MINUTES OF MEETING

Held in the Centre William Rappard
on 6 March 1989

Chairman: Mr. John M. Weekes (Canada)

Subjects discussed:

1. Trade in Textiles
   - Report of the Textiles Committee
   - Report of the Textiles Surveillance Body

2. Accession of Tunisia
   - Time-limit for the signature by Tunisia of the Protocol of Accession

3. Accession of Paraguay

4. United States - Section 337 of the Tariff Act of 1930
   - Panel report

5. Export of Domestically Prohibited Goods

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

7. United States - Increase in the rates of duty on certain products of the European Economic Community (Presidential Proclamation No. 5759 of 24 December 1987)
   - Communication from the European Communities (L/6438)
   - Recourse to Article XXIII:2 by the European Economic Community

8. Japan - Trade in semi-conductors
   - Follow-up on the Panel report

9. Japan - Customs duties, taxes and labelling practices on imported wines and alcoholic beverages
   - Follow-up on the Panel report

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11. International Trade in Agriculture
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12. Canada - Quantitative restrictions on imports of ice cream and yoghurt
   - Recourse to Article XXIII:2 by the United States

1. Trade in Textiles

   - Report of the Textiles Committee (COM.TEX/59)
   - Report of the Textiles Surveillance Body (COM.TEX/SB/1423 and Add.1)

The Director-General, Chairman of the Textiles Committee, introduced the Committee's report on its second annual review of the operation of the Multifibre Arrangement (MFA) as extended by the 1986 Protocol (COM.TEX/59). Article 10.4 of the MFA required the Committee to conduct such a review once a year and to report thereon to the Council. The current review had been carried out in December 1988 on the basis of: (a) a survey by the Secretariat on demand, production and trade in textiles and clothing (COM.TEX/W/210) as well as textiles and clothing statistics (COM.TEX/209); (b) the report of the Sub-committee on Adjustment (COM.TEX/58), original submissions from participating countries (COM.TEX/54) and summaries thereof (COM.TEX/57); and (c) the report of the Textiles Surveillance Body (COM.TEX/SB/1423 and Add.1).

The report of the Textiles Surveillance Body (TSB) was the second annual report submitted to the Committee under MFA IV, covering its activities from 1 October 1987 to 23 September 1988. In accordance with a decision taken by the Committee in December 1987, the TSB had also examined the consistency of aggregate and group limits with the provisions of the MFA; its findings were set out in the Annex to the report.

He also noted that the Committee had decided to extend the 1988 TSB membership until 15 May 1989 at the latest, as it had not been in a position at its December 1988 meeting to agree upon the 1989 membership (COM.TEX/59, paragraph 23). The Committee had asked him, as Chairman, to carry out consultations during this period with a view to finding a mutually satisfactory solution. Consultations in this regard were continuing, and at an appropriate time, the Committee would be convened to decide on the composition of the TSB.

The representative of Pakistan reiterated his authorities' concern (COM.TEX/59, paragraph 26) with the continued non-decision regarding the TSB's 1989 membership because of the extremely rigid approach adopted by a few importing countries. He hoped that rigidity would turn into flexibility as soon as possible and that the question would be resolved within the time-frame stipulated in the Committee's decision at its December meeting. Because of this non-decision on membership, some
contracting parties had been denied the right to play their due rôle in the TSB in 1989.

The Council took note of the statements and of the report of the TSB (COM.TEX/SB/1423 and Add.1) and adopted the report of the Textiles Committee (COM.TEX/59).

2. Accession of Tunisia
   - Time-limit for the signature by Tunisia of the Protocol of Accession (C/W/582)

   The Chairman recalled that at the CONTRACTING PARTIES' Forty-fourth Session in December 1988, the Director-General had suggested that the time-limit in paragraph 5 of the draft Protocol of Accession of Tunisia be changed to 30 March 1989 in order to allow time for the completion of the tariff negotiations required for accession. He drew attention to the communication from the Director-General in C/W/582 which suggested that this time-limit be changed to 30 June 1989.

   The representative of Japan said that Japan supported Tunisia's early accession to the General Agreement and had annually signed procès-verbaux extending the Declaration on Tunisia's provisional accession 19 times. It was inappropriate for Tunisia to keep its status of provisional accession for too long since this was an interim status pending full membership. Japan had started and completed its bilateral negotiations with Tunisia in 1988 despite some difficult problems. He hoped that Tunisia would make its best efforts to complete the process of accession in the course of 1989.

   The Council took note of the statement and of the change suggested by the Director-General.

