GENERAL AGREEMENT ON
TARIFFS AND TRADE

COUNCIL
30 April 1992

MINUTES OF MEETING
Held in the Centre William Rappard
on 30 April 1992

Chairman: Mr. B.K. Zutshi (India)

Subjects discussed:

1. Committee on Balance-of-Payments
   Restrictions
   (a) Consultation with India
   (b) Simplified consultations with
       Sri Lanka and Pakistan
   (c) Note on the meeting of 19 March 1992

2. Customs unions and free-trade areas
   (a) EFTA - Turkey Free-Trade Agreement
       - Communication from Iceland on behalf
         of the EFTA countries and Turkey
   (b) EEC - Association Agreements with the
       Czech and Slovak Federal Republic,
       Hungary and Poland
       - Communication from the parties to the
         Agreements

3. Egypt - Renegotiation of Schedule LXIII
   - Request for a waiver under Article XXV:5

4. United States - Denial of MFN treatment as
   to non-rubber footwear from Brazil
   - Panel report

5. United States - Restrictions on imports of
   tuna
   - Panel report

6. United States - Measures affecting alcoholic
   and malt beverages
   - Panel report

7. EEC - Payments and subsidies paid to
   processors and producers of oilseeds and
   related animal-feed proteins
   - Follow-up on the Panel report
   - Report of the members of the original
     oilseeds Panel

8. Yugoslavia
   - Transformation to the Federal Republic
     of Yugoslavia

9. Canada - Import, distribution and sale of
   certain alcoholic drinks by provincial
   marketing agencies
   - Follow-up on the Panel report
Prior to adoption of the Agenda, representatives rose and observed a minute of silence in memory of Mr. Johannes Feij, former Minister Plenipotentiary of the Netherlands and long-time representative to the GATT, who had passed away recently.

1. **Committee on Balance-of-Payments Restrictions**
   (a) [Consultation with India (BOP/R/197)]
   (b) [Simplified consultations with Sri Lanka and Pakistan (BOP/R/198)]
   (c) [Note on the meeting of 19 March 1992 (BOP/R/199)]

   (a) [Consultation with India (BOP/R/197)]

   Mr. Boittin, Chairman of the Committee, said that at the consultation with India on 19 March 1992, the Committee had recognized the continuing fragility of its balance-of-payments position and had commended India for launching its comprehensive reform programme. It had particularly welcomed the measures already taken to liberalize the economy and reduce bureaucratic intervention, and had encouraged India to continue to implement and pursue vigorously its economic reform process. The Committee had noted with satisfaction that, despite its exceedingly weak balance-of-payments situation in 1991, India had already started to reduce trade restrictions and reform trade policies by withdrawing cash compensatory support to exports and reducing very high tariffs, the scope of quantitative import restrictions and canalizations. It had welcomed India's statement outlining further deregulation and liberalization provisions in the 1992/93 Budget proposal, including the implementation of a dual exchange rate system. The Committee had noted, however, that the system of trade restrictions remained broad and complex. It had encouraged India to undertake further liberalization and, in the light of changes in the balance-of-payments situation, to continue progressively to phase out the restrictions maintained for balance-of-payments purposes, bearing in mind the relevant provisions of the 1979 Declaration on Trade Measures taken for Balance-of-Payments Purposes (BISD 265/205). Given the provisions of paragraph 12 of that Declaration, the Committee had agreed that a more favourable external environment, in particular in the textiles sector, would contribute to assisting India's trade and economic reform programmes. It had also noted, in this context, the positive impact that would result from a successful conclusion of the Uruguay Round.

   The Council took note of the statement and adopted the report in BOP/R/197.
(b) Simplified consultations with Sri Lanka and Pakistan (BOP/R/198)

Mr. Boittin, Chairman of the Committee, said that at the simplified consultations with Pakistan and Sri Lanka on 19 March 1992, the Committee had decided to recommend to the Council that both Pakistan and Sri Lanka be deemed to have fulfilled their obligations under Article XVIII:12(b) for 1992. The Committee had taken note that Sri Lanka would notify as soon as possible the list of remaining import restrictions maintained for balance-of-payments purposes.

The Council took note of the statements, agreed that Pakistan and Sri Lanka be deemed to have fulfilled their obligations under Article XVIII:12(b) for 1992, and adopted the report in BOP/R/198.

