbing considering that the objective of the ATC was to bring about further liberalization, not restrictions, of trade in textiles and clothing.

16.23 In response, it was stated that Members requesting consultations under Article 4 were required to show that there had been a change in the implementation and administration of restrictions and if that was the case, that they had been adversely affected or trade disrupted. In consultations with various Members, it had in a number of cases been agreed that the implementation of revised origin rules had had no adverse impact. In cases where adverse impact could be demonstrated, the particular Member was working towards a mutually satisfactory solution. The new rules had been designed to conform with rules of other Members and also to provide greater protection against circumvention. One Member had expressed concern about the new rules and was consulting with the Member in question, but had so far not requested the intervention of any WTO body. The Members who felt that they were affected by the changes in the rules were free to raise the matter in the appropriate forum.

(viii) Other ATC Issues (Outward Processing Trade, Special Regimes, etc.)

16.24 It was stated that a fundamental principle of the GATT/WTO was the elimination of discriminatory treatment in international commerce. Concerns were expressed, however, that special regimes were continually being extended to provide better access to certain Members. Special regimes were also being used to promote the interests of special interest groups in importing countries, such

as manufacturers of fabrics at the expense of the export of textile and clothing products from developing country manufacturers. It should be ensured that access rights of other restrained Members were not adversely affected.

16.25 In response it was stated that the ATC required more favourable treatment to qualifying re-imports as defined by the laws and practices of the importing country. The ATC gave importing Members discretion on what type of more favourable treatment was to be given to this trade. A particular Member was currently providing more favourable treatment to re-imports under its outward processing programme, fully consistent with the ATC.

(ix) Relationship Between Restrictions and Regionalism

16.26 Concerns were expressed that expanding restrictions in the context of regionalism had adverse implications, especially for the export prospects of developing country Members. Unilateral restrictions under the pretext of regional obligations could not be justified under GATT 1994 or the ATC and could undermine the implementation of the ATC objective of further liberalization of trade.

16.27 In response, it was stated that regionalism could beneficially influence trade in overall terms through its impact on both quantitative restrictions and tariff rates. General conclusions could not be drawn from very specific individual cases. The general question of regionalism should appropriately be discussed in the Committee on Regional Trading Arrangements.

(x) Use of Trade Measures for Non-Trade Purposes

16.28 Concerns were expressed that pressures had been growing for trade measures in pursuit of non-trade objectives, particularly affecting textile products. Often, such measures carried a protectionist bias, were based on criteria outside the framework of WTO rules and disciplines, produced serious disruptive effects for the trade interest and prospects of developing country Members, and may impinge on the effective implementation of the ATC. Measures being adopted or contemplated under the pretext of social and environmental concerns were examples of such non-tariff barriers.

16.29 In response it was stated that it was inappropriate to concentrate on just one sector when dealing with this issue which had a much broader scope than textiles trade. The subject should be dealt with in a wider context.

(xi) Market Access

16.30 It was stated that an important element of the ATC was increased opening of the textiles markets of all WTO Members. Article 7.1(a) provides that "as part of the integration process and with reference to the specific commitments undertaken by the Members as a result of the Uruguay Round, all Members shall take such actions as may be necessary to abide by GATT 1994 rules and disciplines so as to: (a) achieve improved access to markets for textile and clothing products through such measures as tariff reductions and bindings, reduction or elimination of non-tariff barriers, and facilitation of customs, administrative and licensing formalities". Concerns were expressed that some exporting Members had not complied with their obligations under Article 7. In examining the extent to which the commitment to achieve improved access to markets had been complied with, attention should also be paid to any instances where *de facto* market access had been reduced through the raising of applied tariff rates, in addition to the reduction or elimination of non-tariff barriers. One Member had invited exporting Members to make it clear in what way they would be prepared to give effect to this commitment. A trade-off for the progressive liberalization of restraints by importing Members was the removal of various impediments to textile imports by exporting Members.