3. Accession of Paraguay (L/6468)

   The Chairman recalled that in November 1974, the Council had established a working party to examine Paraguay's request for accession, which had been reactivated in January 1983. He drew attention to the communication from Paraguay (L/6468) containing a request for the resumption of negotiations regarding its accession to GATT.

   The representative of Paraguay, speaking as an observer, said that his Government was requesting full accession to the General Agreement. At the beginning of the present decade, Paraguay's accession process had been initiated but had since unfortunately lapsed. Paraguay was now prepared to follow the usual process in order to complete accession as soon as possible through the appropriate channels. The Memorandum on Paraguay's foreign trade régime, the Harmonized-System-based tariff schedule and questions and replies previously submitted had been furnished to the Secretariat. Following the submission of this documentation, his Government had taken trade-liberalization measures and had unified its currency exchange system; relevant documentation and information would be submitted thereon. His
The delegation hoped that the Council would take the appropriate steps and authorize its Chairman to designate the Chairman of the Working Party in consultation with contracting parties. Paraguay believed in GATT and hoped that accession to it would bring benefits.

The representative of Brazil said that the universalization of GATT constituted a positive element for the multilateral trading system. Brazil welcomed the request by Paraguay, a country with which it had particularly close relations, and fully supported Paraguay's decision to comply with the relevant process for accession.

The representative of Chile expressed her delegation's satisfaction that a Latin American country was re-initiating the process for its full accession to GATT.

The Council took note of the statements and that the texts of Paraguay's foreign trade régime and its replies to the questions submitted earlier by contracting parties concerning the Memorandum on its foreign trade régime (L/5500) would be circulated as an addendum to L/6468 in mid-March 1989.

The Chairman suggested that contracting parties wishing to submit additional questions in writing to Paraguay be asked to do so not later than six weeks after the circulation of the Addendum to L/6468, and that Paraguay should supply written answers to these questions, as consolidated and forwarded by the Secretariat, within six weeks after receipt thereof.

This was agreed.

The Chairman recalled that membership in the Working Party was open to all contracting parties indicating their wish to serve on it and that the Council Chairman had been previously authorized to designate the Chairman of the Working Party in consultation with representatives of contracting parties and with the representative of Paraguay. He stated his intention to proceed with these consultations and invited the representative of Paraguay to consult with the Secretariat as to further procedures, in particular regarding the basic documentation to be considered by the Working Party.

The Council took note of the Chairman's statement.

4. United States - Section 337 of the Tariff Act of 1930
   - Panel report (L/6439)

The Chairman recalled that in October 1987, the Council had agreed to establish a panel to examine the complaint by the European Communities. At its meeting on 8-9 February, the Council had considered the Panel's report (L/6439) and had agreed to revert to this item at the present meeting. Prior to the discussion on this item, the United States had circulated in the meeting room a paper setting out the United States' views on the Panel report.
The representative of the European Communities recalled that the Community had already expressed its views regarding this Panel report at the 21 February Council meeting. The Community had supported the adoption of this report because it considered it to be important, sound and well-reasoned. It was important because it clarified the interpretation and application of GATT rules to enforcement procedures of domestic intellectual property laws with respect to goods of foreign origin. It was sound in that it was based on well-established interpretations -- in particular of the national-treatment principle -- and in that it applied those interpretations to the complex case at hand. It was well-reasoned in that it dealt in considerable detail with all the arguments advanced by the parties before the Panel. The Community did not consider it appropriate to re-argue the case at the present time and would not enter into such a re-argument. At the 8-9 February Council meeting, the United States had commented in some detail on the contents of the report and had maintained that the Panel had established, in particular, a perhaps new and far-reaching interpretation of Article III. The Community had already indicated its disagreement with this evaluation of the Panel report by the United States which, in its view, was based on a misreading of important parts of the report. In particular, the Community had already drawn attention to the fact that the Panel's starting point had been that imported products were subject under Section 337 of the US Tariff Act of 1930 to legal provisions which were different from those applying to products of domestic origin; but the Panel had also said that this in itself was not conclusive, and that it had to be established that this difference in treatment could also lead to less favourable treatment. The United States, in its comments, chose to ignore this fundamental aspect. Under normal procedure and practice, a panel report should be adopted, at the latest, the second time it came before the Council. The Community was hopeful that the United States was in a position to agree to the adoption of this report at the present meeting.