(c) Note on the meeting of 19 March 1992 (BOP/R/199)

Mr. Boittin, Chairman of the Committee, said that at its meeting on 19 March 1992, the Committee had agreed, under "Other Business", that the next full consultations with Tunisia and Egypt would take place in the weeks of 22 June and 6 July, respectively. A simplified consultation with Bangladesh, in conjunction with the review of its trade policies under the Trade Policy Review Mechanism (TPRM), would be held in the week of 8 June. However, after the Committee's meeting, the Secretariat had been informed that IMF data and information on Tunisia and Egypt, necessary for the consultations, would not be available in time. Therefore, it was now suggested that the consultations with Tunisia and Egypt be postponed to the end of September. The Committee had also agreed that the next full consultation with Turkey would take place in February 1993. With regard to consultations to be held in conjunction with reviews under the TPRM, the Committee had agreed that, in view of the substantial documentation prepared for the TPRM meetings, the Secretariat would prepare only a short factual background paper containing aspects relevant to the Committee's work. As to the "basic document for the consultation", the Committee had agreed that the consulting country would be free to prepare a specific document for that purpose. However, if its own TPRM report met the requirements laid down for the basic document, the Committee could, at the request of the consulting country, consider that report as satisfying the documentation requirement. Finally, the Committee had welcomed the request by Pakistan, which had participated at the meeting as an observer, to become a member of the Committee.

The Council took note of the information in BOP/R/199.

2. Customs unions and free-trade areas
   (a) EFTA - Turkey Free-Trade Agreement
      - Communication from Iceland on behalf of the EFTA countries and Turkey (L/6989 and Add.1)
   (b) EEC - Association Agreements with the Czech and Slovak Federal Republic, Hungary and Poland
      - Communication from the parties to the Agreements (L/6992 and Add.1)

The Chairman recalled that at its meeting in March, the Council had considered the Agreement in sub-item (a), notified in documents L/6989 and Add.1, and had agreed to revert to it at the present meeting. With respect
to the Agreements in sub-item (b), he drew attention to the notification recently circulated by the parties to those Agreements in documents L/6992 and Add.1. He also recalled that at its meeting in March, the Council had agreed that its Chairman should hold consultations to see how the several regional agreements which had either been notified or were likely to come up for examination in the near future could be dealt with. Having held these consultations, he had some proposals to make, to which he would revert towards the end of the discussion on this item.

The representative of the European Communities recalled that his delegation had informed the Council at its meetings in February and March, under "Other Business", of recently signed Association Agreements between the Community and the Czech and Slovak Federal Republic, Hungary and Poland, and also of interim agreements signed between the same parties which took up the trade provisions of the broader Association Agreements. The Community had recently communicated to contracting parties the texts of the Interim Agreements, which had come into force on 1 March 1992. Contracting parties now had all the elements before them to examine the GATT conformity of these Agreements, and the Community was prepared to participate in such an examination in the appropriate way.

The representative of Chile said that notwithstanding the conformity of these Agreements with provisions in the Enabling Clause\(^1\), they should be examined carefully to ensure that they did not distort the trade of contracting parties not parties thereto. As these Agreements included products such as vegetables, fruits, juices, wines and others of traditional export interest to it, Chile was concerned that it could be affected adversely. A working group to examine these Agreements should therefore be established, and Chile would participate in its work.

The Chairman proposed that, on the basis of his consultations on the logistical aspects of the examination of these agreements and those that might be notified in the future, the Council agree in principle to establish a limited number of working parties -- two at the present time -- with standard terms of reference and open to all interested contracting parties, to examine the agreements already notified; subsequent agreements would either be submitted by the Council to one of these working parties, or to other working parties to be established. It would be understood that such an arrangement would not preclude contracting parties from raising any relevant issue of particular interest to them in any of the working parties. On this basis, he proposed that the Council establish two working parties: the first to examine the EFTA - Turkey Agreement; and the second to examine the Interim Agreements between the EEC and the Czech and Slovak Federal Republic, Hungary and Poland.

