MINUTES OF MEETING

Held in the Centre William Rappard on 21 June 1989

Chairman: Mr. J.M. Weekes (Canada)

Review of developments in the trading system
(Special meeting on Notification, Consultation, Dispute Settlement and Surveillance)

The Chairman recalled that the mandate and function of the biannual special Council meetings was to review developments in trade policy on the basis of the 1979 Understanding regarding Notification, Consultation, Dispute Settlement and Surveillance (BISD 265/210), and of paragraph 7(i) of the 1982 Ministerial Declaration (BISD 295/9).

He drew attention to the Secretariat document, "Developments in the Trading System, September 1988 - February 1989" (C/W/590 and Add.1), based on notifications made by contracting parties and on other relevant information. The Secretariat had continued to rely partly on unofficial information, since official notifications had been inadequate to provide the basis for a well-structured and informed review. The document had been produced on the Secretariat's own responsibility and did not commit any delegation; nevertheless, delegations were given the opportunity, and were encouraged, to send in corrections on points of fact and of appreciation.

He also drew attention to the Director-General's report on the status of work in panels and implementation of panel reports (C/167).

He recalled that the basic purpose of the special Council meetings was to monitor implementation of the 1979 Understanding and of paragraph 7(i) of the 1982 Ministerial Declaration, and to engage in a substantive review of recent developments in the trading system. Representatives should thus not feel inhibited or limited to discussing the specific issues or facts mentioned in the documentation. The review should enable the Council to focus on those aspects of current developments in the trade policy environment that were of particular relevance to GATT's ongoing activities, and the cooperative action, or lack thereof, by contracting parties in the trade field.

The representative of the European Communities outlined what he considered to be some of the cardinal rules regarding the GATT, which included taking no action which could endanger or politicize GATT or which could unfairly disadvantage another contracting party. Turning to a technical question, he asked whether the present final review ended ipso facto the special meetings of the Council held on the basis of paragraph 24 of the 1979 Understanding and if so, how the transition to the periodic special meetings of the Council under the 12 April 1989 Decision
would be ensured without leaving a technical, not to say legal, vacuum. For its part, the Community understood that the latter meetings would focus on two elements: the complete reports to be submitted by contracting parties, and the annual report submitted under the Secretariat's responsibility. As to the complete reports, the first was to come out in perhaps October. The annual report, on the other hand, would allow the Council, according to the given mandate, to proceed with a review of the international trading environment under increased surveillance. If his interpretation was correct, he would propose, in order to avert a technical vacuum, that the Secretariat issue the first annual report in October and that the Council, without interruption in its function, meet in the same month.

The present discussion would no doubt help the Secretariat in this text. Would it, however, be doing the same thing? A new format for the reports had recently been adopted. He asked what would become of the Director-General's traditional report on the status of work in panels.

The Chairman suggested that Council members might want to reflect on the technical question raised by the Community and come back to it.

The representative of Brazil said that he had been afraid that the Community would make the same mistake as President Wilson when he had proposed 14 commandments for the attainment of world peace. He recalled Prime Minister Clémenceau's words about these 14 commandments that even the Good Lord had contented himself with 10 and yet with not very bright results. Fortunately, the Community representative had been more reasonable with only four such commandments.

He quoted the "Financial Times" as saying that the fundamental problem for the multilateral trading system was that the United States, its founder and ultimate guarantor, had altered the balance of its policy. It would abide by its agreements when convenient, but it would also break them when convenient and woe betide any weaker country that crossed it. This aggressive approach struck at the heart of the multilateral system not because of unilateralism alone, but because agreements reached in the course of multilateral negotiations might be scrapped whenever the United States unilaterally decided they should be. What then was the value of such agreements? Quoting "The Economist", he said that the "Super 301" list remained highly dangerous. It put at risk the current Uruguay Round negotiations. The US Administration averred that the Uruguay Round was its top trade priority and that the use of "Super 301" would bolster, not undercut, the GATT process. But by acting unilaterally the United States was bound to undermine the multilateralism which was GATT's main strength. This sort of brinksmanship could degenerate into a trade war. The list also distracted attention from the real macroeconomic causes of the US trade deficit, and so might reduce efforts to address them.

Quoting from the "Journal of Commerce", he said that the impression would be inescapable that the United States was an economic bully, arbitrarily blaming others for a trade deficit that its own economic policies had caused. Quoting further from various sources, he said that in
the face of blatant protectionist action by the United States, the OECD had turned the other cheek. The United States had set itself as judge and jury. For two days, OECD Ministers had condemned Washington for threatening unilateral retaliation against Japan, India and Brazil. But then all 24 members -- including the United States -- had issued a communiqué saying: "Ministers firmly reject the tendency toward unilateralism, sectorialism and managed trade which threatens the multilateral system...." And all 24 had pledged "to halt and reverse all such protectionist tendencies and to strengthen the open multilateral trading system". For the OECD to allow the United States to escape with such a black-is-white rationalization was a confession of impotence. What this discouraging little roundelay meant was that the United States' so-called commitment to multilateral trade was a joke -- and that the commitment of other OECD members was more rhetorical than real. The United States was adrift without a clearly defined trade strategy, except that it was moving away from free trade. Joint action with other nations was fine, but only if it fitted the United States' parochial requirements. Unfortunately, unilateralism was ascendant at the moment, despite US doublespeak in Paris.

He noted that he had not written a single word of the comments he had just read. This showed that Brazil's perception of the threat posed to the multilateral trading system did not derive from the particular bilateral problems it had with the United States, but was a universally shared opinion, sometimes expressed by well-respected US journalists.

Although some positive signs had been witnessed recently in the world trading environment -- such as the resumption of the Uruguay Round negotiations and the high levels of trade and economic growth, albeit with qualifications in the case of developing countries -- the underlying threats to it caused by "prospective future developments in the policies of contracting parties" alluded to in the Secretariat document were no longer prospective but real, as proven by the recent application of the US Trade Act and its "Super 301" clause. As the document clearly pointed out, the promising prospects created by an impressive growth of 8.5 per cent in world trade were threatened by four main trends: the tendency towards increased protectionism through unchecked resort to non-tariff measures; the formation of restrictive economic blocks; the ever-increasing talk of managed trade; and the alarming and distressing recourse to unilateral measures.

Irrespective of the final and irreparable damage to the Uruguay Round that might still be the net result of the escalation in the use of Section 301, its mere invocation had already wasted the precious capital of good-will which had been accumulated through the Director-General's efforts and all those who had strived to make a success out of the April meeting. The basic incompatibility of Section 301 with the Round and with the GATT itself lay not in its goals of opening and promoting trade liberalization but in the ever-present threat of ultimate and unilateral retaliation which

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1 The references to "Super" and "Special 301" are those of the speakers.
was inseparable from its proceedings. It was pertinent to note that in the "Questions and Answers about "Super 301" distributed by the United States Trade Representative's Office, it was said that "whatever action the United States takes under Section 301 will, whenever possible, be GATT-consistent". There was no need to point out that the USTR, by its own admission, affirmed here that US actions might be GATT-inconsistent, which was sufficient to show that the application of "Super 301" might give rise to decisions that were incompatible with GATT, regardless of the arguments about the degree of discretion afforded the President by the law. When the trade law allowed for the application of unilateral trade restrictions, it created the conditions that made the violation of the General Agreement a distinct possibility, and that was precisely what the "Super 301" advocates considered its teeth -- the possibility of threatening other parties with unilateral retaliations outside the GATT machinery. There would be only one way to put to rest definitively the concerns expressed by so many countries about the destructive potential of "Super 301" -- the US Government should make a clear and firm commitment that it would not resort to the imposition of trade sanctions unless authorized by the GATT. The rejection of such a commitment during the Montreal negotiations on the preamble of the dispute settlement agreement indicated that the United States insisted in retaining its unilateral retaliatory power. The application in October 1988 of unilateral measures against Brazil was a further proof that the threat was not hypothetical but very real, as the measures had been based on the old Section 301, not different in substance from the "Super 301".

He asked how the traditional give-and-take of multilateral negotiations could possibly be reconciled with this kind of process under duress, in which a country would be pressured not to exchange trade concessions to make concessions in order to avoid punishment. And this strange exercise was taking place at the same time as contracting parties were engaged in the Uruguay Round negotiations based on the m.f.n. principle. In the "fact sheet" given to the press by the USTR, one read the following justification for the exclusion of some trade practices from Section 301: "Many trade issues may be better resolved through multilateral agreements under GATT auspices than bilateral initiatives. Because GATT negotiations involve a broad range of issues and sectors, they facilitate a comprehensive approach to resolving a number of interrelated issues. In addition, it is often difficult for governments to agree to eliminate a trade barrier in bilateral negotiations, when other countries can act as free riders and take advantage of a more open trading situation without making equivalent concessions". By listing under "Super 301" trade practices that were already being negotiated in the Uruguay Round, the United States had undoubtedly reinforced its negotiating position, in a clear violation of the standstill commitment of the Punta del Este Declaration. This was a fact, not a prospective development.

The USTR's "fact sheet" started by modestly admitting that "no foreign country currently met every standard for adequate and effective intellectual property protection as set forth in the US proposal" and thus "all countries are eligible for potential priority designation because all countries deny adequate and effective protection of intellectual property rights within the meaning of the statute". In spite of this universal
eligibility, only an unhappy few had then been listed on a "priority watch list", the status of which would again be reviewed by no later than 1 November 1989, taking into account "satisfactory progress and results" in several areas, among which "constructive participation in multilateral intellectual property negotiations". In the absence of a definition of what should be understood by "constructive", one might perhaps assume, on the basis of the only criterion which had been mentioned in the paper, that it would simply mean conformity with the US proposal. If that was so, why then bother to go into lengthy and complicated negotiations?

One could not remain silent in the face of the self-righteousness of measures aimed at opening markets on the part of a market where, in less than a decade (1980-1988), the proportion of imports affected by substantial barriers had risen to about 23 per cent from about 12 per cent. At the beginning of May, the European Economic Commission had issued a report on US barriers to trade that listed no less than 42 obstacles to trade in 15 different chapters among which even intellectual property was not absent.

He would reserve for the regular Council meeting the specific remarks made necessary by Brazil's inclusion in "Super 301". He could not, however, let it pass without comment that in this particular case a new and grave precedent was created as the USTR attempted to challenge measures that were covered by the General Agreement, namely in Article XVIII (b), and which had been duly and timely notified and justified to the appropriate GATT bodies, the Balance-of-Payments Committee and the Council, with the United States concurring in both cases in the decisions taken to approve the said measures. Besides undermining the well-established machinery of the GATT, the recent announcement gratuitously singled out actions that had been imposed on Brazil by necessity, not choice, and which had been substantially and progressively reduced as its notorious balance-of-payment difficulties permitted and according to the recommendations of the BOP Committee. It went of course without saying that the singling out of Brazil as a main culprit in generating the US trade deficit found no real ground as Brazil's bilateral surplus had steadily declined to less than four per cent of the total and as Brazil's imports of US products had jumped by 60 per cent from 1983 to 1988, at a rate that was more than double the average growth of US exports world-wide and which had made Brazil the 17th largest market for US products.

This was the final special Council session. Although the intentions behind its creation had been worthy, it had not really fulfilled the objective of providing an effective mechanism for the multilateral collective surveillance of trade policies. It would now be replaced by the Trade Policy Review Mechanism (TPRM), following the decision adopted by the TNC (L/6490). He hoped that the shortcomings of its predecessor would not remain. The creation of the TPRM placed on all contracting parties and the Secretariat alike a heavy and serious responsibility. A major test of the seriousness and credibility of the mechanism would be to ensure that the trade policies of the largest trading partners, which accounted for the bulk of world trade, would be thoroughly examined according to the strict observance of GATT provisions. Failure to do so would put this new mechanism in jeopardy from its very beginning. It had to be remembered
that the TPRM had not yet been definitely approved; the results forthcoming from the first reviews would have an important bearing on its future, and could give rise to subsequent alterations and modifications, as stated in the Ministerial Declaration.