The representative of the United States said that his delegation continued to have serious concerns about the implications of this Panel report for other measures taken to secure compliance with laws and regulations that were not inconsistent with GATT, and the other exceptions under Article XX. At the 8-9 February Council meeting, the United States had noted three serious concerns regarding the Panel's interpretation of the national treatment standard of Article III:4 and also regarding the interpretation of Article XX(d). With respect to Article III:4, (1) the Panel report required that a contracting party ensure de facto equality of treatment for imports in all instances; (2) absolute equality of effect had to be ensured not only for all laws, regulations, rules and procedures directly or indirectly affecting imports, but also for each individual element of every law, regulation, requirement and procedure; (3) the United States believed that the Panel report clearly applied Article III to persons. Accordingly, if the report were adopted, contracting parties would have to provide persons as well as goods equal or better treatment under any law, regulation, requirement or procedure that could affect the sale, purchase, transportation, distribution or use of imported goods.

The United States strongly supported the concept of national treatment as set forth in Article III. Since national treatment was such an
important GATT principle, the United States wanted to ensure that there was recognition and agreement among contracting parties regarding the extent of this obligation. The Community had contended that this report was consistent with prior interpretation of Articles III and XX. The United States disagreed; in its view, the report had taken concepts underlying Article III and had extended their application in far-reaching ways. The report, if adopted, would effectively preclude any differences in treatment between imported goods and importers and domestic goods and producers unless such differences were predictably always preferential to imports and importers.

The Panel's line of reasoning led to the conclusion that Article III covered all procedures that might indirectly affect imports, including procedures that at best had only a tenuous connection to the "expectations on the competitive relationship between domestic and imported products" (paragraph 5.13). The Panel had then reasoned that all differences in such procedures, even those recognized to be unlikely to occur, were relevant to expectations concerning the competitive relationship between goods. This line of reasoning was made all the more troubling by the report's requirement that there be an absolute guarantee, in all cases, of the "effective equality of opportunities for imported products" (paragraph 5.11). Consequently, elements of more favourable treatment had to "always operate in each individual case where a negative effect on the respondent might result from the operation of an element of less favourable treatment" (paragraph 5.16). In the Panel's view, the GATT had to act to forestall any possible less-favourable treatment, in this case by requiring that some differences in procedures be eliminated, rather than remediing actual instances of less favourable treatment.

A recent Panel report adopted by the Council had not required such guarantees. In the report concerning taxation of wine and alcoholic beverages in Japan, the Panel had found that "the mere possibility of exceptional tax rates available only for domestic whiskeys/brandies" did not provide sufficient evidence of tax discrimination contrary to Article III:2 (paragraph 59(c)). A provision had actually to result, or be likely to result, in discrimination. The United States agreed with the conclusions of that Panel that the mere fact that procedures were different was not conclusive. The mere potential for no less-favourable treatment with respect to each individual element of a law, regulation, rule or procedure was not the appropriate standard for assessing whether a particular provision was consistent with the GATT. In complex regulatory systems it would be extremely difficult to predict and eliminate such potentialities. These difficulties would be greatest in situations where implementation of a law or regulation involved the exercise of discretion.

Regarding the interpretation and application of the word "necessary" in Article XX(d), the Panel's interpretation of Article XX, and application of the resulting standard, took on added significance in light of the great possibility that many laws, regulations, rules and procedures of many GATT

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1Japan - Customs duties, taxes and labelling practices on imported wines and alcoholic beverages (BISD 34S/83).
contracting parties would be found inconsistent with Article III if the Panel's interpretation of Article III were adopted. The report defined "necessary" in terms of which measures might be "reasonably available" to a contracting party. In the Panel's view, "a contracting party cannot justify a measure inconsistent with another GATT provision as 'necessary' in terms of Article XX(d) if an alternative measure which it could reasonably be expected to employ and which is not inconsistent with other GATT provisions is available to it. By the same token, in cases where a measure consistent with other GATT provisions is not reasonably available to it, it is bound to use, among the measures reasonably available to it, that which entails the least degree of inconsistency with other GATT provisions." (paragraph 5.26) The Panel then applied this standard to individual elements of a particular enforcement measure. In the Panel's view, each element that was found inconsistent with other provisions of the General Agreement had to be necessary to secure compliance with relevant laws and regulations.

This analytical approach ignored the interrelationship of the various elements that together formed the measure under consideration. Elements that might not be considered "necessary", standing alone, might be essential for the operation of other elements of the measure, that were "necessary". By eliminating a seemingly small component, the law as a whole might not achieve its purpose or function effectively.