16.31 In response, it was stated that the Uruguay Round results constituted a total package with a general equilibrium between rights and obligations for all Members. Benefits given to certain Members in the ATC through progressive integration of the textile and clothing trade into the ATC were trade-offs for the obligations these Members had undertaken in other Agreements. Besides, Article 7 explicitly referred to "specific commitments undertaken by Members as a result of the Uruguay Round" and therefore there was no obligation on the part of any Member to provide additional market access over and above the commitments already included in its Schedule of Commitments. International trade could not be conducted on a basis of sectoral reciprocity. There had been notifications expressing appreciation to certain exporting Members for having provided effective access in their markets for textiles and clothing products. No provisions in the ATC required that the integration be conditional on the removal of impediments to textile imports by exporting Members. The approach undertaken by importing Members at offering more meaningful integration in exchange for greater market access in exporting Members was not justified. The suggestion that attention should also be paid to increased applied tariff rates was rejected because the multilateral trading system had, as its cornerstone, the concept of bindings of tariffs. It was the right of any Member to apply any rates so long as these were within the bound levels in its schedule. Applied rates could fluctuate depending on the revenue and development needs of Members.

16.32 In response, it was stated that there was no attempt to establish a new kind of conditionality; what was being looked for was the widest possible contribution to the worldwide liberalization of trade in textiles and clothing. A Member, of course, might adjust an applied tariff rate upwards to the bound level. However, one would seriously question the logic of those who would argue that there was no deterioration of the real conditions of market access to countries that make such adjustments.

16.33 The points were also made that neither in the Market Access Committee, the TMB nor the DSB had there been complaints as to compliance with market access obligations. The scheduled commitments only provided secure and predictable trading opportunities and did not necessarily translate into higher trade volumes in each case. Moreover, a large group of Members had adopted unilateral liberalization measures. What was needed was a mechanism which would enable those Members to be compensated for these measures which had benefitted the whole multilateral trading system.

(xii) Rules and Disciplines

16.34 It was stated that the Council should examine Members' compliance with GATT 1994 rules and disciplines having an impact on trade in the textiles sector. If necessary, it should request relevant information from other relevant bodies such as those dealing with anti-dumping, balance-of-payments, subsidies and/or the protection of intellectual property.

16.35 In response it was stated that an effective evaluation of the implementation of the ATC should not be extended to compliance with other WTO disciplines. There were concerns about the growing misuse of anti-dumping proceedings on textile products which resulted in the disruption and dislocation of trade amounting to trade harassment. Any perceived non-fulfilment of obligations should be brought to the attention of the relevant Committees.

(xiii) Circumvention

16.36 Concerns were expressed that effective implementation of the ATC depended on exporting Members adopting effective measures to prevent circumvention of the Agreement. Transshipment, in particular, was a large and growing problem. The overall problem of transshipment was much bigger than the amount of imports which had been subject to charge-back. Members had committed themselves in the ATC to establish the necessary mechanisms to deal with this problem. They should abide by this and commit themselves to closer cooperation in this area.

16.37 In response it was stated that the concerned Members continued to fully implement anti-circumvention measures. They had fully cooperated with their trading partners at combating and redressing situations which might suggest the existence of circumvention. They reaffirmed their commitments to close cooperation but stated that recourse to the remedies provided for in the ATC was the proper course to follow. One of the main problems was the subjective manner in which the circumvention provisions were being interpreted and applied. The magnitude of the problem should not be exaggerated. It was also pointed out that implementation of the ATC could not be made conditional on effective anti-circumvention measures.

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16.38 Divergent views were expressed with respect to possible conclusions and/or recommendations, with reference to the issues and problems referred to in paragraphs 16.4-16.37 above.

16.39 At the Council's meeting of 1 November 1996 Hong Kong, on behalf also of the ASEAN WTO Members, i.e. Brunei Darussalam, Indonesia, Malaysia, Philippines, Singapore and Thailand; and Colombia, Costa Rica, India, Pakistan and Peru and with the support of some other Members, presented under "Other Business" a proposal for conclusions and recommendations in respect of the implementation of the Agreement on Textiles and Clothing. The proposal was subsequently circulated as G/C/W/65.

16.40 At the same meeting, also under "Other Business" Pakistan, on behalf of a number of Members, presented a draft of a Ministerial Decision, subsequently circulated as G/C/W/66.

16.41 Divergent views were expressed on how these proposals should be treated.

17. Textiles Monitoring Body (TMB)

Report of the TMB (G/C/M/14)

17.1 The Textiles Monitoring Body is a standing body of the WTO set up pursuant to Article 8:1 of the Agreement on Textiles and Clothing to supervise the implementation of the Agreement, to examine all measures taken under it, and their conformity with it, and to take the actions specifically required of it by the Agreement. The TMB consists of a Chairman and 10 members. The members are appointed by Members designated by the Council to serve on the TMB, discharging their function on an *ad personam* basis. The TMB's report is therefore not a report by a body consisting of WTO Members.