\(^1\)Decision on Differential and More Favourable Treatment, Reciprocity and Fuller Participation of Developing Countries (BISD 26S/203).
The terms of reference and membership of the working parties would be as follows:

**Terms of reference:**

(a) **EFTA - Turkey Free-Trade Agreement** (L/6989 and Add.1)

"To examine, in the light of the relevant provisions of the General Agreement, the EFTA - Turkey Free-Trade Agreement, and to report to the Council";

and

(b) **EEC - Association Agreements with the Czech and Slovak Federal Republic, Hungary and Poland** (L/6992 and Add.1)

"To examine, in the light of the relevant provisions of the General Agreement, the Interim Agreements between the Czech and Slovak Federal Republic and the European Communities, Hungary and the European Communities and Poland and the European Communities, and to report to the Council".

**Membership:**

The Working Parties would be open to all contracting parties indicating their wish to serve on them.

The Chairman also proposed that the Council authorize him to designate the Chairman of these Working Parties in consultation with the delegations principally concerned.

The Council so agreed.

3. **Egypt - Renegotiation of Schedule LXIII**

- **Request for a waiver under Article XXV:5** (C/W/697, L/6986 and Add.1 and 2)

The Chairman recalled that at its meeting in March, the Council had considered this matter and had agreed to revert to it at the present meeting. He drew attention to two recent communications from Egypt in documents L/6986/Add.1 and Add.2, which provided an indicative list of tariff items for which concessions were intended to be modified.

The representative of Egypt referred to the information recently circulated by his Government on its waiver request, and noted that in the draft waiver decision Egypt had undertaken to provide further documentation and to hold Article XXVIII consultations and negotiations with interested contracting parties. Egypt believed that the proposed reform of its tariff system would play a pivotal rôle in assisting Egypt's sectoral structural adjustment. The modification of its Schedule of concessions was not intended to introduce any discrimination or further trade restrictions, but, aimed, instead, at narrowing the gap between maximum and minimum
tariff rates, in addition to the adoption of the Harmonized System (HS) nomenclature. Egypt hoped that its trading partners would consider favourably its waiver request and begin Article XXVIII consultations in light of the proposed tariff modifications. Egypt was ready to provide additional trade data and information on its trade liberalization scheme, including on non-tariff measures, in the course of the consultations. Egypt had been, and would remain, as transparent as possible in the conduct of this exercise, and would attempt to fully take into consideration its trading partners' interests in the process of the modification of its schedule.

The representatives of Morocco, Pakistan, Tunisia, Venezuela, Turkey, Bangladesh, Madagascar, Uruguay, Mexico, Yugoslavia, El Salvador, Peru, Senegal, Brazil, Costa Rica, India, Colombia, Jamaica, Korea, Indonesia on behalf of the ASEAN contracting parties, Nigeria and Tanzania expressed their support for Egypt's request. The representatives of Turkey, Bangladesh, Uruguay, Peru, Brazil and India hoped that the draft waiver decision could be approved at the present meeting.

The representatives of New Zealand, Canada, the United States, the European Communities and Austria favoured a deferral of the consideration of the request until the next meeting.

The representatives of Morocco, Tunisia, Venezuela, Turkey, Madagascar, Uruguay, Mexico, Yugoslavia, El Salvador, Senegal, Brazil, Costa Rica, Korea, Nigeria and Tanzania said that the waiver was necessary for the implementation of a far-reaching and ambitious structural reform programme being undertaken by Egypt in cooperation with the International Monetary Fund and the World Bank, which aimed at modernizing and liberalizing its economy and which included a tariff reform component. Several of these representatives said that the GATT should encourage and support Egypt in this major effort by granting the waiver.

The representatives of Morocco, Pakistan, Tunisia, Turkey, Uruguay, Yugoslavia, El Salvador, Peru, Senegal, Brazil, Costa Rica, India, Colombia, Indonesia on behalf of the ASEAN contracting parties and Tanzania noted that Egypt had recently provided more precise and relevant information as regards the scope of the waiver, in response to requests that had been made at the March Council meeting.

The representatives of Pakistan, Madagascar, Mexico, El Salvador, Colombia, Korea, Nigeria and Tanzania noted that Egypt had requested the waiver for a short and limited time period.