One of the critical tests of the TPRM would be the examination of the trade policies of the United States, the influence of which on world trade was second to no other contracting party. He understood that the United States had already flagged its intention to be among the first to be reviewed. He hoped that this mechanism would be able truly to examine the impact of that contracting party’s trade policies and practices on the multilateral trading system, and that the Council, in reviewing the US report, would be more objective and less hypocritical than the declaration recently made by OECD Ministers.

There was still time to avoid the worst and to prevent a fateful chain of retaliation and counter-retaliation from doomling the Uruguay Round and debilitating the world trading system. After having successfully overcome the challenges of an unfavourable external environment during the Tokyo Round, it would be tragic and without excuse if the GATT were to fail when industrialized economies were growing at rates between 3.5 and 4 per cent a year and international trade was expanding at 8.5 per cent. One should take the opportunity to fulfill the objective of providing an "early warning" against policies detrimental to the trading system. The warning now, however, was not so much early as urgent. Brazil believed that by not collectively taking a firm commitment to renounce once and for all the menace posed to the system by unilateral retaliation, one would be endangering its very existence in the years to come.

The representative of Jamaica said that the Secretariat report (C/W/590) showed improvement over previous ones and was very useful for officials in capitals. The section on agriculture and food products (Appendix 5) was instructive. The section on subsidies (pp. 68-88) would be improved if additional information was provided on especially large subsidies in the industrial sector, in particular in the high technology area, where the Uruguay Round was moving slowly and not necessarily in the right way. The section on exchange rates (p. 113) could also be improved by pointing to the relationship between exchange rates and fluctuations thereof, and their effects on international trade.

As to the analytical part (paras. 7-14), he said that the conclusion in paragraph 14 that the Uruguay Round would be facing its sternest test was an accurate pointer to some of the trends and indications identified in the preceding paragraphs. His delegation remained convinced that the international trading system would survive and preserve its credibility. The Uruguay Round was doomed to succeed.

Turning to the technical point raised by the Community, he recalled the proposal by the Nordic countries, which his delegation had supported, for establishing a working party to examine the need for notifications and their best use. No action had yet been taken on it. He was not convinced yet that even in the Uruguay Round the question of the required range of
notifications had been exhausted. He hoped that in future work, this issue would be kept in mind.

Another question raised by the Community was how to deal with the reports. He understood from the Decision on the Functioning of the GATT System (L/6490) that there was to be an annual report by the Director-General that would come in parallel to the notifications by individual contracting parties. He hoped that the transition period and process would be reflected on, because in view of the useful semestrial reports that had been coming out, he wondered whether the annual report would adequately replace those. He was not sure whether, even if one was optimistic and got 16 such individual reports, these reviews could be taken as a valuable substitute. The reviews carried out over the years had been a useful exercise in terms of transparency and the range of GATT-inconsistent measures but had not been useful in terms of paragraph 7(i) of the 1979 Understanding mandate.

With regard to the Director-General's report on the Status of Work in Panels (C/167), he hoped that this practice would continue. Under Section (A) there were 17 Panel reports which had not yet been adopted by the Council, six Panels established by the MTN Committees for which a number of questions arose, and six Panel reports which had been adopted by the Council but had not been satisfactorily implemented. He believed that it would be useful to put both these documents (C/167 and C/W/590) into the public domain, as this would be a test of the governments' seriousness in requesting panels and in adopting and implementing the latter's reports.

The representative of Japan said that in reviewing the developments in international trade since the most recent special Council meeting, one saw a continued trend of high growth in the volume of international trade, which was to be welcomed. Japan, however, was concerned that, against the background of moves toward unilateralism and regionalism, there was an undercurrent of an increase in measures which were tainted by protectionism and risked being inconsistent with the GATT system. One example was the invocation in May of the so-called "Super 301" under the US Omnibus Trade Act and the identification of countries on the "Priority Watch List" under the so-called "Special 301". Another was the introduction of, and increasing resort to, new anti-dumping-related regulations, and the arbitrary application by the Community of the rules of origin.

Under these circumstances, the Uruguay Round was the task with the highest priority and importance to all contracting parties in the pursuit of further strengthening the free trade system -- a system providing the immutable driving force behind the dynamic development of the world economy. Japan was encouraged, therefore, that the participants in the Uruguay Round, having concluded the mid-term review in a satisfactory manner, were seriously addressing the issues before them, in order to conclude the Round by the end of 1990. Participating countries should not impair the negotiating environment of the Uruguay Round, nor were they allowed in any way to take actions which would undermine the negotiations. Furthermore, several negotiations were being conducted with the objective of establishing international rules in areas not presently covered by GATT.
Co-operation from all participating countries, including those from developing countries, was called for in the efforts for further strengthening and expanding the scope of the GATT system. At the present meeting, he wished to state Japan's views focusing on the invocation of the so-called "Super 301" and the United States' disregard of the GATT dispute settlement process, because the United States was without doubt, one of the major pillars upholding the GATT system, and because Japan believed it was essential that the United States, as the standard-bearer of the Uruguay Round, lend its forces to strengthening the GATT system by contributing to the promotion of the Round negotiations. The unilateral measures based on "Super 301" presented a number of serious issues. First, for a country to designate unilaterally another country's measures as "unfair", together with a possibility of retaliation, ignored the basic principles upon which the present multilateral open trading system was based. The second issue was the United States' neglect of the principle of the rule of law, which was fundamental to the GATT system. A contracting party could not, at its own discretion, deviate from valid GATT rules simply because it considered them inadequate. To be judge, jury, and executioner at the same time was not acceptable. "Super 301" also disregarded the due process of law by neglecting the established dispute settlement process of GATT, whereby retaliation was not allowed unless explicitly authorized by the CONTRACTING PARTIES. Resort to any retaliation under "Super 301" was very likely to contravene the GATT Articles. Moreover, even if a contracting party was unhappy about an existing GATT rule, the rule in question could be changed only in accordance with agreed procedures and in a way reflecting the concerted will of contracting parties. Third, "Super 301" was likely to undermine the ongoing efforts, mainly in the Uruguay Round, for establishing multilateral rules in areas where GATT rules did not yet exist. Japan found it encouraging that the United States had emphasized publicly that the highest priority in its trade policy was a successful conclusion of the Uruguay Round negotiations. This policy was apparent in the way the United States had been participating in the Round negotiations. Furthermore, it was apparent that the US Government was making efforts to alleviate, to the extent possible, the negative effects of "Super 301". However, Japan did not find convincing the US assertions that the true aim of "Super 301" was not to seek retaliation but to realize market opening and trade expansion, that the "Super 301" was not only consistent with the GATT, but also strengthened it, and that it contributed to the Uruguay Round negotiations.

Moreover, the unilateral designation of sovereign state's actions as "unfair" was in itself wrongdoing, with considerable political ramifications. Japan was concerned that this could adversely affect the bilateral relations between the United States and the country designated, unduly obstruct efforts to resolve the problem, and risk giving advantage to protectionist forces.

The GATT dispute settlement procedures had played an extremely important rôle in maintaining the confidence of an effective GATT-based multilateral trading system. This was evidenced by the significant increase in the number of disputes submitted to GATT procedures. In addition, the Uruguay Round participants had recently renewed their determination to further adhere to and respect the dispute settlement
procedures. Japan had hitherto abided by the GATT dispute settlement process by agreeing to the adoption of panel reports, even though its views differed from the panel's findings, and by implementing the recommendations even though doing so sometimes posed difficult problems. Many other contracting parties had also been addressing panel reports in earnest. In this respect, the United States' defiance regarding the adoption of the Panel report on Section 337, and on the implementation of the Panel reports on the Superfund and the Customs User Fee disputes, endangered the credibility of the GATT dispute settlement procedures, undermined the reliability of the GATT itself, and would have adverse effects on the Uruguay Round negotiations. Japan appealed to all contracting parties to renew their determination to respect the terms of the General Agreement, to seek to maintain and strengthen the GATT multilateral trading system, to reaffirm adherence to its dispute settlement procedure, and to exert utmost efforts in making the Uruguay Round a success. The United States should recognize its pivotal rôle in guarding the open multilateral trading system. He quoted Claire Wilcox, US drafter of the Havana Charter: "We have introduced [in the Havana Charter provision corresponding to Article XXIII:2] a new principle in international economic relations. We have asked the nations of the world to confer upon an international organization the right to limit their power to retaliate. We have sought to tame retaliation, to discipline it, to keep it within bounds. By subjecting it to the restraints of international control, we have endeavoured to check its spread and growth, to convert it from a weapon of economic warfare to an instrument of international order" (E/PC/T/A/PV/6, p.4).

The representative of India said that US trade law had been a source of concern ever since the Section 301 provision had been introduced almost 15 years earlier. Contracting parties' unease had increased considerably in August 1988 when, with the enactment of the US Omnibus Trade and Competitiveness Act of 1988, this provision had been transformed into an even more aggressive instrument. Twice earlier, the Council had discussed the provision in detail, and contracting parties had been unanimous in pointing out that the use of Section 301 would subvert the multilateral trading system and start a spiral of retaliatory measures which could choke international trade flows. The Director-General had reminded the Council in February 1989 that it was precisely in order to avoid such a possibility that the founding fathers of GATT had sought to keep the weapon of retaliation in check by requiring a contracting party to obtain the CONTRACTING PARTIES' authorization before taking recourse to such a measure. There was a generally shared feeling that the present GATT system, despite its many inadequacies, was still effective. Any attempt to replace it by an alternative system which did not subscribe to the fundamental concepts of the present system was bound to fail.

Despite past warnings of the threat from Section 301 to the GATT system, the US authorities had implemented the "Super" and "Special 301" provisions. Investigations had been initiated for three contracting parties under "Super 301" and were threatened for 21 under "Special 301". With the growing number of contracting parties facing the possibility of Section 301 action, the threat to the multilateral trading system had deepened. While it was true that no action had yet been taken, there was a strong possibility that eventual action would be discriminatory and without
prior GATT authorization; thus, there would be serious violations of contracting parties' rights. India's concern was heightened by the fact that GATT rights were being threatened for securing concessions in areas of economic policy outside the scope of GATT.

At Punta del Este in September 1986, an ambitious round of multilateral trade negotiations had been launched embracing not only the traditional subjects but also venturing into new areas. While the multilateral process was in progress in the Uruguay Round, one of the participants had decided to secure its aims bilaterally, not by persuasion or negotiation but through the use of economic sanctions. This was a serious departure from the well-established and recognized norms of international conduct whereby economic agreements were expected to be reached not by dictation of terms by one of the participants, but by recognition of mutuality of benefits. An agreement secured under duress could not last. This was the first principle that had to be borne in mind when sovereign countries dealt with each other. Furthermore, bilateral pressures could only serve to undermine the multilateral process. It was ironic that the US authorities were supposedly acting under the mistaken belief that "Super" and "Special 301" were tools "to create an ever-expanding multilateral trading system based upon clear and enforceable rules". In this context, it was imperative that the Council send a clear message to the US administrative and legislative authorities that the implementation of Section 301 provisions would emasculate the multilateral trading system and bring to a halt the process of preserving and strengthening it. His delegation, too, was interested in the question as to how the review process would continue.

The representative of the European Communities said that he proposed to deal above all with the issue of unilateralism. He did not intend to go into other important subjects such as protectionism, sectoralism or managed trade. Unilateralism had become the burning topic. Indeed, the Community had itself initiated a debate on this subject at the February Council meeting. At that stage the Community had received only lukewarm support; but today, it would seem that the wind had changed, and many sails were making their appearance on Lake Geneva and were moving in the right direction.

As to all that concerned unilateralism, the Secretariat had highlighted some interesting and important things in its report (C/W/590). He quoted passages which he said deserved special emphasis. In paragraph 12 the Secretariat had said: "... In at least two instances, the failure to resolve disputes bilaterally has led to unilateral retaliatory measures by way of tariff increases, in one case against Brazil and in the other case against the Community. These measures stimulated a wider debate in the GATT Council on the increasing use of unilateral measures in international trade and the dangers that this poses for the multilateral trading system". He could confirm that these facts represented the truth and that the Secretariat's analysis was correct.