17.2 At its meeting of 15 October 1996, the Council considered the Report of the Textiles Monitoring Body (G/L/113) in the context of the preparations for the Singapore Ministerial Conference. The full account of the discussions in the Council was provided in the minutes of the meeting (G/C/M/14). The following is (a) a summary of the comments made by Members at that meeting; and (b) action taken by the Council.

A. Summary of Comments Made by WTO Members

17.3 Some Members stated that the report was a complete, well-documented analysis of the activities of the TMB based on the mandate given to it in the ATC. It was the most important reference document for analysis of the implementations of the ATC, giving a factual account on the way in which the Members had complied with their obligations and the way in which the different problems which had arisen had been analyzed and assessed. It was an important contribution to the Council towards understanding the major complexity of the matters being handled by the Body and the difficulties therein. The TMB was a hard-working body, and a number of delegations appreciated the amount of time and effort given by the TMB members and its Chairman to completing the report. It was also stated that it was apparent that the TMB had relied extensively on notifications by Members to perform its tasks.

17.4 Some Members stated that, according to Article 8.3, the TMB was supposed also to rely on additional and supplementary information that could or should be available to it. In certain cases, it had not sought such information, e.g. from the importing as well as the major cotton-producing Members as to whether consultations required under Article 1.4 had been conducted. The TMB had also overlooked changes in the rules of origin of one importing Member and should have been able to at least state that the transitional safeguard had not been sparingly used. The TMB had received but not yet disclosed a number of notifications involving administrative arrangements. It would seem important for the TMB to review these to ensure that they were consistent with the provisions of the ATC. It was also stated that the report confirmed almost all concerns voiced with regard to the operation of the TMB, as well as on the implementation of the ATC.

17.5 In response it was stated that no complaints had been brought to the TMB concerning changes in the rules of origin nor about non-sparing use of transitional safeguards.

17.6 It was stated that while the TMB had brought out the absence of commercially meaningful integration in the first stage, it had erred in not pointing out that the integration programmes of Members which did not maintain quantitative restrictions carried over from the MFA was a notional integration, and that the products they selected for integration had no implication for the access; unlike in the case of the four other Members.

17.7 In response it was stated that the TMB had handled the integration notifications in a factual and separate manner which recognized that the obligations concerning integration arose from differing legal provisions (paragraphs 7(a) and 7(b) of Article 2).

17.8 It was also stated that the report should have included information as to whether the Member taking safeguard action had claimed serious damage or actual threat thereof or both, and whether the TMB had found serious damage or actual threat or both.

17.9 In response it was stated that such information was not an important and certainly not a necessary element that should have been included in the report.

17.10 Some Members stated that the manner in which Article 6 notifications had been reviewed by the TMB did not always seem to have taken place within the disciplines of the ATC. For example specific limits lower than the rollback level, inconsistent with the ATC, should have been pointed out by the TMB. The TMB had accepted, in several cases, bilateral solutions which were not consistent with the letter and the spirit of the ATC; in this connection, the so-called Guaranteed Access Levels (GALs) were mentioned. The TMB had concluded that a notified restraint was justified "in overall terms", a term not used in Article 6. When further bilateral consultations had been recommended, rights and obligations had been modified. Doubts were expressed with regard to a statement in the report that Members invoking the safeguard provisions had, in all cases, strictly observed the procedural requirements. The TMB had gone beyond the provisions of the ATC, in that Article 8.9 did not envisage any requirement of Members "to comply" with TMB recommendations, especially when read with the provision of Article 8.10 which enabled Members to pursue unresolved matters in the DSB. It was also recalled that the TMB had stated its awareness of the concerns expressed by some Members with respect to lack of sufficient improvements in access to markets in some developing country Members. However, there had not been any notification by any WTO Member to the TMB with regard to the implementation of Article 7. Nor had there been any communication from the Market Access Committee to the TMB on the matter of cross- and reverse-notifications. It was surprising that the TMB should have made such an extra-jurisdictional observation.

17.11 In response to some of these points it was stated that the GALs involved an outward processing programme and Article 6 explicitly not only permitted such programmes but required that a Member using Article 6 give more favourable treatment to Members involved in outward processing programmes.