The representatives of Pakistan, Turkey, Mexico, Yugoslavia, El Salvador, Senegal, Costa Rica, India and Colombia noted that Egypt had clearly indicated its readiness and willingness to engage in Article XXVIII consultations and negotiations forthwith with interested contracting parties.

The representative of Pakistan expressed concern at the attempt to use the Council's consideration of Egypt's waiver request to advance individual negotiating objectives under Article XXVIII.
The representative of Tunisia said that Egypt's request was fully justified because it was in conformity with the provisions of the GATT.

The representative of Venezuela noted that Egypt had clearly indicated that its tariff reform programme was not intended to introduce any discrimination or further restrictions.

The representative of Madagascar expressed the hope that the tariff modifications effected under Egypt's waiver would not in any way endanger the trading interests of other developing countries.

The representative of Mexico said that the main theme of Egypt's tariff reform programme was the reduction of any dispersion in tariffs, and thus a reduction of the extent to which that Government's trade policy could choose winners or losers from amongst sectors. This was a more neutral policy which was fully in line with the spirit of the GATT. There would perhaps be important effects on contracting parties with exporting interests which should duly be taken into account, and Egypt appeared willing to do so.

The representative of Brazil said that there were some products of potential interest to Brazil in the lists of tariff items proposed to be modified that were recently circulated by Egypt, and that Brazil would raise this matter in the consultations envisaged in the draft waiver decision.

The representative of New Zealand recalled that his delegation, among others, had sought more detailed information regarding Egypt's request at the March Council meeting. He noted with appreciation that that information had recently been provided. While New Zealand would have wished to associate itself with previous speakers who had expressed support for Egypt's request, it had some concrete trade concerns which needed to be addressed. It was clear from a preliminary examination of the documentation provided by Egypt that products of major interest to New Zealand, representing approximately 70 per cent of its current exports, would be affected. Furthermore, the proposed tariff increases on some of those would yield revenue ten times greater than the offsetting tariff reductions on certain other products. It was not clear where further offsetting tariff reductions might be offered to compensate for the tariff increases to be faced by New Zealand. This was an important issue given that the bulk of New Zealand's trade would be significantly affected by tariff increases. Regrettably, New Zealand had only recently become aware of these implications, and intended to hold consultations with Egypt at an early date. If the waiver was approved at the present meeting, New Zealand would seek Article XXVIII negotiations. However, its strong preference would be to allow affected contracting parties more time to consider the precise trade implications of the waiver before it was granted.

The representative of Canada said that the additional information recently provided by Egypt on its proposed tariff changes had shown, on initial examination, that proposed tariff increases on products of interest to Canada would not be offset by corresponding reductions. While Canada fully supported Egypt's structural reforms, it required additional time and trade data to review the waiver request. Under the circumstances, Canada requested that consideration of this matter be deferred until the next Council meeting.
The representative of the United States recalled that at the March Council meeting the United States, among several others, had indicated that it was not prepared to agree to Egypt's request pending receipt of further information that would permit an assessment of the scope and level of the proposed changes to the latter's tariff régime. Specifically, the United States had requested more data on proposed tariff increases, the reasons for the need to raise tariffs, and information on tariff reductions to be made. The United States had also noted that Egypt had partially justified its request by referring to its conversion to the HS tariff nomenclature in 1993, but that it had not sought to initiate negotiations on proposed tariff line changes prior to the implementation thereof. While Egypt had indicated its willingness to consult with the contracting parties concerned and had recently made additional information available, the United States was not certain that information on all the tariff changes to be made had been provided. The list of tariff reductions, for example, had been labelled as indicative. The United States would therefore prefer to defer consideration of this matter in order to consult with Egypt and to clarify the precise scope of its request and of the tariff changes to be made pursuant to the waiver.

The representative of Switzerland said that the information made available by Egypt showed that the proposed changes were significant and went beyond the simple tariff restructuration that would result from the introduction of the HS nomenclature. These changes affected a number of products of interest to Switzerland, tariffs on some of which would be increased ten-fold. These changes, at least from the point of view of Switzerland's export interests, were not what one could call trade neutral. Indeed, they affected trade flows, and would increase tariffs on Switzerland's exports. To accept Egypt's request for the renegotiation of its tariffs would not simultaneously mean that contracting parties accepted the lists of proposed modifications presented by Egypt. Egypt's proposed changes should be renegotiated according to the Article XXVIII procedures. To facilitate this, the information made available by Egypt should be further supplemented by statistical data, which was missing.