In paragraph 13, the Secretariat had become a little bolder where it had said: "... There would appear to be a growing tendency on the part of some governments to apply or invoke restrictive trade measures to deal with
trade practices which these governments consider to be unfair but which may not, at the present time, be recognized as such in the GATT, or which are not, at the present time, covered by multilateral trade disciplines. The debate in the Council thus reflects a wider concern with the possibility of changes in the existing rules being sought through unilateral action rather than on the basis of multilateral negotiations." There one had the backcloth set out with much finesse.

Continuing, and with increasing audacity, the Secretariat had come to grips with Section 301 of the 1988 US Trade Act: "... For the immediate future, the national trade policy measures that could have the biggest impact on the multilateral trading system and on developments in the Uruguay Round, are those that may be decided upon under Section 301 of the US Trade Act. Some of these may essentially involve demands for the opening of bilateral negotiations with priority countries on issues that are also the subject of multilateral negotiations in the Uruguay Round. Others, however, relating to matters covered by existing bilateral agreements, may involve short deadlines for the elimination of the offending measures and, if this is not forthcoming, for retaliatory action..."

All things considered, the Secretariat might not have gone far enough and had pulled its punches. But in its conclusions in paragraph 14, the Secretariat had after all been more daring, of course with the necessary decorum: "It would thus appear that international trade relations are entering a phase in which the priority that governments attach to the successful conclusion of the Uruguay Round and to the attainment of the objectives of the Punta del Este Declaration will face its sternest tests." For its part, the Community would not use the conditional: the Uruguay Round was being well and truly put to the test.

He asked what points one should be making now at the present Council meeting. One would remember the memorable debate on unilateralism which had been recapitulated in a report issued on 16 March 1989 (C/163). At that time, the Director General had been prevailed upon to speak up and had undertaken an act of courage and a veritable act of faith in the multilateral system -- he had agreed to give his interpretation on all this, and his interpretation was nothing if not orthodox: "... This (General) Agreement said that discriminatory import tariffs were contrary to its Article I. There was no exception in the General Agreement which could justify discriminatory import tariffs imposed for the particular purpose of inducing another contracting party to bring its trade policies into conformity with the General Agreement..." Who could say it better or more clearly? This "Dunkel decree" had become famous.

The Community had asked a fundamental question at that same Council meeting in February, and contracting parties had not given a clear, unambiguous reply: "Does a country have the right within the GATT system to be both judge and jury, and to execute its own judgement?" A collective reply to this double question was needed. He wanted in this connection to address himself to the entire assembly, but first and foremost to his colleague and friend the US representative, and to ask him to take good
note of his comments in order to communicate them to his authorities, and above all to the US Congress.

He would construct the Community's observations entirely on the United States Trade Representative's declaration at her hearing before the Senate Finance Committee on 3 May 1989. The USTR had replied, in her own way, to the Community's question at the February Council meeting with a clear 'yes'. A country such as the United States could assume the rôle of judge and jury and had the right to execute its own judgement. This reply came out clearly throughout her submission, but one passage in particular deserved to be quoted: "... Until we can achieve our goals for the Uruguay Round, we must work within an imperfect system and take what steps we can on our own to improve the system and protect US trading interests. That is why we will not hesitate to take selective unilateral actions to complement our multilateral objectives or open foreign markets and advance US economic interests..."

Undoubtedly the Congressional body which had given birth to the Trade Act would find this point of view perfectly logical given the origins and gestation of the Trade Bill and its eventual transformation into the Trade Act.

The question which had arisen then and which arose now was this: Was the Congress aware that this US law was built on a premise which violated or, at the very least, contradicted the foundations of the law which one called the multilateral trading system and which found expression in the GATT? That was the meaning of the Director-General's message or the "Dunkel decree". He asked the US representative to convey that message to the US Congress with the solemnity which the occasion deserved.

It was of course true that, within the US Administration which had received a poisoned and infectious legacy, there was naturally awareness of the contradiction between the noble purpose, honourably defended, and the means used in order to achieve that purpose. The USTR had acknowledged it: "There is, however, a tension between our unilateral and bilateral objectives".

But the USTR's reply in her endeavour to resolve that contradiction revealed how far the Bush Administration had become embroiled in that contradiction: "Yet retaliation must be used to advance US interests in some cases where multilateral rules are ineffective or non-existent or where the United States is frustrated in its efforts to enforce trade agreement rights. It is the Administration's job to reconcile this conflict. Such reconciliation can best be achieved through a balanced mix of the multilateral, bilateral and unilateral tools in our trade policy arsenal: Each type of action should complement, not undermine, the other types."

There one had, in essence, the basic contradiction; but there was also a secondary contradiction in the US law -- the opening of foreign markets was based on the threat of closing the US market.
It was time for the Administration, and above all for the US legislative branch to untie this Gordian knot. Despite all its declarations, the US executive branch could never mix water with fire. To claim otherwise was to lull the legislature into a dangerous and impossible dream. The USTR's assertion: "... We intend to use 301 as we believe it was meant to be used..." demonstrated the extent to which the Executive had become a hostage and prisoner of a perverse and irrational logic in which the US legislature had at the outset enclosed itself, unconscious or ignorant of violating the basic multilateral law. For it was not to be imagined that the legislation of a great and responsible country which had itself sponsored and indeed engendered the basic multilateral law of the GATT should deliberately and consciously violate that law.

The Congress and the Administration would need courage to untie this knot. Admirer and ally of the United States which the Community was, it expected no less. Failing a solution, this contradiction fed on dreams, and illusion could only lead to a tragic impasse; that was the meaning of the term "time bomb" which the Community had used repeatedly in the Council and at the most recent session of the CONTRACTING PARTIES.

In reality, the Community's appeal was born of sadness and resignation. The Community was not directly concerned for the present. But precisely because it was not directly concerned, the Community was morally fit to make this appeal: "Friend of the United States that we are, we cannot stand by helplessly and watch the sinking of the GATT system because of a tragic error of judgement which will lead you inexorably towards committing an irreparable act of folly and unleash the apocalypse from which you, the United States, will certainly not be spared. This is suicide".

Of course, the US legislature might be tempted, even reassured by some successes of circumstance -- yet more illusion, as such successes would be Pyrric victories obtained on the back of frustration and the bitterness of others. Unwittingly, the United States would be weaving a web of frustration, into which they too would most certainly fall. Nobody would of his own free will go to Canossa. The risk was that the United States' allies would become its vassals, though unrelenting in reality, eventually to become its adversaries or even its enemies. The United States was rowing against the tide. The United States also depended on others, above all on those who were smaller. It should never forget that there could be no purely American solution to purely American problems today. It should not abuse its strength, nor use the law of the strongest, above all, bilaterally. So much for the weaker. As for the others, those not quite as strong but nearly so, even if the Community would regret it, the old law of Talion would show its ugly head again.

He asked where all this would lead. The strongest might well be drawn, more or less involuntarily, into acquiring the same type of arsenal -- the word was the USTR's -- claiming selfdefence. All knew the very dangerous logic of the balance of terror. True, this reality belonged to the military realm, but it would be the same situation in the trade field. Those who possessed such an arsenal would always be tempted to use it against those less well-armed to defend themselves. Could one stop this
suicidal logic? For there could be no denying that, having acquired this commercial nuclear bomb, even if not primed, the United States had unquestionably acquired an advantage, a negotiating arm which the others did not have -- certainly not the Community. Was this advantage politically and technically compatible with the commitment undertaken by the United States on standstill and roll-back in the Punta del Este Declaration? Of course, one could argue endlessly about the concept of measures not yet applied. This distinction was not serious, as the process once started was inexorable; at the end of a slow road there was concrete action. Neither the United States, nor any other country was required to justify itself or to account for its actions, but it had to explain -- explain was not the same as to justify. Here, at this Council, the task was to come to a collective evaluation without accusing.

The Community wanted to end this declaration on a note of hope. He had noted that during the USTR's hearing before the Senate, a number of Senators had reacted reasonably, with realism, and with respect for international commitments whilst at the same time taking account of the real origins of the problem, namely, the absence of any coherent macro-economic policy in the United States, and whilst recognizing implicitly that Section 301 could not itself resolve the whole problem. He mentioned names of Senators. The detailed record of that hearing should be read, as in studying the Senators' various points of view, there was reason to hope that they would remain receptive to the message which he had just delivered in the name of the Community and its member States.

By way of conclusion, the Community wished to refer to the OECD communiqué in expressing the hope that "all the contracting parties strongly reaffirmed the determination to fight protectionism in all its forms and to oppose the tendency towards unilateralism, bilateralism ... which tends to undermine the multilateral system and the Uruguay Round negotiations".

The representative of Hong Kong said that as with past editions, his delegation found the latest Secretariat document most useful. In some ways it was regrettable that this was the last in the series, but his delegation was pleased that to a large extent the functions of the special Council would be carried on, and improved upon, in the TPRM, including an overview of developments in the international trading environment based on an annual report by the Director-General.

Hong Kong shared generally the Secretariat's comments in the overview section, in particular that the multilateral trading system, the future of which was inextricably linked to a successful conclusion of the Uruguay Round, would be under severe pressure in the next 18 months.

The Secretariat had aptly pointed out that a number of contradictory developments had occurred during the six-month period September 1988 - February 1989. On the positive side, the most important event, of course, had been the adoption of a package of results across the Uruguay Round negotiations at the April meeting of the Trade Negotiations Committee. This had been finalised outside the review period of the report, but had been rightly included by the Secretariat. These agreements had brought a
much needed impetus to the negotiations. The implementation of results in areas such as tropical products, dispute settlement and functioning of the GATT system was particularly heartening, but much remained to be done to achieve a satisfactory conclusion to the Round. This would require the total commitment of all participants and a positive negotiating climate. But unfortunately, there were disturbing developments in such areas as anti-dumping, rules of origin and the use of unilateral action.

The report devoted no less than 13 pages (pp. 72-84) to anti-dumping. Hong Kong agreed with the Secretariat's observation in the overview chapter (p. 4) that "a trend towards broader and more extended use of anti-dumping measures was noted". Discerning readers would notice that, most unusually, Hong Kong appeared as the respondent in a number of anti-dumping cases, all initiated by the Community. Without going into details, he wanted to point out that these had all been started recently, within a short space of time. One might ask why this sudden upsurge? Could it have been changes in the trading environment in Hong Kong, or did it have something to do with the way anti-dumping measures were being applied?

Ex-EEC Commissioner De Clerq was on record as saying that "Dumping is made possible only by market isolation in the exporting country, due primarily to such factors as high tariffs or non-tariff barriers and anti-competitive behaviour". Certainly Hong Kong did not meet these criteria, as it had no tariff or non-tariff barriers, and its companies were normally small and survived by being competitive, not anti-competitive. A good number of Hong Kong companies had been subjected to investigations and there was little doubt as to the cause of this phenomenon. Apart from contending the individual cases, Hong Kong would seek improvements to the multilateral rules in both the regular GATT forum and the Uruguay Round. Protectionist pressures were, in its view, beginning to find an outlet in anti-dumping. He urged the Council to be alert to this development.

Paragraph 12 of the Secretariat report noted that there had been moves to tighten rules of origin and to enforce stricter local content requirements. Rules of origin were important elements in the administration of international trade, and past efforts to tighten or change these rules had not been altogether fruitful. It was Hong Kong's view that there should be disciplines under the GATT to ensure that origin rules, and their implementation, did not constitute barriers to trade. Hong Kong would pursue this in the appropriate negotiating group, but was grateful to the Secretariat for having noted this issue.

The use of unilateral action had been a matter of some debate in previous Council meetings. The dangers of such action on the multilateral trading system and on the Uruguay Round negotiations had been underlined by many delegations, including Hong Kong. He would not repeat them again except to make one point: recent moves by the United States under "Special" and "Super 301" of the Trade Act had given added cause for concern that the world trading system might come under increasing tension. In this regard, he noted that the United States Trade Representative had affirmed that the United States was fully committed to the multilateral trading system and the continuing liberalization of world trade. On
"Super 301", she had said that action taken was intended only to complement these objectives. Hong Kong shared the same commitment to the multilateral trading system and to the continuing liberalization of world trade, but firmly believed that the best way to achieve this was through the GATT and the Uruguay Round. Taking the unilateral route ran against the spirit of the multilateral process and could only be counter-productive. In particular, the conclusion of the "Special 301" and "Super 301" process through bilateral negotiations would coincide with the final, critical stages of the Uruguay Round. Any unilateral retaliatory action taken at that time would have very serious implications for the Round.