The GALs offered to certain Members were necessary to remain in conformity with Article 6. The remark by the TMB that in most cases Members could comply with recommendations was a positive statement of fact which did not reflect distorted legal obligations, namely that Members had been able, following their best endeavours, to comply in full with the recommendations made. In most cases Members had been able to abide by TMB recommendations, which boded well for the ATC. Reference had been made to dispute cases where the Body could not reach agreement, but the avoidance of decisions on late or absent notifications was of equal concern. The TMB was entitled to mention market access because Article 8:1 entrusted it with supervision of all aspects of the ATC, including Article 7.

17.12 Recalling that the report did recognize that there had been difficulties which were very often due to the limited amount of time available to review dispute cases, the view was expressed that it would be inconsistent with the provisions of the ATC to provide time-frames other than those prescribed in Article 6. The danger of accepting such a view, and transposing it to other processes under the Dispute Settlement Body, could not be over emphasized.

17.13 In response, the view was expressed that this was simply stating a fact. It was unfair to criticize the TMB in this matter. One could see from the length of the report what tasks the TMB faced. In some cases it might not be possible for the Body to reach consensus, particularly when it was operating under tight deadlines.

17.14 Recalling that the TMB had expressed awareness of the need for giving reasons for its decisions, some Members did not agree that more detailed reports might render consensus more difficult to achieve or require additional time. The discipline of having to provide reasons or common rationale for a decision or recommendation would encourage TMB members to study the various elements seriously and discharge their duties strictly in an *ad personam* capacity. The TMB's reviews should be dictated by the actions themselves rather than by the convenience of the participants. They believed greater transparency provided for greater accountability and therefore greater acceptability. It was further recalled that the TMB was concerned that in a few cases it had not been able to arrive at a consensus decision and therefore could not fulfil its mandate. The TMB also had said that this could have an adverse impact on the Members affected. It was actually concerned about the implications of unresolved issues for the continued operation of the Agreement. However, while the TMB stated its determination to take all necessary steps to overcome such difficulties, it went on to say that similar circumstances could not be excluded in the future. It was of concern that the TMB recognized that it had not fulfilled its mandate under the ATC and then also recognized the possibility that such a situation might occur again. Furthermore, the TMB was aware of the implications for trade of requests for consultations made with a view to introducing transitional safeguard measures. However, the TMB only said that further efforts would be made to provide as many details and explanations as possible. There was thus neither a demonstration of will to address the roots of the problem nor a commitment to provide common rationale.

17.15 In response the view was expressed that the TMB had been able to establish standards for the review of notifications and disputes which could provide guidance to Members with respect to the implementation of the ATC. The reasons for TMB's decisions were important not only for the parties to whom they were directed, but for all other Members. The TMB had acknowledged these problems and was determined to make every effort to overcome the obstacles to reaching decisions by consensus and to try to make its decisions more understandable. One could only urge the TMB to make greater efforts so as to enhance its ability to reach consensus decisions. An assessment of TMB's functioning could not be made without taking into consideration circumstances of its establishment, the initial workload it was faced with, as well as the importance of this sector of international trade. It was a fact that more detailed reports might render consensus more difficult to achieve and/or require additional time. Explanations in case of no consensus also required consensus in the TMB. Because of the quasi-judicial nature and neutrality requirement of the TMB there should be a reasonable limit to its transparency. Some also argued that TMB's problems were partly due to shortcomings in the ATC

itself. The ATC established the TMB and unless one was ready to embark on substantial legislative and negotiating activity which did not seem feasible, one had to continue to live with the TMB. The course of action therefore was to try to enhance its functioning precisely through a discussion such as the present one. By the very nature of its constitution the TMB had limits to a perfect performance.

17.16 It was stated that the report of the TMB had contributed towards greater transparency of the TMB functioning, and that this trend should be encouraged.

B. Action Taken by the Council

17.17 The Council took note of the TMB's report and decided to annex it to Council's own report to the General Council.

17.18 The Council also agreed to take the following action on the three recommendations made by the TMB to the Council:

(i) it took note of the observations and concerns contained in paragraph 102 of the TMB report and recalled to Members the particular importance of strictly adhering to the notification requirements under the Agreement on Textiles and Clothing;

(ii) it agreed that the Chairman resume consultations on the proposal of the *ad personam* status of TMB's members (G/C/W/20) at an appropriate time;

(iii) it took note of the recommendation that due consideration should be given to the schedule of meetings of the TMB in the WTO's overall schedule of meetings.