The representative of the European Communities said that while the Community recognized Egypt's right to have recourse to Article XXVIII procedures, the decision to grant the necessary waiver should not be taken too lightly. The Community did not fully understand and appreciate the framework in which Egypt's request was being made. Egypt had referred in its communication (L/6986) to fundamental changes in its economy and in its trade régime. The Council had, on earlier occasions, considered similar requests by other contracting parties; the Community had been able to acknowledge the necessity of granting waivers in those instances because the fundamental changes in these countries' trade régimes, as a result of a move from essentially non-tariff measures to an entirely tariff-based régime, had involved a certain imminent risk. The Community was not sure that the situation was comparable in the present case. The Community was aware of ongoing discussions between Egypt and the IMF and the World Bank, and also of efforts to restructure Egypt's trade régime. However, the institution with the responsibility of monitoring trade policies, namely the GATT, had received fairly limited information from Egypt as to what effectively was going to be undertaken. While Egypt's request gave the impression that only a certain rebalancing of tariffs was being contemplated, the Community's understanding had been that Egypt's
restructuration involved a more complete revision of Egypt’s trade régime, including non-tariff measures. To the extent that that was the case, and if that could be substantiated by Egypt, the Community would be prepared to consider favourably its request. However, in the absence of such a clear indication, the Community would not be in a position to support Egypt’s request at the present meeting.

The representative of Austria said that his Government was sympathetic to Egypt’s request. However, in the documentation recently provided by Egypt there were several products and product groups of interest to Austria. His authorities had not yet been able to conclude their examination of the impact of the waiver on Austria’s exports. Austria was therefore in favour of deferring consideration of this matter until the next Council meeting.

The representative of Egypt expressed his country’s appreciation to those that had supported its request. He reiterated that the modification of Egypt’s schedule was not intended to introduce any trade discrimination or further restrictions, and that his Government remained willing to enter into consultations with interested contracting parties once the waiver had been granted. Egypt was ready to consult and to provide further information concerning its trade liberalization programme, which included reductions in non-tariff measures, in accordance with GATT provisions. Egypt had proceeded bona fide to provide further data and information — although preliminary — at the present time as an expression of its goodwill in this matter. However, this was not the end of the process; once the waiver had been granted, Egypt would try to satisfy its trading partners and to reach an understanding with them. He noted that the majority of the statements made on this item had expressed support and understanding for Egypt’s request and suggested that if no consensus were possible, the Council should vote to approve the text of the draft waiver decision and to submit it for adoption by the CONTRACTING PARTIES by postal ballot.

The representative of the United States said that the contracting parties which had difficulties with the waiver request at the present stage were troubled by the proposal for a vote. This was, in his view, an unprecedented request. There were understandable reasons why all should be extremely reluctant to see a vote on this matter, or on any other matter, become standard procedure in the Council. The United States therefore strongly discouraged Egypt from pressing its request.

The representative of the European Communities said that while a lot of support had been voiced at the present meeting for Egypt’s waiver request, a number of delegations — including that of the Community — continued to have a problem in taking a decision at the present time. The Community was sympathetic to Egypt’s waiver request, but wished to have additional information and assurances put forward and examined in the Council. A decision by consensus could then be taken on this matter. He therefore asked that Egypt reconsider its request for a vote.

The representative of Canada joined the United States and the Community in urging that Egypt reconsider its request for a vote. He recalled that his country, together with several others, was seeking more time and additional data — some of which was now available and some not — to see how this waiver would impact upon its position in Egypt’s market. He did not believe this to be an unreasonable request.
The representative of New Zealand said his Government would like to be able to associate itself with a consensus on the question of Egypt's waiver. It would, of course, be very much easier to do that if the extra period of consultation and clarification that had been sought were to be available.