The United States was also troubled by the Panel's conclusion that simply because other governments had adopted a certain law or procedure, that measure was reasonably available to another GATT contracting party. This conclusion disregarded systemic and political differences between governments. The United States believed that the list of laws, regulations, measures and procedures that could be found not to guarantee in all cases and in all conditions equality of treatment would be quite extensive. For example, laws that were enforced at the border against imports and enforced by a different or additional procedure against goods in the domestic market were immediately suspect. A contracting party would, if the Panel report were adopted, be required to prove that each element of these measures applied at the border was necessary to provide effective enforcement.

The United States was not prepared to accept an isolated interpretation of GATT Articles and application of standards set forth in this report. That was why it urged careful consideration of the report and its implications for the laws of other contracting parties. His authorities were continuing to examine and discuss the implications of this report, internally and with the Congress, and they were not prepared to accept the adoption of the report at the present meeting.

The representative of Canada said that the United States seemed to have set out some of the same arguments that it had previously made in the Council. His Government had carefully analysed the Panel report and had found it to be well prepared, clearly presented and legally sound. Nothing the United States had said had changed that view, and Canada therefore urged the United States to agree to adoption of the report as soon as possible.
The representative of the European Communities said the Community regretted that the United States did not seem to be in a position to agree to the adoption of the Panel report at the present meeting. In this situation, the Community had no choice but to insist that this matter be kept on the Agenda. The Community agreed with Canada that the United States' comments, at least on a quick reading, seemed to be essentially the same or similar to those made when the report was first discussed on 8-9 February. The Community believed that such views were based largely on a misinterpretation of the report. Moreover, the United States was essentially re-arguing positions already advanced during the Panel proceedings and rejected by the Panel with very sound arguments. The Community would not participate in re-arguing this case, but in the light of the comments made by the United States, the Community had no choice but to reserve its right to contribute in the appropriate forum to a correct understanding of the Panel's findings. The Community agreed that all contracting parties should study this report carefully and invited those contracting parties which had not yet made their position clear, to do so. The Community was confident that such an examination would lead to a consensus that this report should be adopted.

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

5. Export of Domestically Prohibited Goods (C/W/580, L/6459, L/6467)

The Chairman recalled that at its meeting on 8-9 February, the Council had considered this item and that a draft Decision (C/W/580) had been circulated at the request of African delegations. The Council had agreed to revert to this item at the present meeting. He understood that interested delegations were pursuing their discussions on this matter.

The representative of Nigeria said that this subject had been on the Agenda for some time, and the question was no longer whether, but how, GATT should deal with it. At the December 1988 Ministerial meeting of the Trade Negotiations Committee in Montreal, several delegations had recommended the establishment of a working party to examine the issue. For such action to be taken, consensus was needed, and in order to obtain such consensus, more time was needed for consultations among delegations. He appealed to all delegations to examine this matter objectively and to support the establishment of a working party. He asked that this item be included on the Agenda for the next Council meeting.

The Council took note of the statement and agreed to revert to this item at its next meeting.
6. **United States - Restrictions on the importation of agricultural products applied under the 1955 Waiver and under the Headnote to the Schedule of tariff concessions (Schedule XX - United States) concerning Chapter 10**

- Recourse to Article XXIII:2 by the European Economic Community (L/6393)

The Chairman recalled that at its meeting on 8-9 February, the Council had considered this item and had agreed to revert to it at a future meeting. It was on the Agenda of the present meeting at the request of the European Communities.

The representative of the European Communities said that unless the United States agreed to the Community's request for the establishment of a panel (L/6393) -- and if it did not, he would understand the reasons -- the Community would maintain fully its unchanged and duly recorded request.

The representative of the United States said that despite a great deal of effort and discussions, the US concerns articulated at previous Council meetings had not been satisfactorily resolved by the Community. The Community had still failed to clarify the basis for its complaint. Accordingly, the United States was not prepared to agree to the Community's request for a panel at the present meeting.

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

7. **United States - Increase in the rates of duty on certain products of the European Economic Community (Presidential Proclamation No. 5759 of 24 December 1987)**

- Communication from the European Communities (L/6438)
- Recourse to Article XXIII:2 by the European Economic Community

The Chairman recalled that at its meeting on 21 February, the Council had considered this item and had agreed to revert to it at a future meeting. It was on the Agenda of the present meeting at the request of the European Communities.