18. Proposals and Initiatives for Further Trade Liberalization

(G/C/M/11, 13 and Corr.1, 14 and 15)

18.1 At the meeting of 5 July 1996, the representative of Australia stated that while the built-in agenda covered many areas, it failed to deal with industrial tariffs. For that reason Australia proposed that the Singapore Ministerial Conference agree to begin comprehensive industrial tariff negotiations in the year 2000, at the same time as further negotiations in agriculture and services, and mandate the Council or the Committee on Market Access to undertake preparatory work for such negotiations as from 1997 (G/L/96).

18.2 At the meeting of 19 September 1996, the representative of Australia further clarified the proposal made by his delegation in the context of preparations for the Singapore Ministerial Conference. The Council agreed to the Chairman's proposal to consult informally on this matter.

18.3 At the meeting of 15 October 1996, the representative of Australia proposed that a draft recommendation on this matter be included in the report of the Council.

18.4 At the meeting of 1 November 1996, the representative of Australia proposed that the Council consider the inclusion of a recommendation in Section II of its report to the effect that "Members agreed to keep under review the prospect of effecting further trade liberalisation including on an autonomous, plurilateral or multilateral basis".

18.5 In the discussions of this matter in the Council, Members expressed divergent views with respect to the substance of the Australian proposal as well as the request for the inclusion of a recommendation in the report of the Council. While some Members expressed support in varying degrees for the proposal, other Members expressed opposition to the proposal as well as to the request for a recommendation.

18.6 At the resumed meeting of 4 November 1996, the representative of Australia stated that his delegation would continue to work with other delegations towards the objective that the Singapore Ministerial Conference underlines the commitment of the WTO to the further progressive liberalization of tariffs through successive rounds of multilateral trade negotiations. At this stage, Australia would not insist on the inclusion of the recommendation proposed in Section II of the Council's report.

18.7 At the meeting of 1 November 1996, under "Other Business", a proposal was also submitted by Canada on Further Tariff Liberalization (G/MA/W/9) which recommended a WTO work programme to address, *inter alia* the acceleration of Uruguay Round tariff reductions, expansion of membership for existing sectoral and harmonization initiatives, and identification of additional sectors for zero-for-zero and harmonization initiatives.

18.8 Additionally, two communications were submitted at that meeting under "Other Business": one by the United States (G/MA/W/8), concerning the Information Technology Agreement on further liberalization of information technology products; and one by the European Communities on behalf of the WTO Members concerned (G/MA/W/10), on Trade in Pharmaceutical Products outlining the review of pharmaceutical product coverage that had resulted in the addition of 465 products for duty-free treatment.

19. Singapore Ministerial Conference

(a) Reports of subsidiary bodies of the Council (G/C/M/13 and Corr.1, 14 and 15)

19.1 At its meeting of 19 September 1996, the Council agreed to the Chairman's proposal to consult informally on the Council's treatment of the reports of its subsidiary bodies.

19.2 At its meeting of 15 October 1996, the Council agreed that the broad guidelines with regard to the handling of the reports of 12 of its subsidiary bodies (i.e., the Committees on Agriculture, Anti-Dumping Practices, Customs Valuation, Import Licensing, Market Access, Rules of Origin, Safeguards, Sanitary and Phytosanitary Measures, Subsidies and Countervailing Measures, Technical Barriers to Trade, Trade-Related Investment Measures and the Working Party on State Trading Enterprises) who were expected to submit their reports on a consensus basis to the Council in the context of the Singapore Ministerial Conference, would be to take note of those reports and annex them to its own report. This would be without prejudice to the ability of Members to raise points with regard to the reports, and also the ability of the Council to record observations, to make recommendations, and to take decisions, if considered necessary. With regard to the factual report from the Independent Entity under the PSI Agreement and the report from the Working Group on Notification Obligations and Procedures, the Council agreed to treat them in the same way as the other 12 reports. As concerned the TMB report, the Council agreed to the Chairman's proposal to consult informally on how to deal with this report.