The representative of Egypt said that the matter before the Council was Egypt's request for a waiver under Article XXV:5. One was not negotiating here under Article XXVIII. Those negotiations would come later. He did not therefore understand the purpose of deferring consideration of the matter at hand. Egypt had bona fide provided a list of items on which tariffs were to be increased (L/6986/Add.1) and another on which tariffs were to be decreased (L/6986/Add.2). It had also explained that these changes were part of a trade liberalization and economic reform programme being undertaken in cooperation with the World Bank and the IMF. Once the waiver had been granted, Egypt would provide additional information and negotiate under Article XXVIII. Under GATT provisions, Egypt was not required to provide all the data and to exhaust negotiations and consultations before the waiver had been granted. In response to New Zealand, he said that Egypt's tariff reform was not intended to be discriminatory. In addition, the items of interest to New Zealand were of an inelastic-demand nature. He reiterated that Egypt would not engage in Article XXVIII-type negotiations before the waiver had been accorded.

The representative of Sweden said that had he spoken on behalf of the Nordic countries, he would have been able to express their support for Egypt's waiver. However, Egypt's request for a vote was quite another thing. He believed that those that had supported Egypt's waiver request would also like to reflect on the serious consequences for the GATT of taking a vote to decide this issue. In his view, it was possible to arrive at a consensus regarding Egypt's waiver request in the near future. What had been asked for by a few contracting parties was a little more time to consider the issues raised by the waiver. To deny contracting parties the right to have some time for reflection by forcing a vote would set a bad precedent in the GATT. He hoped those contracting parties that, like Sweden, would have been able to support Egypt's waiver request would reflect on this.

The representative of Australia associated his delegation with Sweden's remarks. Australia approached Egypt's waiver request with some reservation and hesitation because ninety per cent of its exports would be affected by tariff increases. Australia therefore would have a keen interest in the Article XXVIII negotiations which would follow, and accepted the point that this issue was separate from that of the granting of a waiver under Article XXV:5. While Australia had had no desire to oppose the waiver request, it had neither had the desire to lead the charge to support it, in the belief that in time this issue would be resolved to the satisfaction of all, and primarily Egypt. However, with the discussion now heading in the direction of a vote, his delegation believed that more was at stake, namely the way in which the Council went about its business. Once contracting parties went down the voting route, they would find themselves engaging in a practice that would not be in the GATT's best interests.
The representative of Jamaica said that one had finally come to the crunch: a contracting party had legitimately requested a vote on a matter of interest to it in the Council, which had been accustomed to taking decisions by consensus thus allowing in effect a veto right to a minority of its members. To put the issue more clearly, he would say that to take a vote on this issue at this time would not only violate the GATT tradition, but would also open the way for similar actions in the future and might thus be inimical to a variety of interests and concerns, both individual and collective, in the future. This was therefore a step to be taken after some mature thought. It could be that the issue at hand was of overriding importance to Egypt; that was for Egypt to decide. It could also be that the issue was of overwhelming importance to the Council; that was for the Council to decide. However, it was also for the Council to act in accordance with its own collective interest and that of its members.

One could not deny that the practice, whereby contracting parties' interests and concerns were constantly deferred because of the tradition of consensus, had to be re-examined and taken into account more seriously in the course of the Council's deliberations. The matter at hand was a good illustration of the nature of the Council's decision-making process, and demonstrated the capacity of individual members, legitimately concerned for their interests, to delay proceedings in order to satisfy their own concerns. This was not the first time such a situation had occurred and, presumably, would not be the last. At the present meeting, Egypt had brought this general matter to the crunch. As far as Jamaica was concerned, while it supported the granting of the waiver, it would not be supportive of a vote in the Council on this matter. However, it was clear that Egypt's concerns were legitimate. The question to be asked then was what a vote would achieve in this situation. If the majority opinion, as expressed in the statements made at the present meeting, carried, it would merely mean that the draft waiver decision would be submitted to the CONTRACTING PARTIES for a vote thereon, and would presumably be granted. Would the minority then refuse to trade anymore with Egypt? Would the minority then establish an embargo on Egypt because a vote was taken in the Council in support of the waiver? Would Egypt's economic reform programme be thereby stopped? Would its negotiations with the IMF and the World Bank be therefore hampered? What, therefore, would the practical effect of a vote be? That was one thing to ponder over. The other was: what would the effect of a vote be on the GATT's decision-making tradition?