Hong Kong had also noted with concern an increase during the period under review of voluntary export restraint arrangements, or grey-area measures. Again, the implications for the multilateral system of the continuing use of such measures were well-known, hence the important April TNC statement on the need to eliminate them. Indeed, this would be a key issue in the substantive negotiations on safeguards the following week.

Turning to the Director-General's report on the status of work in panels and on the implementation of panel reports (C/167), the list was getting longer and there was a parallel development in the agenda of the regular Council meetings. This was partly due to the fact that increasing recourse had been made to the dispute settlement system, which was a positive development. But it was also partly due to increasing difficulties in getting reports adopted and implemented. Some useful improvements to the dispute settlement system had been agreed in Montreal, for example, setting time limits for different phases of the process, but all these would lead nowhere if the reports could not be adopted or, if adopted, were not implemented promptly. The dispute settlement negotiating group would be considering possible improvements in these areas in the next 18 months, but it was important, in the interim, that contracting parties should be seen, particularly by the trading community, to be committed to the early resolution of disputes brought before the Council.

The representative of Finland, on behalf of the Nordic countries, said that during the period since the most recent special Council meeting, the multilateral trading system had undergone an evolution characterized both by tensions and failures as well as by concerted co-operation and successes. A serious crisis had been looming in the aftermath of Montreal meeting, but it had been finally averted through joint efforts by all. Today, the Uruguay Round was again back on track. The credibility of the Round had been boosted, useful frameworks existed for further negotiations, and the implementation of some early results was about to start. All participants seemed to be firmly committed to completing the Round by the end of 1990 despite the great time-pressure which this scenario implied.

The overall economic environment in which the GATT system was operating and in which the Uruguay Round was moving ahead continued to give rise to optimism. World trade was expanding rapidly and growth prospects, generally speaking, looked promising. There was a unique opportunity to advance towards further liberalization under conditions which facilitated the adaptation to the structural changes which increasing international competition would impose on all. Promising as the general picture might
be, it still contained some features which caused concern and might develop into major problems unless they were successfully redressed.

In the field of global macroeconomics, little progress had been registered in adjusting the large trade and payments imbalances. Inflationary pressures had re-emerged as a problem in many countries. Efforts to reduce unemployment, to accelerate structural adjustment and to establish sound public budgetary positions had been only partly successful. Many developing countries continued to be faced with extremely heavy debt burdens despite the relatively high growth of their exports. All these trends and phenomena lay at the root of continuous protectionist pressures and international frictions which threatened the Uruguay Round and the normal functioning of the GATT system. These pressures and frictions had in a number of cases already developed into open conflicts in the field of trade policy. Some of them had been duly brought before the GATT for scrutiny and judgement. Some were being addressed outside the GATT with means which eroded the multilateral trading system. However, it was encouraging to note that the dangers inherent in such a tendency were now well acknowledged by all, including the major entities. The Nordic countries were keen to back the recent OECD Ministerial communiqué which, inter alia, stated that the participating Ministers firmly reject "the tendency towards unilateralism, bilateralism, sectorialism and managed trade which threatens the multilateral system and undermines the Uruguay Round negotiations".

In order to safeguard the valuable work already done in the Uruguay Round and to ensure its successful completion, it was now imperative that this unambiguous statement from Paris be scrupulously lived up to by all. But it was also clear that a similar attitude had to prevail in all other countries which co-operated in the GATT and participated in the Round. Major responsibilities were, naturally, carried by the major entities, but even smaller countries, developed and developing, had a part to play and a burden to share in this concerted effort. The Nordic countries fully concurred with the Secretariat's concluding remarks in paragraph 14 of the report which stated that "international trade relations are entering a phase in which the priority that governments attach to the successful conclusion of the Uruguay Round and to the attainment of the objectives of the Punta del Este Declaration will face its sternest test".

At the February Council meeting, an entire morning's session had been devoted to a discussion on unilateralism. There had been widespread recognition that resort to unilateral measures was contrary to both the letter and the spirit of GATT. It was highly unfortunate that issues which were not regulated under the general GATT framework but that were currently being negotiated in the Round were singled out for priority attention on a bilateral basis. This could not but add to the difficulties of negotiating rules to cover such issues under the GATT. The fact that such issues surfaced and became the subject of tension between countries confirmed the acute need of bringing the negotiations in the Uruguay Round to a speedy and successful conclusion. In order to avoid trade friction of this kind, the Round became even more important as the only viable means of laying to
rest the underlying tensions in the multilateral trading system, and one would need collectively to increase efforts to have substantive results at the end on 1990.

The representative of Singapore said that his delegation had two specific critical comments on the report (C/W/590). These referred to the special section on "Movements in Exchange Rates". First, Chart II on page 117, showing the movement of real effective exchange rates of the currencies of some developing countries, was confusing because unclear. Second, the concluding sentence in paragraph 480 read, "The index of competitiveness of the developing countries displayed in Chart II shows a general deterioration with the major exception of Korea's increased price competitiveness and slightly less so for Singapore". Based on the information in Chart II, his delegation wondered how the GATT Secretariat could have come to the conclusion that Korea had increased its "price competitiveness", and "slightly less so for Singapore". He hoped that, in making an assessment of the movements in exchange rates, the Secretariat had not been influenced by the misperception that the developing countries, or some of the so-called "newly industrialized countries", had used exchange rate movements to gain an export advantage.

The representative of Canada said that the Secretariat's work provided an excellent basis for the analysis of the world trading system. Canada's assessment of the state of world trade was similar to that set out in the report. Although world trade had continued to grow at impressive rates, there were major problems facing the world trading system. Fortunately, the Uruguay Round provided a focus for the collective efforts to come to grips with these problems. Unfortunately, the focus of trade policy attention in many important countries was being diverted from these important negotiations to the problem of unilateral trade actions and the threat thereof. This was evident in all the interventions heard so far. This was by no means the first time these concerns had been voiced in the GATT.

Over the course of the past several months, many contracting parties, including Canada, had commented on the increased recourse, or threat of recourse, to unilateral retaliatory action and had clearly stated, as Canada wanted to restate now, that it considered the use of unilateral retaliatory action without prior GATT sanction to be inconsistent with contracting parties' obligations. Further, it considered it to be a threat to the continued viability of the multilateral trading system. The GATT had a well-developed system for resolving bilateral disputes. The new dispute settlement rules had to be given a chance to show their effectiveness in speeding up and improving the dispute settlement system. For that system to work, all contracting parties should be willing to respect the procedures and to make use of them. This included forgoing the use of unilateral measures which, if used by one contracting party, would serve to feed unilateral tendencies in other contracting parties. If any contracting party considered that it had solid ground for withdrawing concessions from another contracting party, it should be prepared to seek the authority of the CONTRACTING PARTIES as provided for in the General Agreement. Any other course of action would seriously compromise not only the credibility of the GATT dispute settlement system, but also the
effective functioning of the open, multilateral trading system that GATT had endeavoured to build over the past forty years. The Uruguay Round provided an opportunity to make real progress in areas where unilateral tendencies had been most evident. Such progress would serve to reduce and bring those tendencies under control. His delegation urged all contracting parties to show their commitment to the GATT system by refraining from the use of unilateral action.

The representative of Mexico said that the implications of Section 301 of the US Trade Act in all its forms -- normal, super and special, or in respect of the countries which had been identified as priority countries by the US Government -- went beyond the North/South divide. It was a question which affected all countries through the negative effects it might have for the multilateral trading system as a whole. Mexico believed that no contracting party, however important, had the right to determine unilaterally and arbitrarily whether other contracting parties were complying or not with their obligations under the General Agreement. The CONTRACTING PARTIES alone and exclusively had that responsibility. It was contradictory that at the same time that there were special procedures for dispute settlement, there were contracting parties which ignored them and preferred to act outside the established rules to impose their own opinions. The multilateral dispute settlement procedures should prevail over any unilateral procedure, particularly now that they had just been strengthened and improved.

Unfortunately, the problem did not end there. Under the provisions of Section 301, it was also possible to take retaliatory trade actions against contracting parties which, although faithfully complying with their contractual obligations under the General Agreement, applied measures in non-GATT areas or areas which had not even been negotiated in any international organization, but which, in the view of the United States, were harmful to its particular interests. This type of behaviour, which lacked any internationally-recognized legal basis, could lead to a situation where the law of the jungle prevailed, where the economically more powerful countries placed themselves above reason and the law at the expense of the weaker countries and, above all, of the multilateral trading system, after all the efforts that had been devoted to building and securing compliance with it. Furthermore, insofar as these provisions referred to matters currently under negotiation in the Uruguay Round, they conflicted with the political commitments solemnly assumed in the Punta del Este Declaration "not to take any trade measures in such a manner as to improve its negotiating position".

Mexico repudiated and would continue to repudiate any kind of unilateral action which was contrary to the spirit and letter of the General Agreement and might damage the credibility of the Uruguay Round. Consequently, all contracting parties -- in particular the United States -- were called upon to comply with the contractual and political undertakings adopted in each of those instruments.

The representative of Argentina said that it was strange that one should have to take up the discussion of an issue such as unilaterally-imposed trade restrictions in a forum precisely intended to ensure that
this type of event did not occur. Recent similar discussions had made clear that there were no rights under the General Agreement permitting unilateral action against another contracting party without the authorization of the CONTRACTING PARTIES. At the same time, and as a result of the first stage of the Uruguay Round negotiations, an improved dispute settlement mechanism existed. These two points should suffice for all GATT members to refrain from resorting to unilateral measures. However, this had not been the case; on the contrary, there had been a repetition of such acts.

Unilateral action had serious consequences for the multilateral system. Firstly, if not preceded by recourse to the corresponding articles of GATT, such action was illegal under the GATT. That point was above any discussion. It was even more strange that some of the major trading partners, while claiming to be trying to improve the multilateral system, included in their own legislation the possibility of unilateral sanctions or restrictions as a means of exerting pressure. Furthermore, there was a danger that the situation under review might lead to a profound crisis of distrust in the Uruguay Round and, ultimately, in the multilateral trading system. This was cause for reflection, as the negotiations launched at Punta del Este were the most complex and ambitious GATT had undertaken and might still bring significant results for all participants.

Thus, the present situation was hard to explain. The major trading partners had repeatedly stressed the need to launch the Round in order to strengthen the multilateral system, while at the same time retaining in their own legislation the contradictory option of recourse to unilateral actions. The use of this option at the present time was leading many participants to wonder if there was any sense in concentrating on an effort not fully shared by others. As Mexico had stated on various occasions, the above contradiction would have to be resolved. Either the multilateral system would be reinforced and all conflicts that might arise among parties would be settled within it, or the unilateral track would be used, leading little by little to the destruction of multilateralism.

The representative of Tanzania said that his delegation would want to rectify with the Secretariat references to Tanzania in C/W/590, in particular in paragraphs 215 and 491. His delegation joined others which had spoken against unilateralism in multilateral trade relations. A multilateral system such as the GATT could only be held hostage to a national law -- such as the US Section 301 -- at the peril of multilateralism. Economic, technical and financial leverage did not entitle the use of such a law on other contracting parties. States should not be treated as commercial or industrial corporations. Where there were issues, such as investment policies, which were not within the ambit of GATT, it was wrong to use the GATT mechanism to force their being brought up in the absence of an agreement, and before the Uruguay Round had been concluded.

The representative of Yugoslavia said that the factual information in the Secretariat document provided a solid basis for an evaluation by contracting parties. Yugoslavia largely shared the views in the Overview of the document. According to available data, world trade was still
expanding. One could thus forecast that such a trend could last, provided that exchange-rate stability and greater openness of world trade were achieved. His delegation noted with concern that very little progress had been achieved in adjustments of enormous trade and payments imbalances which also had a destabilizing effect on the world economy. It was evident that many developing and developed countries had benefited from the expansion of world trade during the period under consideration. However, he stressed that, in spite of the growth in both exports and imports of heavily indebted countries, their debts and debt-servicing could not be viewed separately from the upward movement of interest rates induced by the appreciation of the US dollar and a net outflow of capital.