19.3 As regards the reports of the Committees on Agriculture (relating to the Marrakesh Ministerial Decision on Measures concerning the Possible Negative Effects of the Reform Programme on Least-Developed and Net Food-Importing Developing Countries)[7], Anti-Dumping Practices, Customs Valuation, Import Licensing, Market Access, Rules of Origin, Safeguards, Sanitary and Phytosanitary Measures, Subsidies and Countervailing Measures, Technical Barriers to Trade and Trade-Related Investment Measures, the Independent Entity, the Working Group on Notification Obligations and Procedures and the Working Party on State Trading Enterprises, the Council at its meeting of 1 November 1996, took note of them and decided to annex them to its own report. As regards the report of the TMB,

[7]At the time of adoption of the Council's report, the report of the Committee on Agriculture on the Implementation of the Agreement on Agriculture and the work of the Committee had not been received. The Council agreed to consider that report separately after its receipt and forward it to the General Council as an addendum to the Council's report.

the Council took note of it and decided to annex it to its own report; this action was preceded by a full consideration of the report (see discussion in paragraphs 17.1 to 17.18).

19.4 At its meeting of 1 November 1996, the Council took note of the concerns voiced by some delegations on the third sentence of paragraph 15 of the report of the Committee on Technical Barriers to Trade (TBT) relating to the issue of eco-labelling and its coverage in the TBT Agreement.

(b) Report by the Council for Trade in Goods to the Ministerial Conference (G/C/M/10, 11, 13 and Corr.1, 14 and 15)

19.5 At its meeting of 22 May 1996, the Chairman referred to the statement made by the Chairman of the General Council at the meeting of 16 April 1996, concerning "Reporting Procedures for the Singapore Ministerial Conference" (WT/L/145), and suggested holding informal consultations at a later stage on the Council's report to the Singapore Minsterial Conference.

19.6 At its meeting of 5 July 1996, the Chairman stated that in the context of the status of work with respect to the Singapore Ministerial Conference he wished to address two aspects regarding this process. While the situation was satisfactory in respect of scheduled commitments, a serious problem seemed to be emerging in respect of compliance with notification obligations in a number of Agreements, as reflected in document issued by the Working Group on Notification Obligations and Procedures. The second aspect related to the indication given by the Chairman of the General Council that it would be appropriate for the Chairmen of the sectoral Councils to present an oral report to the General Council regarding the current status of work concerning the preparations for the Singapore Ministerial Conference, particularly in respect of implementation and the built-in agenda. Accordingly, he intended to present an oral report on his own responsibility to the General Council at the meeting scheduled for 18 July 1996.

19.7 At its meeting of 19 September 1996, the Council agreed to the Chairman's proposal to consult informally on the format and content of the Council's report to the Singapore Ministerial Conference.

19.8 At its meeting of 15 October 1996, the Council agreed that the Council's report would consist of two parts, one factual and one containing conclusions and/or recommendations.

19.9 At its resumed meeting of 4 November 1996, the Council adopted the report to the General Council contained in G/C/W/62/Rev.1, as amended in the light of the discussion at that meeting[8].

[8] The report was subsequently issued in its final version as G/L/134.

SECTION II: CONCLUSIONS AND/OR RECOMMENDATIONS

The conclusions and/or recommendations of the subsidiary bodies of the Council are contained in the reports of the respective bodies annexed to this report.

The following conclusions and/or recommendations arise directly from the deliberations of the Council:

1. Agreement on Preshipment Inspection

1.1 The Council recommends that the General Council acting on behalf of the Ministerial Conference in accordance with Article IV:2 of the Agreement establishing the World Trade Organization, set up a Working Party under the Council with the following terms of reference:

> "to conduct the review provided for under Article 6 of the Agreement on Preshipment Inspection and to report to the General Council through the Council, in December 1997."

2. Notification Obligations and Procedures

(a) The Council requests the General Council to take the necessary steps to eliminate the notification obligations in the Decisions of the GATT 1947 CONTRACTING PARTIES relating to import licensing procedures (L/3756 and SR/28/6).

(b) The Council requests the Ministerial Conference or the General Council to consider the establishment, at an appropriate time, of a body with a mandate to review the notification obligations and procedures throughout the WTO Agreement. Alternatively, consideration might be given to the establishment of a body, or the extension/modification of the mandate of the current Working Group, to conduct, at an appropriate time, a further comprehensive review of the notification obligations and procedures in the agreements in Annex 1A of the WTO Agreement. It was suggested that future work also encompass matters relating to the Central Registry of Notifications, electronic transmission of notifications and further work on the notifications handbook.