The representative of the European Communities recalled that, following the discussion on unilateral measures prior to adoption of the Agenda at the 8-9 February Council meeting (C/163), he had understood that the large trading partners, in particular the United States and the Community, had together to assume the responsibility for seeing that GATT's dispute settlement system worked properly. He did not want contracting parties or the Council to think that those large trading partners were trying to exempt themselves from the common rule. Regarding its request in the case at hand, the Community had been conciliatory in agreeing to go through procedures which were not always necessary but which the United States wanted. There had been consultations under Article XXIII:1, but these could not have been reasonably expected to result in the establishment of a panel at this point. The Community intended to remain absolutely firm, indeed intransigent, as to the substance of this matter, and wanted to see that the CONTRACTING PARTIES fulfilled their duty -- to
disapprove any unilateral measure regardless of its form or justification. The Community would continue to be patient, but would not let go of this issue until it achieved satisfaction.

The representative of the United States said that Ministers from the United States and the Community had agreed to appoint a task force of high-level representatives from both parties, to develop within 75 days ways to resolve the problem which had ensued from the implementation of the Community's directive. That process was taking place, and he assured the Council that the United States would -- even if the Community did not -- pursue this issue and would hopefully find a situation in which the US request for a panel to examine the directive under the Standards Code delayed by the Community for the preceding 18 months -- would be allowed to proceed. His delegation hoped that this matter could be resolved by the task force and by the growing good-will that seemed to infuse the discussions at Ministerial level.

The representative of the European Communities said that he had purposefully presented the problem in this matter in an objective manner. He had not wanted to enter into the efforts being undertaken on both sides of the Atlantic to find a solution, not to the global problem mentioned by the United States but to the single problem of the implementation of the Community's directive. The latter did not concern the measures which had been taken unilaterally by the United States. It was quite clear that if a solution could be found regarding the Community's hormone directive, this could help solve the problem of the US unilateral measures. In any event, the Community intended to raise the problem of unilateral measures, whatever their form or justification -- this was the matter which the Council and the CONTRACTING PARTIES could not avoid and would have to solve. There could be no shying away from responsibility in this field. The problem which the EEC-United States Task Force was trying to solve should not be mixed up with the unilateral measures which had been taken by the United States without the prior authorization of the CONTRACTING PARTIES.

The representative of the United States said that the unilateral action that had been taken was the Community's, in implementing its hormone directive; the US action had been a response to that. He repeated that the United States would be pleased to withdraw its retaliatory measures simultaneous to a withdrawal of, or change in, the hormone directive so that it reflected accurately and honestly, scientific facts.

The representative of the European Communities said that the Community's formal request for a panel remained before the Council, which would one day have to take a decision.

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

2 Agreement on Technical Barriers to Trade (BISD 265/8).
8. Japan - Trade in semi-conductors
   - Follow-up on the Panel report (L/6309)

At its meeting on 8-9 February, the Council considered this item and agreed to revert to it at the present meeting.

The representative of Japan recalled that at the 8-9 February Council meeting, he had promised that his Government would make its utmost efforts to finalize the measures to be taken in implementation of the recommendations of the Panel report on Japan's trade in semi-conductors (L/6309). He then outlined the concrete measures Japan would take and its readiness to put these measures into force.

Since the Council's adoption of the Panel report, his Government had been making great efforts to examine how GATT-inconsistent elements could be eliminated from the measures relating to third-country monitoring. However, the difficulties of interpreting the specific aspects which the report defined as trade-restrictive and inconsistent with GATT had given rise to various questions and problems, and had thus necessitated contact with countries directly involved. Such difficulties could mainly be attributed to the report's ambiguous conclusion, which merely stated that the complex of measures taken by Japan to implement third-country monitoring constituted a coherent system restricting exports and was thus inconsistent with Article XI:1. Despite these difficulties, he could now report to the Council the following measures, as amended, regarding third-country monitoring: (1) data on export prices hitherto collected prior to export would be collected only after export had been made. Thus, this reporting procedure would be clearly separated from any export control, and as a consequence, monitoring would be done ex post facto. Moreover, under the current regulation in Japan, the export of semi-conductors was never denied because of pricing. (2) The Supply and Demand Forecast Committee would be abolished. He noted that since the beginning of 1989, forecasts were being compiled on a semi-annual basis rather than on the previous quarterly basis. The requests to companies not to export semi-conductors at prices below cost would be made in general terms, and clearly separated from any export control.