In spite of the progress achieved in the Uruguay Round negotiations and the April decision taken by the Trade Negotiations Committee in April, which was building confidence in the credibility of the Round and the future of multilateralism, the trade policies of some developed countries still included measures inconsistent with and outside of GATT rules and disciplines. The wide acceptance of the GATT dispute settlement mechanism by contracting parties was undoubtedly a positive achievement. However, the procrastination and even refusal of some governments to accept and implement the panels' recommendations was a source of great concern. The progress achieved so far on the standstill commitment was unsatisfactory and, on rollback, even disappointing. The underlying factors which still caused unpredictability and tensions in the international trading system stemmed from the trade policies of some key countries. He voiced concern about the increasing trend in the number and coverage of anti-dumping and countervailing actions; despite the expected decrease in the number of voluntary export restraints arrangements, which would be in line with the substantive reduction and elimination of this type of grey-area measure, there was a considerable number of new export restraint arrangements (Section VII of C/W/590). In essence, the voluntary export restraints introduced in the early sixties and seventies had been in force for almost thirty years. Only a few of these had been notified to GATT. The majority of the products affected lay in the following sectors: agriculture, textiles and clothing, steel, electronics, motor vehicles and machine tools. Bearing in mind that the exports of the developing countries were the most affected by these measures, it was clear that the causes of the greatest distortions of competitiveness and violation of the principles of free trade -- and therefore weakening of confidence in GATT and the Uruguay Round -- stemmed from the trade policies and practices of the developed countries. The implementation of unilateral restrictive measures by the United States for certain products from Brazil and the European Economic Community in the period under review, as a result of the absence of bilateral dispute settlement, gave rise to great concern because it questioned the basis of the international trading system as a whole. The public announcement of the US "list of countries with unfair trade practices" represented the greatest danger not only for the credibility of the Uruguay Round, but for the GATT as a whole. The attitude of the US administration to resort to unilateral measures was unacceptable not only because it was not GATT-consistent but also because it implied implementation of retaliatory actions. This action also ignored the reality that the problem of trade in services and those linked with trade-related investment measures and the protection of intellectual
property rights were outside the GATT and were being negotiated in the Uruguay Round. This last element was of particular importance because the United States, for almost 30 years, had been implementing GATT-inconsistent trade restrictions on imports of goods that were of vital importance to developing countries. The actions announced by the United States in fact pre-empted the possible outcome of negotiations in so-called new areas and added pressure for the realization of the United States' priorities.

He then turned to Yugoslavia's latest trade liberalization measures and ongoing economic reform. In the course of 1988, Yugoslavia had introduced substantial changes in the import régime so that at the beginning of 1989 the level of liberalization envisaged for 1990 had been achieved. It was expected that at the end of 1989, the level of liberalization planned for 1991 would be achieved, so that more than 85 per cent of imports would be liberalized. As of the beginning of 1989, the share of free prices had reached 85 per cent of goods. As a direct result of trade liberalization measures taken in 1988 and the beginning of 1989, imports in the first five months of 1989 had increased by almost 24 per cent, while exports had grown by only 5.5 per cent. Besides measures relating to import liberalization already notified to GATT in 1989 (L/6486 and Adds.1 and 2) Yugoslavia had recently decreased the level of taxes charged on imports of goods. The purpose of such measures was the greater integration of the economy into the world market. Yugoslavia as a small developing country expected that these actions would receive appropriate recognition in GATT and credit in the Uruguay Round negotiations, and that its economic reform and greater opening of its economy would also be understood in a wider context. However, as a complement to the process of internal opening towards the world market, it was necessary that there be a process of opening of the world market, so that Yugoslavia's exports would not face closed doors. In this context, Yugoslavia attached great importance to the Uruguay Round negotiations, because what GATT stood for was also of priority importance in Yugoslavia's economic and trade policy.

The representative of Peru recalled that on numerous occasions, Peru had expressed its support of the GATT multilateral trading system and opposition to the application, or threat thereof, of unilateral measures. The actions which could eventually be applied by an important trade partner against an important group of countries were contrary to the spirit of the General Agreement and contravened the Punta del Este Declaration, in particular its Part I, Section C on the status quo. For Peru, it was vital that all contracting parties, in particular those that carried more weight in world trade, solemnly undertake to renounce definitively the threat or use of unilateral measures in order to preserve the multilateral trading system, and that they attempt, at the same time and in the Uruguay Round, to make it more just, equitable, open and predictable.

The representative of Pakistan said that the multilateral trading system and the GATT were at a critical juncture and were faced with its sternest tests yet. The signs were less than bright. Dangers and threats loomed on the horizon, not so much to the letter of the General Agreement, but more importantly to the way it was applied -- to contracting parties' commitment to it and to the inconsistency between professions of commitment and actions to the contrary. These dangers and threats were manifested in
a plethora of trade policy actions and measures: increasing resort to unilateralism, countervailing and anti-dumping duty actions, a host of non-tariff measures, and, more fundamentally, the challenge to the basic principles of the General Agreement. To this list had regretfully been added the "Super 301", the "Special 301" and the identification of priority countries for specific targeting under bilateral procedures and pressures. He said that perhaps the worst threat that GATT would have to withstand was represented by attempts to change or modify its basic principles to suit the individual requirements and perceptions of a few countries. He cautioned against the potential damage of these threats to the GATT and to the multilateral trading system. His delegation counselled restraint on the part of those who bore the most responsibility for guaranteeing the continued existence of GATT and, in fact, for returning it to health.

The representative of Turkey said that over the past year, although the continued strong growth in the volume of world trade had favoured exports, governments had nevertheless been slow in fulfilling their rollback commitments. The persistence of the high degree of external imbalances acted as a potent source of tension in the world economy. At the same time it had to be recognized that a number of restrictive measures had been renewed and some new ones introduced during the recent period, as indicated in the Secretariat document. The use made of anti-dumping and countervailing measures over this period confirmed a trend towards broader and more extended use of those measures, as further underlined in paragraph 12 of the document. In addition, there had been a gradual change in the nature, scope and frequency of bilateral trade disputes. These measures and disputes had concerned, to a great extent, traditionally sensitive sectors, and had been extended also to new areas where the role of technology was important. Unfortunately, there also remained a strong temptation to resort to grey-area measures.

On the other hand, the US Omnibus Trade and Competitiveness Act of 1988 represented a major new development in the trade environment. The possibilities for unilateral trade actions based on this legislation continued to cause concern vis-à-vis the multilateral trade system and the Uruguay Round negotiations. Similarly, trade policy-makers were tempted to give new interpretations to certain trade concepts such as "unfair trade practices" and "reciprocity". New approaches implying a degree of balanced bilateral trade were gaining popularity in some countries. Turkey was against any trade-restrictive or distorting measure inconsistent with the provisions of the General Agreement and its instruments. Such measures were detrimental to progress in world trade. It should be a matter of principle to avoid any discriminatory or autonomous actions which undermined the disciplines of GATT and the integrity of the multilateral system. For this reason, Turkey believed that problems should be dealt with and resolved within the framework of the Uruguay Round and the multilateral system. The above-mentioned developments reflected a dangerous tendency toward unilateralism, bilateralism, sectoralism and managed trade. Turkey believed that the primary objective should be to strengthen the multilateral trading system and to counter tendencies which would weaken this endeavour. The objective should also be to ensure that trade expansion enhanced equal trading opportunities for all
contracting parties based on mutual interest. He assured the Secretariat that the messages it had endeavoured to convey in the document had been well received by his delegation.

The representative of Egypt drew attention to the general trends (paras. 12-14 of C/W/590) which gave rise to serious concern. At the top of the list was unilateralism, which represented a serious departure from the GATT system. It was clear from the actions taken and from panel reports which had not been adopted, or had been adopted but not implemented, that the credibility of the system was at stake. Unilateral action had its appeal but could only yield short term results. In a world of globalization of the economy, interdependence was essential to greater growth. In such an environment, relations between countries should be governed by the rules of the system and not by those of one contracting party's legislation. All of this would in some way affect the Uruguay Round. As unilateralism was a violation of the standstill commitment, it was not realistic or logical to negotiate under threat. In spite of the Decisions at the April meeting of the TNC and of all the undertakings being worked out in the Uruguay Round -- in spite of all these successes achieved on the assumption of no threat of unilateralism, those expectations had unfortunately not materialized. He hoped that through a meaningful dialogue, differences could be ironed out.

The representative of New Zealand said that the Secretariat document contained positive features. As to unilateralism, there was no doubt about the principles involved; unilateral retaliatory measures were an extremely dangerous policy instrument for all the reasons put forward by previous speakers. Principles were formed not usually from abstract reasoning but from wide-spread collective experience over many years. That lesson had been learned the hard way two generations earlier and should not be repeated. Like all contracting parties, New Zealand had been watching with considerable concern the broader political debate in the United States that had led to this situation. Historically, the United States had been the ultimate guarantor of the GATT, and where it had led with liberal solutions, the GATT had followed; but where it had turned away from market-orientated liberal approaches, that had immediately defined the upper limits of political possibility for the GATT. Thus, when the United States embarked, however tentatively, on a path that was ultimately irreconcilable with a fair trading system based on some degree of predictability and restraint within a judicial framework, there was reason for concern. New Zealand had followed the political debate with some care, and had formed its own view that the US Administration, in the political context it faced, had exercised what could be called a large measure of self-restraint in the choice of targets. That was irrelevant to the principle involved. It was also of no comfort whatsoever to the three countries arbitrarily singled out for allegedly unfair practices. "Super 301" and other more subtle but equally damaging forms of unilateralism would not disappear because of stern speeches in the GATT.

The Uruguay Round had been launched to deal with these real world pressures. Some of them could not be dealt with, but fundamental problems could be tackled, provided contracting parties saw the Uruguay Round not simply as a diplomatic exercise to manage politically, but as something
real which would mean a change in behaviour. The April meeting of the TNC had provided the platform for that, but it was not clear whether enough contracting parties had made the mental decision that those Decisions did not refer solely to the major developed countries. Thus, the broad political message was that all of this was a reminder of what was at stake in the Uruguay Round. One could only speculate as to what might have been the consequences of "Super 301", had the Uruguay Round not been available as an outlet to deal with the very real trading problems which did not appear on that list. For the present, that was an academic question only, but it would not be so in the near future.

The representative of Switzerland said that his delegation shared the Secretariat's analysis of developments in international trade, in particular as set out in paragraph 8 and following paragraphs of the document: International trade was healthy and had just reached growth rates comparable to those of the 1960s. His delegation also shared the concerns expressed by the Secretariat regarding current tensions and dangers in international trade relations, despite the overall favourable developments in trade. The summary in paragraphs 12 and 13 of the document called for no further substantive comment.

While it was the Secretariat's responsibility to indicate clearly and unambiguously the main points of tensions and major dangers threatening the international trading system without glossing over them, the responsibility of contracting party governments was to act to reduce the tensions and to avert the dangers. Contracting parties did not have an unlimited number of means for joint action to that end. They had in fact, two, which were inseparable. The first lay in steadily improved co-ordination of economic, trade and monetary policies, in such a way as to foster growth, balance and stability in international monetary relations. This co-operation was the essential condition for any progressive correction of the chronic, serious trade and payments imbalances in the world economy. The second was to provide a renewed world trading system as a framework for the new global economic conditions. That was essentially the objective of the Uruguay Round. Participants in the negotiations would be able to realize the hopes raised by the break-through achieved in April only by sticking to these two paths, namely, macro-economic responsibility and reform of the international trading system.

Action needed to be taken within the area of GATT's responsibility and in the Uruguay Round in particular was, firstly, a commitment to persevere and to meet the deadlines set. One had to grasp the opportunity offered by a favourable international economic environment to bring to a decisive conclusion, within the established deadlines, the task set nearly three years earlier in Uruguay. Secondly, a commitment to innovate -- the starting point for adjusting the present trade system to the new reality was that economies, from being interdependent, were becoming internationalised. This would require the political courage to break new ground. Thirdly, and this had been the appeal by the Swiss Minister of the Economy at the recent OECD Ministerial Meeting in Paris, a commitment to restore the credibility of multilateralism by submitting trade policies to disciplines, without any reservations. The success of the Uruguay Round, i.e., restoring a system of credible multilateral rules, depended on a real
and not merely verbal commitment to renouncing unilateral action once and for all. Unilateralism was and always would be the greatest threat to the international trading system, and hence the greatest threat to future economic growth. Negotiations were being conducted on two fronts, internal and external. The complexity and difficulty of these twin negotiations should encourage all contracting parties to give each other mutual support.