The representative of Switzerland recalled that in its earlier statement, his delegation had indicated that it was not opposed to a consensus on granting Egypt's request, although it had expressed some concerns regarding that request. Now, of course, the situation was entirely different because it was no longer just Switzerland's export interests that were at stake, but the GATT's working methods, and the system as it had functioned over the past decades; indeed, the whole spirit of the system, to a certain extent, was at stake. He therefore asked Egypt to reconsider its request for a vote. In his view, a vote in the Council was a final recourse, to be taken when all other possibilities for reaching a consensus had been exhausted. That stage had not been reached on the matter at hand. No delegation had stated that it would firmly oppose the granting of the waiver without any reconsideration of its position. One had only heard requests for further information and for further time to consider the matter, and it could not be deduced therefrom that there was no possibility of a consensus. He hoped that all would continue to seek a consensus and not to force the situation by turning immediately to a vote.
The representative of Japan said that his Government was sympathetic to Egypt's waiver request. Japan also recognized that it was important for Egypt to have a decision on this matter rather quickly. Furthermore, as Jamaica had indicated, Egypt had certain rights in pursuing its objectives. Having said this, Japan's preference would be to endeavour further to seek a consensus so that the Council could address this matter in the customary way. While there appeared to be some questions and doubts concerning the waiver request, these did not seem to be unsurmountable. With a little more effort, consensus could be reached in the very near future.

The representative of Mexico said that the matter at hand gave an indication of the work that needed to be done in the Uruguay Round to ensure greater coherence between the work of the GATT and that of the IMF and the World Bank, because implementation of the programmes drawn up by the latter two institutions appeared to cause problems for GATT contracting parties. As to the question of a vote, it was his understanding that a vote had never been taken in the Council as far back as one could recall. While contracting parties undoubtedly had the right to request a vote, one had to regard this more like an atomic weapon -- to be stored but not used. As Switzerland had said, a vote should be a final recourse, and one had to be convinced that all other channels had been exhausted first. In the present situation, it appeared that an amicable solution satisfactory to all could soon be reached. Therefore, while reiterating its support for Egypt's waiver request, Mexico would be deeply concerned by any recourse to a vote; it would prefer by far that every effort be made in the GATT to reach decisions by consensus first.

The representative of Hong Kong said that his delegation was sympathetic to Egypt's waiver request and would have been happy to join a consensus thereon. While every contracting party had the right to request a vote, his delegation believed that it could only be good and healthy for the multilateral trading system and for the GATT to continue, and if necessary to strengthen, the long-standing practice and tradition of conducting business by consensus. He therefore joined others in making a plea to Egypt to reflect on whether more time could be allowed so that the matter could be considered again at the next Council meeting, at which it could hopefully be resolved by way of a consensus. He hoped also that the delegations that had spoken to urge the conduct of GATT business by consensus would take this to heart and act accordingly in future in matters of interest to them.

The representative of Colombia said that no one would be happy in the end if this matter were put to a vote. While Colombia fully supported Egypt's waiver request, it believed that consensus should remain the way of decision-making in the Council.

The Chairman proposed that the Council suspend discussion on the present item, and that it be resumed after the consideration of the remaining items on the Agenda of the present meeting.

The representative of Egypt reiterated his concern that some delegations appeared to want to negotiate under Article XXVIII before a decision could be taken under Article XXV:5. In his view, this was extraordinary. He requested those that had asked for more information to reconsider their position, to join the majority of contracting parties that were in support of Egypt's waiver request and thus to build a consensus at
the present meeting. He expressed his Government's willingness to provide these countries with further information in the course of the Article XXVIII negotiations. However, if the Chairman wished to suspend discussion on this item until later, his delegation would be ready to go along.

The Chairman said that that would indeed be his wish. While the waiver decision itself would be taken by the CONTRACTING PARTIES in a vote by postal ballot, what was being proposed was that the Council vote on whether or not to approve and to send the draft decision to the CONTRACTING PARTIES for a vote thereon. That would be an extraordinary move, and he called on all to reflect on this.

On resumption of the discussion, and following consultations with delegations, the Chairman reported that there was a strong desire amongst Council members, including Egypt, to take a decision on the waiver request on the basis of a consensus. Accordingly, he proposed that the Council agree to revert to this item at its next meeting, that in the meantime he hold consultations to try to reach a consensus on this issue, and that in view of the urgency of this matter for Egypt, if a consensus emerged earlier than the proposed date of the next Council meeting, that meeting would be convened earlier.