Japan believed that with these changes, a coherent system restricting the sale for export of semi-conductors at prices below cost -- judged by the Panel to be inconsistent with Article XI:1 -- would no longer exist, for the following reasons: (1) Under the amended measures, as data would be collected only after export, his Government could not know prior to export whether the sale was being conducted below company-specific costs or not. Thus it would not be able to make a request not to export at such costs for each individual transaction prior to export, as the Panel report had requested (L/6309, para. 132 A). Accordingly, there would be no room for concern that such measures might restrict exports. (2) His Government had decided to abolish the Supply and Demand Forecast Committee in order to dispel the concerns of some countries that export restrictions through production control or allocation could be carried out as a result of the Committee's deliberations. He reiterated that the coherent system judged by the Panel to be export-restricting would be eliminated by implementing these amended measures, and that their GATT consistency would be ensured.
The representative of the European Communities expressed the Community's satisfaction that -- although somewhat late -- a response had been made by Japan to the Panel's recommendations. His authorities would study that response in some detail in order to determine whether it satisfied the terms of those recommendations and to what extent those recommendations had now been met. That would inevitably take some time; therefore, the Community would be obliged at an early opportunity to come back to this matter in light of that opinion.

The Council took note of the statements.

9. Japan - Customs duties, taxes and labelling practices on imported wines and alcoholic beverages
   - Follow-up on the Panel report (L/6216, L/6465)

   The Chairman recalled that at its meeting on 8-9 February, the Council had considered this item. It was on the Agenda of the present meeting at the request of Finland.

   The representative of Finland, speaking on behalf of Sweden and Finland, welcomed the opportunity to react to Japan's communication in L/6465, which had been considered at the Council meeting on 8-9 February. Sweden and Finland had considerable interests -- both of principle and commercial character -- which they had expressed to the Panel. They had been particularly keen to see the elimination of the disparities in the tax treatment for imported vodka and for domestically produced shochu. While these two countries recognized that Japan's tax system was about to undergo significant changes in the right direction, they noted that the new system still left room for discriminatory treatment of vodka in favour of shochu. Furthermore, the treatment of vodka was less favourable than that of some other imported alcoholic beverages. Even in the new system, shochu and vodka were classified in separate categories, and the volume tax pertaining to these categories would be higher in the case of vodka than in the case of shochu. While the disparities in the new system were much smaller than in the old system, this was not good enough. Sweden and Finland would continue to pay particular attention to the manner in which Japan's tax treatment and market conditions for vodka were evolving, and reserved their respective rights to revert to this matter in the light of these future developments.

   The representative of Japan said his delegation believed that the revision of Japan's liquor tax law, as reported at the 8-9 February Council meeting, met the Panel's recommendations fully. He had taken due note of Finland's statement and would convey it to his authorities.

   The representative of the European Communities recalled the Community's position, as stated at the 8-9 February Council meeting, that while it welcomed the steps taken by Japan, it was not fully satisfied that they would lead to a full implementation of the Panel's recommendations, in particular with respect to the treatment of substitutable or directly competing products.

   The Council took note of the statements.

The representative of Korea, speaking under "Other Business", expressed his delegation's deep regret that the US Government, in its report to the Congress on 21 February 1989, had designated Korea as a priority country regarding telecommunications market-opening negotiations under the US Omnibus Trade and Competitiveness Act of 1988. Korea had previously expressed its deep concern over the possible adverse effects -- not only on bilateral trade but also on the overall multilateral trading system -- of any improper application of the US Trade Act. In Korea's view, the bilateral approach embodied in the Act ran counter to the spirit of the Uruguay Round, where multilateral rules in services were being negotiated, and would be prejudicial to progress in the Round. Korea again urged the United States to implement the Act in a cautious way so as not to damage the credibility of the Uruguay Round. His delegation reserved its right to raise this issue in the appropriate GATT forum.

The representative of the European Communities said the Community found itself in a situation somewhat analogous, although not identical, to Korea's. The Community had received a formal request to enter into negotiations pursuant to the telecommunications provisions of the US Trade Act. The Community's position, already announced publicly, was as follows: it had been engaged in certain fact-finding discussions with the United States over some time and was ready to continue such discussions. It was not ready to enter into negotiations under duress and on the basis of US legislation. The place for formal negotiations on the subject of telecommunications was the Uruguay Round. That was also the right forum for internationally-agreed solutions to the problem of trade in telecommunications products and services. To date, the Community had not received any clear indication of the nature of the US complaint against the Community, and for all these reasons, reserved all its rights in this matter.

The Council took note of the statements.