Switzerland had a general, systemic interest in "Super" and "Special 301", but it also had specific interests in the particular trade sectors in question, through its exporters, investors and also insurers. Nevertheless, in the joint endeavour in which all were engaged, Switzerland had always maintained and continued to maintain that liberalization could represent progress towards the attainment of the objectives of the General Agreement only insofar as it was based on previously-negotiated multilateral rules. That was the path on which contracting parties had set out by launching the Uruguay Round.

For the time being, the United States might not yet have adopted unilateral measures against other contracting parties. But the means which the 1988 Trade Act allowed the United States to implement certainly represented a serious threat for the Geneva negotiations. And yet those negotiations, in the eyes of the United States itself, were the number one priority of its external trade action. Admittedly, for the time being, GATT did not have precise rules with regard to international trade in services, investment and intellectual property. Nevertheless, to try to achieve liberalization by bilateral means, outside the procedures already existing or being prepared in GATT, would go in the opposite direction from the desired objective, and would constitute conduct which Switzerland could not endorse. One should not forget that one was currently in an extremely sensitive stage of the Uruguay Round negotiations, the objectives of which included extending the GATT rules to new areas (TRIPs, TRIMs, Services). Everyone would benefit from this, both exporters and importers. The success of the Round would make the multilateral system more secure, more reliable and more equitable.

The Punta del Este Declaration had already foreseen that negotiations aimed at establishing new rules presupposed multilateral behaviour during the negotiations. It was to ensure such behaviour that the negotiations were accompanied by measures such as the standstill. Obviously, such difficult and politically sensitive negotiations as the Uruguay Round could only advance and succeed in a climate of trust. It was impossible to set up new rules in the absence of trust. Trust was necessary for multilateralism to work.

One element that would be indispensable for establishing and maintaining a climate of trust would be a clear and unambiguous attitude towards competition. Competition had changed, and was becoming more fierce every day, sometimes taking on new forms. One of the most important objectives of the Uruguay Round -- and therefore the basis for Switzerland's attitude in these negotiations -- had to be a fundamental consensus on the extent to which one agreed to subject its economy to this new competition, which was fierce but also brought economic growth. The
present and future trading system would be effective, stable and genuinely observed only if it left no room for doubt on two points; the fact that competition was legitimate and useful, and that it would not be penalised outside the multilateral provisions freely agreed upon in GATT. Nothing should be done that would create any doubt in this respect. His delegation was making an appeal to the United States on this point.

The representative of Korea said Korea believed that the Secretariat document effectively condensed the major changes in trade policies in individual countries during the period. His delegation shared the view in the overview of developments that the trading environment had been dominated by a further increase in the uncertainties and tensions affecting trade policies, and this, in spite of the progress in the Uruguay Round and the positive aspects of world trade and of the global economy as a whole. His delegation was gravely concerned by the US action under Section 301 of the US Trade Act, and by the trend in various countries towards broader and extended use of anti-dumping and countervailing measures. Section 301, which mandated the US Government to seek bilateral solutions to its trade problems and provided ground for unilateral retaliatory actions, would have a severe impact on the GATT multilateral trading system and would undermine the ongoing efforts for strengthening the rules and disciplines of international trade through the Uruguay Round. His delegation once again shared the view in the Secretariat document that international trade relations were entering a phase in which the priority that governments attached to the successful conclusion of the Uruguay Round and to the attainment of the objectives of the Punta del Este Declaration would face its sternest tests.

The representative of Romania said that at the present special Council meeting, which was carrying out a final review in its present form, one could find encouraging changes; however, there had been many contradictory developments in the area of both trade flows and trade policies. While the world economy and international trade had as a whole continued to advance, sharp discrepancies between countries and groups of countries continued to exist. Taking account of the worsening of the developing countries' debt and the large imbalances in trade and payments, the situation had even deteriorated. The agreements reached in Montreal and finalized in Geneva at the April meeting of the TNC indicated a widespread desire to pursue efforts aimed at greater liberalization of trade. Nevertheless, actual developments in trade policies did not, as a whole, show a similar trend.

He mentioned a number of elements of great concern to his delegation: first, uncertainties and tensions surrounding trade policies had further heightened; second, greater use of multilateral dispute settlement procedures had not been accompanied, at the same level, by a willingness to adopt and implement panel recommendations; third, protectionism had been stepped up, often in a discriminatory way. In some cases, countries had continued to refuse to grant the benefit of the m.f.n clause among GATT members. Some countries had also tended to link the development of trade relations with conditions and criteria that had nothing to do with trade, which was contrary to the principles and rules of the GATT. At the same time, a lack of real, substantial progress in the implementation of the standstill and rollback commitments of Punta del Este could be seen.
Taking into account that the changes aimed at the reduction, liberalization or gradual elimination of various types of tariff or non-tariff restrictions had been made primarily by developing countries, the strengthening of protectionism was attributable above all to the industrialized countries. In this context, one new and highly worrying development was the increasingly frequent recourse to anti-dumping legislation as a protectionist measure.

The most serious development in the period under consideration, which might have deep implications for the future of the multilateral system, was the growth of unilateralism. The fear previously expressed by a majority of delegations that the new US Trade Act, and particularly its Section 301, could open the way for unilateral interpretations of international rules and for protectionist actions had unfortunately become a reality. Romania agreed with the other delegations which had spoken against the use of unilateral restrictive practices and measures used to harass and coerce weaker trading partners in order to gain economic and political advantages. Unilateralism was a threat to all contracting parties and a serious danger for the GATT system. All contracting parties should comply with multilateral disciplines and rules and resist the temptation to take unilateral measures or to adopt and maintain measures that were incompatible with the General Agreement. Such behaviour was all the more essential in the case of the major trading powers, as their unilateral, restrictive and often discriminatory trade policies and practices endangered the fundamental principles of the multilateral system, conflicted with the very essence of the General Agreement, damaged world trade and harmed the legitimate interests of the small and medium-sized nations and, primarily, of developing countries. Romania associated itself with those who had urged contracting parties to condemn the use of unilateral trade measures and practices and to reaffirm their commitment not to resort to such measures.

The representative of Nicaragua said that for almost ten years, the Council had periodically reviewed developments in the international trading system, and since 1983, had decided to monitor the application of paragraph 7(i) of the 1982 Ministerial Declaration (BISD 29S/11). However, the undertaking made by the CONTRACTING PARTIES to refrain from taking or maintaining any measures inconsistent with the General Agreement had not been implemented, and the United States' unilateral trade policy was affecting Latin America much more intensely. Protectionist measures had proliferated. While in theory the United States based its trade policy on liberal principles, in practice it had even further restricted access for foreign products in recent years. The Latin American countries had been particularly affected by the protectionist trend in US trade policy. Their access was every day more restricted and conditional upon the granting of trade concessions. On the one hand, they were one of the main targets of the United States' so-called trade relief legislation, and on the other, the threats and the application of trade reprisals under Section 301 had become a common ingredient in the United States' relations with Latin America.
Among the measures which the United States had begun to apply unilaterally were bilateral negotiations, threatened and actual retaliation, conditional and political utilization of the GSP, and pressure on countries to accede to specific GATT Codes that were not favourable to their own interests. There was also the promotion of objectives favourable to United States' interests in the multilateral sphere, such as insistence on workers' rights in GATT, as a political response to its huge trade deficit, thus seeking to erase the relative advantage enjoyed by some developing countries, and setting itself up as both judge and party. On previous occasions, both the Community and other members of the Council had considered Section 301 incompatible with the provisions of the General Agreement, in that it allowed the adoption of unilateral measures based on unilateral findings and without the CONTRACTING PARTIES' authorization. Thus, the US Trade Act contained the seeds of unilateralism, arbitrariness and bilateralism, in the negative sense of the word, which threatened the multilateral trading system and the very existence of the General Agreement.

For the GATT to survive and to remain viable, it was most important that all contracting parties firmly and unambiguously opposed unilateralism, whatever its origin, form or justification. The General Agreement was the sole legal framework on which contracting parties should base their trading activities, a legal instrument which had been accepted by all as parties, and which had to be equally binding on them.

The representative of Hungary said that in his delegation's view, the document prepared for, and the discussion at, the special Council meetings gave a broad and general overview of basic trends in trade-policy developments. The present document carried accurate information relating to Hungary, including concerning the recently-concluded agreement between the EEC and Hungary on trade, commercial and economic cooperation (paragraphs 143-148). However, the report did not mention the introduction of a fairly significant measure which constituted a major change in Hungary's import licensing procedures. Previously, all foreign trade transactions had been subject to licensing. From 1 January 1988, the licensing requirement had been abolished for imports of a large number of goods, representing approximately 40 per cent of the total value of Hungarian imports in convertible currencies. The abolition of this licensing requirement covered mainly machinery products, spare parts and components, research instruments and equipment and some agricultural products. The partial abolition of the licensing requirement, which should also be considered as Hungary's advance contribution to the Uruguay Round negotiations, was an important step in the ongoing reform process in the Hungarian economy, other elements of which were also dealt with in the report.

Hungary shared the view that during the period under review, a number of contradictory developments had taken place in the field of trade flows and trade policies. Though, in principle each contracting party had committed to maintain and strengthen the multilateral trading system, in certain concrete cases the behaviour of some contracting parties might give rise to concern. For the smaller trading nations relying to a great extent on international trade, like Hungary, it was indispensable to preserve and
to strengthen the multilateral trading system. Hungary thus welcomed the agreement reached in April on a framework which paved the way for substantial results and for the timely conclusion of the Uruguay Round negotiations. It was the responsibility of each and every participant in the negotiations to achieve this objective. The special responsibilities of the major trading nations in this context should not be underestimated. Therefore, the attachment to the smooth functioning and strengthening of the multilateral trading system should be reflected in the concrete trade policy steps and actions of contracting parties. Only in that way could the necessary climate of confidence be created for the success of the negotiations. One could not but regret that uncertainties and tensions in trade policies were on the rise. Hungary welcomed the fact that an increasing number of trade disputes had been brought before the GATT, especially during the past six months. On the other hand, Hungary was concerned about the delays in the establishment of panels and in the adoption and implementation of panels' recommendations. The threat of or recourse to unilateral, in some cases retaliatory, measures without the prior authorization of the CONTRACTING PARTIES was detrimental to the trading system and to the ongoing negotiations. Such steps undermined the important climate of confidence, brought about confrontation instead of cooperation, and endangered the possibility of reaching substantial results and the timely conclusion of the Uruguay Round. His delegation sincerely hoped that contracting parties' trade policy actions and reactions would be guided by the greatest possible self-restraint, moderation and the spirit of cooperation.

The representative of Israel said that his delegation thought that the Secretariat document was excellent and reflected many years of experience. Israel agreed with the assessment in the overview section and in particular with the observation that "some developments were contradictory". Paragraph 12 stated that "the period under review seems to have seen a further increase in the uncertainties and tensions affecting trade policies". This was a very alarming statement, in particular for a small trading entity like Israel. The reasons for these uncertainties and tensions, were mentioned in paragraph 12, among others; countervailing measures, problems of rules of origin, problems in some services sectors, and also the unilateral measures which were the main issue of the present, as well as previous, Council meetings. Israel shared the concerns expressed by many with regard to the danger of unilateral measures -- these went against the basic principles of a multilateral system like the GATT. All had to show responsibility and to do everything to avoid this kind of action, as well as to strengthen the trading system, as was currently being done within the framework of the Uruguay Round.