11. International Trade in Agriculture
- Communication from Australia (L/6471)

The representative of Australia, speaking under "Other Business", said that his Government had decided to circulate for the information of contracting parties an independent study, entitled "Japanese Agricultural Policies - A Time of Change", by the Australian Bureau of Agricultural and Resource Economics (ABARE), an independent economic research agency responsible to the Australian Minister for Primary Industries and Energy. It had also circulated some of the key findings together with a copy of the summary of the study in L/6471.Copies of the full study had also been made available to contracting parties. He emphasised that this study was one of a series being prepared by ABARE on the policies of different countries. This was not a special one-off study on Japan. He recalled that Australia had circulated a study on the European Economic Community's
agricultural trade practices in October 1985. A study on US policies was in preparation. Australia considered that the ABARE publications were making a substantial contribution to the understanding of the distortions arising from agricultural policies and the importance of achieving liberalisation in agricultural trade in the GATT and the Uruguay Round. He stressed that Australia recognised that Japan had recently taken important steps to liberalize trade in agriculture, particularly access to its beef market, and that circulation of the present study at this particular time should not be interpreted as indicating a belief that Japan had a particular responsibility to help resolve the current impasse over agriculture in the Uruguay Round -- that responsibility, at the present juncture, rested with the United States and the European Community.

The study underlined the significant changes in 1988 in Japanese agricultural policies, while noting that there was still a need for further reform of such policies. Support prices in Japan had been reduced, and the number of product groups protected by import quotas had fallen. On the other hand, the study highlighted the complexity of Japan's agricultural policies and the problems facing Japan's policymakers in moving to a more liberal, market-oriented régime. It noted the detrimental impact of Japan's agricultural policies on world prices and on farmers in agricultural exporting countries, both in terms of lower prices and greater price instability. The level of protection for agriculture in Japan remained one of the highest in the world. The nominal rate of protection in Japan, averaged over twelve major items in 1986, had been about 210 percent. Among industrialised countries, this figure had been exceeded only by Switzerland, with a rate of 260 percent.

It was not Australia's intention to criticize Japan in particular for its agricultural policies, but to illustrate the pervasiveness of the high level of protection and distortion in the agricultural sector in international trade. In Australia's view, the complexity of the policy structures that had evolved in many countries would need to be tackled seriously through international rules, if lasting fundamental reform were to be achieved. Japan was an example of a contracting party that was coming to grips with its agricultural problems, was reforming them, and was moving in what was, in Australia's view, the right direction even though it would still face significant political and social problems before achieving full reform. He commended the study to contracting parties and hoped that it would be useful in the discussions on agriculture in both the GATT and the Uruguay Round.

The representative of Japan said that L/6471 appeared to contain a number of one-sided and misleading views on Japan's agricultural policies. However, he did not intend to enter into detailed discussion on the contents of the document, since the Government of Australia might not be responsible for a study which did not present an official view. His delegation was deeply concerned over the unilateral manner and means of circulation by Australia of such a study. It was also regrettable that the

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3 See L/5874.
The Secretariat had circulated a non-governmental study as an official GATT document. He noted that a similar regret had been expressed at the Council meeting in October 1985. His delegation was afraid that escalation of such requests for circulation of non-governmental documents would risk jeopardizing the efficient work of the Secretariat and of discussions and negotiations in the GATT. He therefore suggested that the matter of circulation might be examined by the CONTRACTING PARTIES.

The representative of the European Communities said that the Community took this development in the procedure for circulation of so-called documents or studies very seriously. The Community had already protested to this effect at the Council meeting in October 1985. It had been alone then in voicing such concern, and only New Zealand had supported the circulation of that study aimed at the Community. There was no such thing as an independent study, at least in the Council where all circulated documents stemmed from the exercise of contracting parties' political responsibility. The latter alone were empowered to bear such responsibility through the necessary assessment and the assumption of the consequences of the conclusions, indications or comments of one study or another. The proliferation of such documents entailed the risk of completely falsifying the function of this institution and the very ethics which should prevail therein. What would be said if the Community wished to inflict popular revenge on its partners by circulating a whole series of so-called independent documentary studies in order to twist the debate and exert underhanded harassment? It was not so simple, because in negotiations, one also dealt with governmental documents, guidelines or proposals which stemmed from contracting parties' political responsibility. As Australia had said, the study on Japan would be followed by one on the United States. All these studies would join the anonymity of the mass of studies and risked being useless -- complicating and delaying the negotiations. That was contrary to the goal being pursued. He repeated that he would be resolutely critical of the Secretariat should it continue to operate in this manner. In 1985, the Director-General had observed that, in the case then at hand, the Secretariat had followed the usual procedures concerning circulation of information to contracting parties. For the Community, which did not agree on that score, he was posing a problem of principle and ethics for the work of the CONTRACTING PARTIES.