His delegation agreed with the conclusions in paragraph 14. The successful results of the Uruguay Round in all areas of the negotiations, including the so-called new issues, should be a priority for all. This was the only way to avoid the danger of unilateral measures, and to improve the system and to make it more responsive to changes in the world. The importance of GATT dispute settlement as demonstrated in paragraph 11 of C/W/590 was a very clear example of the need for a viable system which all had to respect and observe. That, together with successful results of the
negotiations in the Uruguay Round in all areas by 1990, was the answer to unilateral measures. To this end, his delegation believed that the trade policy developments mentioned in paragraph 13, including Section 301 of the US Trade Act in all its forms, could and should find their answers in the Uruguay Round negotiations.

The representative of Australia said that nearly everything that had been said in the present debate reflected Australia's point of view on the issues. His delegation supported the proposal made by the Community at the outset of the present debate that another session of this type be held in October, whether it was a repeat of the special Council forum or whether it was the first occasion for the annual exercise under the TPRM. Australia, too, was concerned about the increasing resort to unilateral measures, which breached the spirit of the multilateral system, complicated the negotiating climate of the Round at a very busy and sensitive time and risked undermining the quite successful efforts thus far in the Round to strengthen the dispute settlement mechanism. There was no doubt that the "Super 301" action certainly won the prize in the beauty parade when it came to unilateral actions. However, he reminded the Council of the comments made earlier by Hong Kong regarding increases in actions relating to protectionism and the fearful spectre emerging in Europe of another means of preventing competitive exports from competitive economies. He recalled that the most recent discussion on unilateralism had been, in fact, a discussion reflecting the inability of the United States and the Community to come to terms with their agricultural trade problems. He understood that in the regular Council meeting, these parties were going to be able to announce positive developments regarding the soya bean and Section 22 Waiver cases. It was very good news that the Community and the United States had started to get their process of debate on agriculture back on to some sort of even keel. He would, however, draw attention to the other items on the agenda and ask that the United States and the Community appreciate that this was a multilateral and not a bilateral negotiation, that a number of issues had been on the agenda for a long time, and that one looked to both of them to employ a common standard in their attitude to agriculture -- i.e., that they would act speedily on other countries' cases and not just on their own disputes.

The representative of Czechoslovakia said that the Secretariat document contained very interesting information about developments in trade policies and measures. Many delegations had concentrated their attention on the problem of unilateral trade measures; this was logical, as these measures had become a critical point of the multilateral trading system. In Czechoslovakia's view, contracting parties should avoid unilateral judgments which often led to a lack of objectivity and to discrimination in their actions. Unilateral action threatened the multilateral trading system and undermined the much-needed mutual confidence. Existing problems had to be solved under GATT rules and dispute settlement procedures. Retaliatory measures should be applied only with the approval of GATT; their unilateral application was not compatible with GATT obligations. Creation of any new restrictive measures was inconsistent with the standstill commitment and undermined the Uruguay Round. GATT did not recognize terms such as "priority countries", "priority practices", "watch list" or "priority watch list". In C/W/590/Add.1, pages 6 and 7, and
recently in the Negotiating Group on the Functioning of the GATT System, many references had been made to the importance of coherence of policies. It was now clear where the problem of coherence of policies lay.

The representative of the United States said that he welcomed this opportunity to clarify the record regarding recent US announcements under Section 301 of the Trade Act. As was clear from the discussion, there was much confusion and misinformation with respect to both the United States present actions and its future intentions on this matter. Statements made thus far had, either expressly or by implication, suggested that these actions ran contrary to the GATT and the Uruguay Round. These were very serious charges, and he would give a clear, unambiguous statement as to why his Government did not believe such charges had merit.

(1) The United States had taken no action under this new 301 procedure other than to identify its trade liberalization priorities, in the transparent fashion that was typical of the United States. It had not taken any actions affecting trade which could in any way be interpreted as violating GATT obligations. (2) To date, all his Government had done internationally was to seek bilateral negotiations in areas of priority interest to the United States as well as to the world trading system. It was asking in good faith for a process of consultations and rational dialogue with nations considered as friends. It was seeking understandings which would help to expand trade for all nations. (3) The items identified as trade liberalization priorities were significant barriers to world trade; they involved the very issues being negotiated in the Uruguay Round. The United States had every right to complain about government practices which restricted foreign competition and stifled trade opportunities. Its efforts to seek reduction or removal of these barriers would benefit all GATT members. Thus, its desire to focus attention on such barriers was fully compatible with the very essence of the GATT system. (4) Where matters which were the subject of US complaints were fully addressed by GATT rules, the United States would bring them to the GATT for formal consultations and, if necessary, dispute settlement. Where the matters raised by its complaints did not fall under existing GATT disciplines and were being negotiated in the Uruguay Round, the US position in bilateral consultations on the same or related subjects would be entirely consistent with, and in furtherance of, the objectives of the Uruguay Round. (5) Retaliation was not the United States' objective, which was to open markets, not close them, and to facilitate trade expansion. In this context, it was important to note that Section 301, even in its so-called "Super 301" dimension under the new US law, did not mandate or make automatic any form of retaliation. (6) The present US Administration was committed to the multilateral trading system and to the Uruguay Round. The Uruguay Round also enjoyed broad support from the US Congress and business community. The United States had always provided leadership in previous trade rounds, was continuing to do so in the Uruguay Round and would continue to do so in the future.

He said that these six points should serve to explain both the United States' present policies and its future intentions. As to what seemed to be the pre-eminent concerns of many delegations, he would answer those who were apprehensive because they feared that the thrust of Section 301 policy
was somehow inconsistent with the spirit of multilateralism. He assured that the United States shared their interest in maintaining the good will and cooperation which was necessary to uphold the GATT and to preserve the momentum for a successful Uruguay Round. The United States wanted to ensure a successful climate for multilateralism.

It was not fair to suggest that the United States had undermined this spirit of multilateralism simply by seeking to resort to bilateral discussions on matters affecting its commercial interests. Nor could it be said that it sought to create a negotiating advantage by such action. If that were the case, one would have to criticise any contracting party for resort to bilateral dispute settlement during the pendency of the Uruguay Round. Was the Community undermining the Uruguay Round by challenging the US sugar program? Was Canada undermining the GATT by challenging Japan’s régime on spruce, pine and fir? Was Brazil undermining multilateralism by challenging US countervailing duties on footwear? Surely the rules should not be different for the United States. The entire GATT system was based on an understanding that bilateral trade disputes would arise. That was the very nature of the process. Thus it was not valid to accuse the United States of undermining GATT or damaging the Uruguay Round simply because it sought to address bilateral trade problems through bilateral means. Every other country represented at the present meeting did the same thing.

If the concern of his colleagues went beyond mere bilateralism, he suspected that it was rooted in the expectation that the Bush Administration could possibly take some action under Section 301 in a manner contrary to the United States' GATT obligations or prejudicial to the Uruguay Round. It was not appropriate for the Council to make judgments about hypothetical future actions by the United States that could possibly be GATT-inconsistent. He restated how strongly the United States felt about avoiding any fundamental conflicts between its bilateral concerns and its multilateral obligations. The United States wanted the same thing that others wanted -- a strengthened GATT system with clear and enforceable rules.

Moreover, he said that he had not come to the present meeting with an attitude of callousness or malice toward any GATT member. His delegation did not think it proper to question the motives or the political pressures which had brought the other members to this meeting to attack US policies. But neither would the United States be made to apologize for its record as a constructive and cooperative participant in world trade.

The United States was the largest single importer in the world and the major export market for many GATT members. Looking at the record for some of the smaller participants in the trading system -- some delegations had said that US bullying tactics prejudiced the interests of smaller countries --, the fact was that the developing world had no better friend in world trade as a whole than the United States, which imported 60 per cent of the developing nations’ exports of manufactured goods -- more than twice the percentage of the European Community with 100 million more consumers than the United States and more than five times as high a percentage as Japan. The United States was the largest single export market for Brazil, India
and Japan. India's exports to the United States had increased by 16 per cent in 1988 alone -- more than twice the growth rate of world trade --, and Brazil's by 19 per cent. Even in the areas where the United States imposed import restrictions -- textiles, sugar and steel -- it was the developed world's largest importer of such products, even on a per capita basis. The United States imported twice as much as the average of all highly developed countries. He cited all these figures because they spoke more loudly than any words about the United States' commitment to an open trading system and because the GATT's Preamble stated that one of its purposes was to stimulate the production and exchange of goods. In that regard, he did not think that the United States' record could be questioned. Brazil had quoted several editorial writers in its statement. He would therefore quote a more reputable source -- the President of the London School of Economics, a European and a free-trade economist: "The United States has the most open market in the world". Of course the United States had barriers and restrictions, but it should not be forgotten that if it did not, participants would not be negotiating in the Uruguay Round for better trade rules. The point was that the facts of world trade pointed to the United States' commitment to the system.

In the face of a large trade deficit which had helped to fuel the growth of world trade, the US economy had remained remarkably open. Section 301 had been a part of US law since 1974 and had not been used as a pretext to build a protectionist wall around the open US economy. It had been used to focus attention on trade barriers and trade restrictive practices, many of which the United States' trade partners had conceded were unjustified and had in fact removed. US 301 complaints had resulted in GATT findings that certain contracting parties' practices violated their GATT obligations. So he could not apologise for a policy which permitted the United States to do what every other GATT member sought to do -- to pursue the elimination of restrictive trade policies of its trading partners. The United States would remain very sensitive to the need to maintain a spirit of multilateralism and cooperation to obtain the elimination of barriers in all countries. The United States was willing to negotiate its own policies. It had demonstrated its willingness to participate in bilateral dispute settlement. He would respond more fully to the specific items placed on the regular Council's Agenda by Brazil and India; the specific measures maintained by these countries which had given rise to US concerns could be discussed then.

The representative of China, speaking as an observer, said that China had been surprised by the wide powers which the US Trade Act had given the Administration to discriminate or retaliate against foreign competitors. Under the "Super 301" provision of the Act, individual countries were cited for so-called "unfair trade practices". His country had been identified on the priority watch list under the "Special 301" provision for possible retaliation against allegedly denied protection of intellectual property rights and market access. Follow-up consultations, investigations and reviewing under both "Super" and "Special 301" would have adverse effects on the world trading system which participants in the Uruguay Round had been working so hard to improve and strengthen.
He expressed the following concerns: regarding GATT obligations and national legislation, China took notice that the trade legislation of the United States had taken precedence over GATT rules and principles. When trade laws were legislated in a mood of protection and discrimination, the implementation of such laws would certainly lead the US Government to serious deviation from its GATT obligations. As a frequent victim of its discriminatory anti-dumping actions, and as a new target of its "Special 301" procedures, China had the greatest concerns regarding the nature of the US Trade Act and the consequence of its implementation. The US Government had unilaterally singled out "Super 301" target countries and had unilaterally identified issues for consultation. In the coming years, the United States would unilaterally determine whether a trade practice was fair or unfair, and unilaterally retaliate against its trading partners. Such a unilateral approach was by no means GATT-compatible, rather it struck at the very heart of the multilateral trading system, which his Government had decided to join. His delegation had serious concerns over the undermining of the multilateral system by the US procedures. As to managed trade or free trade, in implementing the "Super 301" provision, the United States was seeking bilateral solutions rather than multilateral settlement of its trade problems. Should the United States succeed in concluding agreements with the three trading partners under "Super 301" and with the 17 trading partners under "Special 301", this would virtually turn the multilateral trading system into a mechanism of managed trade. His delegation worried that efforts to strengthen the free-trade system might not be successful as long as the United States pushed forward the "Super 301" actions.

The representative of Brazil said that the United States' statement seemed to have some positive aspects, which he welcomed and hoped would be confirmed by the United States' future behaviour in trade matters. However, he was not convinced by the reasons put forward. In Brazil's view, the United States had not replied to the arguments Brazil had advanced. What was under discussion was not whether or not the US market was the most open in the world, or whether the United States had played a positive rôle in the creation of the multilateral trading system, but rather the unilateral retaliation which was not only permitted by US law but also practised by the US Administration. This point had not been satisfactorily answered. Brazil welcomed the statement that retaliation was not an objective of the US Administration and that the latter would prefer to avoid it, but it was thoroughly clear from the Community's statement which quoted the United States Trade Representative's statement to the US Congress that she intended to use unilateral reprisals that were incompatible with the General Agreement if the United States, and solely the United States, considered such retaliation necessary. Reference had been made to the fact that no specific measure had been taken; he did not agree, as regards the traditional Section 301, because Brazil had been the victim in 1988 of a prima facie case of breach of the General Agreement with the imposition of prohibitive 100 per cent tariffs on Brazilian products under the traditional Section 301, which was not substantially different from the "Super" or the "Special 301". What they all had in common was the threat of retaliation. Furthermore, it should also be added that in international law -- not only in the General Agreement but in the
highest instrument of international law, namely the United Nations Charter -- not only sanctions were prohibited, but also the threat of sanctions.