The representative of Australia said that the Community's reaction was fascinating. That same morning he had received a call from a journalist who had told him that he understood from the Community that it would object to the way in which the document was being tabled, but liked its content. In Australia's view, the Community's arguments were very much a matter of convenience. Australia appreciated the sensitivity of circulating a report on another contracting party's policies; there was no question of GATT's integrity in this respect. Document L/6471 was entitled "Communication from Australia"; Australia would take full responsibility for it as far as the GATT was concerned, while it would not take responsibility for the character of the analysis, which was basically of an academic nature, resting on academic judgements, and was not a policy-oriented analysis by his Government. He was emphasizing this in order to increase the value of that report. However, Australia agreed with the study's conclusions. It had not asked the Secretariat to circulate the full report; his delegation had circulated it. He hoped that various authorities and private
organizations in Japan would find the report as useful as governments, agencies and other policy-oriented groups had found the earlier report in helping them to understand the implications of the Community's policies.

The representative of Switzerland said that his delegation had also been somewhat surprised at the circulation of a research paper prepared by a private institution, and shared the concerns expressed about the implications of distributing such private studies in a formal setting such as GATT. Since Switzerland had been mentioned, his delegation reserved its right to come back to the present study after having scrutinized its contents.

The representative of Argentina said that the problem before the Council consisted of formal and substantive aspects. The formal aspect was that the circulation of the document by Australia, for which that country assumed full responsibility, had been done according to established practice. He recalled that some delegations had also objected from time to time to the circulation of Secretariat documents in the context of the special meetings of the Council. Those documents, prepared under the Secretariat's own responsibility, contained information not only from contracting parties but also from other sources which the Secretariat considered appropriate. Therefore, his delegation considered that from a formal point of view, Australia had followed established practice. From the substantive point of view -- which was what really mattered -- his delegation believed that Australia’s paper represented a useful contribution in that it provided an analysis of the effects of the agricultural policies of an important contracting party. If prepared and studied objectively, this academic analysis would contribute positively to the furthering of the General Agreement as well as to the Uruguay Round negotiations. Argentina suggested that contracting parties worry less about the form and more about the substance of this problem -- i.e., the effects of the policies concerned.

The representative of the European Communities emphasized that the introduction of such studies would complicate the negotiations. He hoped that other representatives, especially those concerned with agricultural problems, would leave aside their wishes, fears and unfulfilled obsessions and think rigorously and clearly. If the intention was to turn the GATT Council into a seminar, he would have no objection to discussing the paper. For its part, the Commission had at its disposal many studies, which had been more or less instigated by the Community, and which it could throw into the debate with a view to enlightening the intellect of his fellow representatives. He preferred, however, that these studies be used to facilitate internal assessment and to define a negotiating policy. The process should not be used otherwise, as this would entail the risk of poisoning the atmosphere of negotiations or, at the least, inciting distrust among the negotiators. The situation at hand was not a procedural matter, but rather a most dangerous side-stepping of GATT processes and procedures.

The representative of the United States said that he agreed generally with the Community about the importance of governments utilising internal reports for their own assessment, but he was not sure of the logic in the latter’s opening statement that Australia’s document “would complicate the
negotiations*. Was the Community speaking on behalf of Japan, or was the Community looking for some external excuse to justify complicating the negotiations?

The Director General quoted a French proverb to the effect that "he who apologizes accuses himself". He did not owe an apology to anyone for the circulation of the document in question. The Secretariat had followed the rules and practices applied to date in this respect, and he had no intention of modifying them. He emphasized, however, that it was for contracting parties to exert self-discipline in this area, not only so as not to burden the issues but also for budgetary reasons.

The Council took note of the statements.

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

The representative of the United States, speaking under "Other Business", said that the Panel established on 20 December 1988 to examine the US complaint in L/6445 had still not been composed. Canada had still not officially accepted or rejected the panelists proposed by the Secretariat seven weeks earlier. His delegation hoped that this matter could soon be decided so that the Panel could begin its work.

The representative of Canada expressed his delegation's surprise that the United States was raising this issue at the present time since only one week earlier, a panelist agreed to by both parties had withdrawn his name. Canada had been cooperating in all aspects of this Panel, including having agreed to its establishment the first time the United States had requested this, and would continue to cooperate with the United States and the Secretariat on the Panel's composition. His delegation looked forward to having the Panel conduct its examination in a timely fashion once the remaining panelists were agreed.

The Council took note of the statements.