That, in fact, was the fundamental point under discussion in the Council. He was not referring to the other points which had not been answered, such as his reference, based on USTR documents, to the contradiction in wishing to obtain, through bilateral pressure, concessions on matters which were being discussed multilaterally, and concerning the difficulty which any government would have in making concessions which would immediately, through the m.f.n principle, be extended to all trading partners. A very large number of countries had spoken more or less along the same lines as Brazil -- he would even say virtually unanimously to that effect. All had said that the US law was a source of concern. The United States had not offered any apologies, as it considered that there was nothing wrong with its law or practice. This was a problem the Council should resolve. Otherwise there would be a situation where the special Council was impotent. This matter should be seriously considered so that there could be a collective assessment of the problem. He wanted to make it clear that contracting parties were not convinced. Brazil considered that the vast majority -- virtually all members -- had spoken in the opposite sense to that of the United States' statement, and that the GATT Council should take a position in this matter.

The representative of the European Communities said that it might be worth recalling that one was conducting a collective assessment exercise in this meeting. Thus he would feel uncomfortable if majority or minority rules were to prevail in drawing conclusions. If each member was to stick to its position, without trying to understand others', there could not be collective assessment. Earlier he had refrained from compromising any contracting party by simply trying to see, through the different policies, to what extent they affected or not the multilateral system as it was, and the Uruguay Round negotiations set up to make it better.

His conclusion -- perhaps not shared by others, and certainly not by the United States -- was that today, US law, through its Section 301 and precisely because it had not been applied for very long and had been improved so as to be applied in a more concrete manner which was based on contradiction, was such that, for the very reason of the initial error of appraisal and conception, it could only come to be held hostage and prisoner of that contradiction. One could not fulfil noble and multilateral objectives bilaterally and using unilateral means.

He would thus add something which did not concern the United States, but threatened the system -- the law of retaliation. It was precisely because the Community and others had rejected the temptation to equip themselves with the same weaponry, that he was saying that the multilateral system was being threatened. There was no question of embarrassing the United States. He was convinced of their good faith, but one could err in good faith. That was the problem.

He would therefore be quite embarrassed if there was not going to be a minimum collective assessment on matters as simple as those and without talking of questioning one's intentions. That was somewhat obsolete and
the debate should be raised above this. He asked what the Director-General thought of all this.

The representative of India said that he welcomed the US statement insofar as it indicated a commitment to the multilateral system and to the Uruguay Round. What had been discussed at the present meeting was a perception, perhaps of the majority of the world, of the consequences of Section 301 cases initiated against some countries. The process was on, but one did not yet know the ultimate result thereof in all these cases. There was a widespread apprehension, however, that this was an attempt to gain at the very least a negotiating advantage, although that had been specifically denied by the United States. Relative openness of markets was not the issue, but rather actions contrary to multilateral commitments and obligations now in existence. The US statement was not very convincing on that score. His delegation would have more to say about its own case at the regular meeting later on and the issue would then be put, perhaps, in better focus. While welcoming the US statement, India had serious reservations with regard to the 301 actions already initiated.

The Director-General recalled that his most recent report on the status of work in panels and implementation of panel reports (C/167 of 9 June) reflected a number of developments in the area of GATT dispute settlement procedures to which he drew attention. There were now nine panel reports before the Council that had not yet been adopted. Of these reports, one had been submitted to the Council in September 1985 and one in October 1986. In one case, the panel report had been discussed four times but its adoption had so far not been possible because of the objection of the party complained against. There had never been as much unfinished business before the Council in the area of dispute settlement. In the cases listed, the panels had usually completed the work within a reasonable period of time: on average, approximately seven months had elapsed between the constitution of the panels and the submission of their reports to the parties to the dispute. He paid tribute to the members of the panels for their contribution in shortening that period. However, it had taken in many cases an extraordinarily long time to determine the composition and terms of reference of the panels. On average, close to five months had elapsed between the decision to establish the panel and its constitution. In one case, it had taken one year to constitute the panel. He hoped that the new procedures on dispute settlement adopted in April 1989 relating to the constitution of panels would improve the situation in a very substantial way.

In two cases, panels had been established by the Council but the consultations on the composition and the terms of reference of the panels had been suspended at the request of the party that had brought the complaint. In one of these cases, the decision of the Council to establish the panel went back to 1985. He did not think that such long periods of time between the establishment and constitution of panels had been contemplated by the drafters of the decisions on dispute settlement. He would therefore urge the parties to these disputes to consider whether they still needed to maintain their complaints.
He said that he had purposely given a factual character to his report because he still had confidence in the wisdom of contracting parties and thought he would give the regular Council a chance to demonstrate that the GATT system worked and was capable of serving the interests of all its members, and therefore of eliminating the temptation to explore the alternative approach of quick-fire solutions. That meant that when one came to the next Trade Policy Review under the new procedures, he would be in a position to say that the dispute settlement procedures were functioning in a manner which made them the only efficient, credible manner of handling bilateral disputes.

Since he had mentioned the next review, he informed the Council -- and in so doing answered the question asked by several members -- that the Secretariat planned to present its first annual report provided for in paragraph F of the Council's April decision on the Trade Policy Review Mechanism sometime in November 1989. He made it clear that this commitment on behalf of the Secretariat was a major one because it implied a heavy burden on his team. He believed, however, that it would be worthwhile to make the effort. It went without saying that this report, and the debate on it, would provide a useful follow-up to the present discussion. In answer to the question regarding the publication of the report now under consideration, he said that according to what had been agreed at the most recent special Council, it was the Secretariat's intention to derestrict this document as soon as one had been able to incorporate the factual corrections that some delegations had indicated they would make.

About the present discussion, he had asked himself if he should intervene in the debate at all. How could he not? After all, the debate mainly concerned the relationship between the United States and its trading partners; and since the United States and more and more of its trading partners were members of the GATT, and since their trade relationships were governed by GATT rules and disciplines, he had no option but to intervene.

He said he should perhaps start by paying tribute to the US delegation and Government. All agreed that one of the objectives was to assure transparency in the field of trade policies. Today's debate was a good example of transparency. He hoped that there would be many other occasions to benefit from transparency in the trade policies of contracting parties. His second point was that he had nothing to add or subtract from the comments he had made at the meeting of the Council in February. He had made those comments without pointing his finger at any contracting party in particular. If some had used these comments in furtherance of their specific interests, they had done so under their own responsibility. On that occasion, he had referred to the views of one of the drafters of the General Agreement regarding the power of retaliation and the restriction placed on this power by the General Agreement.

On and off during the debate, he had been wondering what would have been the reaction of the drafters of the General Agreement had they been present. He thought their comments would have been twofold. They would have first reminded the Council that the GATT had been established after unilateralism and bilateralism had been tried and had failed. They would have asked in despair whether it was necessary for world economic relations
to go through the same cycle again. Could the present generation of trade-policy makers not learn from the experience of the previous one? He added that he considered that the group of trade policy people sitting in the room had a major responsibility in this respect in advising their capitals. The drafters of the General Agreement would have said, of course, that they recognized that bilateral conflicts might emerge but that they also knew from experience that there were no permanent bilateral solutions to trade problems. That was why the drafters of the GATT had incorporated in the General Agreement provisions enabling contracting parties to seek multilateral solutions to bilateral conflicts, in particular Article XXIII, which obliged the CONTRACTING PARTIES to investigate any measure, be it consistent or inconsistent with the GATT, and any situation that was claimed to impair objectives of the GATT or benefits accruing under it. He assumed that some members would then have countered this argument of the founding fathers by saying that dispute settlement would provide little comfort to an aggrieved party if the rules in question were either weak or non-existent in respect of areas of trade in which they sought remedy. The drafters would have then answered, however, that rules and disciplines, in order to be universally applied and accepted, had to be multilaterally agreed. And that it was for this reason that the GATT had also been envisaged as a negotiating forum — a fact borne out by the last seven rounds of trade negotiations held under the GATT for precisely this purpose. They would have pointed to the numerous multilateral rules and disciplines that had emerged from these negotiations. And last but not least, they would have pointed to the Uruguay Round of trade negotiations, the basic objective of which was to strengthen the existing rules of competition and also to establish multilateral rules in areas which, for the present, lay outside the framework. In other words, and this was his conclusion, the drafters of the General Agreement would have said that while the creation of GATT outlawed unilateralism, it also eliminated the need for it.

The representative of Australia, referring to C/167, asked whether the Director-General would consider a panel's proceedings to be complete if an interested third party which had reserved its rights and had made a submission to the panel had indicated its interest in being consulted on the implementation of the panel's report, at the time of its adoption, but had not been so consulted. He asked if, in such a case, the process would be complete and the panel go off the list.

The Director-General replied in the negative.

The representative of Australia asked why, then, the report on the dispute concerning Japan's 12 agricultural products did not appear on the Director-General's list.

The Director-General said that he expected this question to be raised. He added that there was always room for improving his report.

The representative of Australia said that he looked forward to the revision of the report.
The representative of Brazil said that he merely wanted to suggest, with reference to the next meeting in November, that the subject of the lengthy discussion at the present meeting be kept under a continuous system of surveillance, so that one could achieve, in the intervening months, results for collective reflection, and could take note that the positive elements in the US statement were being confirmed in practice. In November, one could then celebrate the victory of multilateralism and not that of unilateral retaliation.

The Chairman said it seemed to him that there had been a useful, collective evaluation. The usefulness of this type of discussion seemed to be borne out by the fact that a number of delegations had asked for specific indications of how the process of surveillance would be continued. The discussion had been facilitated considerably by the documentation prepared by the Secretariat, in particular a number of delegations had indicated that they shared the Secretariat's views in the section on the overview of developments. He noted, as well, that several particularly important statements had been made which he would not try to summarize. These would be fully reflected in the record of the meeting. The mood of the discussion had been sombre, but not without hope. The main focus of the discussion had been certain recent actions by the United States under Section 301 of its trade law. A number of delegations had expressed concern about the unilateral nature of these proceedings and the prospect of GATT-inconsistent retaliation resulting from them. Attention had been drawn to the GATT disciplines in this area and to the requirement that retaliation be practised only after authorization for such action had been obtained from the CONTRACTING PARTIES. A number of delegations had commented that these developments represented a threat to the trading system and a possible threat to the Uruguay Round. More than one delegation had commented in particular that it represented a threat to the negotiations in the new areas in the Uruguay Round. A number of delegations had suggested that there had been a violation of the standstill commitment. A number of delegations had also commented on the importance of the rôle of the United States in the shaping of the trading system and its contributions to the GATT. The United States had provided some important assurances in this regard. A number of useful clarifications had been heard about the US intentions and policies. In particular, Council members had taken close note of the way in which the US representative had discussed the possibility of retaliation — that the US legislation did not mandate or make automatic any form of retaliation. A number of issues had been raised by more than one delegation: increasing resort to the use of anti-dumping duties, concerns about the manner of application of rules of origin, and voluntary export restraints, to name a few. On a more positive note, delegations had commented on the strong growth performance in world trade. Many delegations had spoken of the importance of the Uruguay Round and had expressed satisfaction with the progress that had been achieved to date, in particular at the mid-term review meetings in Montreal and Geneva. A considerable amount of faith had been expressed in the future of the trading system and the contribution which a successful completion of the Uruguay Round would make to the system. Lastly, a number of concerns had been expressed about difficulties regarding the question of panels, in
particular with regard to the adoption and implementation of panel reports, and the rôle of the dispute settlement system in resolving bilateral disputes had been emphasized, including, in particular, in the Director-General's final statement.

The Council took note of the statements and agreed that the review of developments in the trading system had been conducted.