The representative of Egypt expressed appreciation for the Chairman's efforts to find a solution acceptable to all on this issue, and said that Egypt could go along with his proposal. However, bearing in mind that Egypt had to embark on Article XXVIII negotiations as soon as possible, he would prefer, if a consensus emerged early, to have a "special" Council meeting convened to consider this matter before the next regular meeting.

The Chairman reiterated that the date of the next regular Council meeting would be kept open, and that depending on the results of his consultations, that meeting could be convened earlier than planned.

The Council took note of the statements, and agreed to the Chairman's proposal.

4. United States - Denial of MFN treatment as to non-rubber footwear from Brazil
- Panel report (DS18/R)

The Chairman recalled that in April 1991, the Council had established a Panel to examine the complaint by Brazil. At its meetings in February and March 1992, the Council had considered the Panel report (DS18/R), and in March had agreed to revert to it at the present meeting.

The representative of Brazil recalled that at the March Council meeting, his delegation had requested for the second time that the Council adopt the Panel report and that the United States take the necessary steps to bring itself into compliance with the requirements of Article I. Brazil had also requested that, in accordance with the 1982 Ministerial Declaration (BISD 29S/9), the Council recommend that the United States report within a specified time period on the action taken in this regard. At that meeting, the United States had requested, for the second time, that the Council defer consideration of this matter so that the United States
could continue to seek a solution that could be acceptable to the two parties. He hoped that the United States was ready to agree to adoption of the report at the present meeting.

The representative of the United States recalled that at the March Council meeting, he had reported that his authorities had been looking for a mutually satisfactory solution to this matter. He had hoped then to be in a position to indicate to the Council at its present meeting how the matter could be resolved. His authorities had held extensive discussions with Brazil in which considerable progress had been made, and it appeared that a mutually acceptable solution could be reached in the near future. For this reason, the United States could not agree to adoption of this report at the present meeting.

The representative of Argentina recalled that at the March Council meeting, his delegation had indicated that the Panel's conclusions were relevant. Although Argentina had been encouraged that the United States was seeking a mutually satisfactory solution to this problem with Brazil, it was convinced that the appropriate solution to the matter was the adoption of the Panel report, thus ensuring compliance by contracting parties with their GATT obligations. Argentina had noted the United States' statement at the present meeting regarding its continuing efforts to find a solution. She underlined that the dispute settlement process, in addition to resolving disputes between contracting parties, constituted a vital instrument in supporting the multilateral trading system. Overall, it was necessary in all dispute settlement cases to take into consideration not only the legitimate interests of the parties involved but also the need to ensure the predictability and the credibility of the GATT system. A contracting party that did not assume its GATT obligations undermined the multilateral trading system.

The representative of Uruguay said that the dispute settlement mechanism was a fundamental pillar of the multilateral trading system. Brazil's request for adoption of the Panel report in this instance was valid. Contracting parties should fulfil their GATT obligations to ensure predictability in the multilateral trading system, and Uruguay was disappointed that the United States could not yet agree to adoption of the report. Uruguay requested that the United States reconsider its position as soon as possible.

The representative of Colombia said that this Panel report was linked to the report of the panel established under the Subsidies Code (SCM/94), and which was still pending in the Subsidies Committee. The Panel report at hand had concluded that the countervailing duties applied by the United States to products from Brazil between January 1980 and October 1981 had been incompatible with its obligations under the Subsidies Code. In his view, it would facilitate the adoption of both these reports in the respective bodies, if the United States were to agree to adoption of this Panel report at the present meeting. Brazil then could be willing to accept adoption of the report pending in the Subsidies Committee at the next regular meeting thereof.

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2Agreement on Interpretation and Application of Articles VI, XVI and XXIII (BISD 268/56).
The representative of Brazil noted that the United States had requested a further delay in order to consider this matter. Apart from the question of principle related to the dispute settlement mechanism, it was urgent to settle this matter as a continuing delay was very burdensome for Brazil's trade interests. The interest penalties the United States had claimed on the imports involved exceeded US$1 million per month. If the Council decided on a further postponement, it would be on the understanding that the matter would be fully resolved at its next meeting. Brazil remained ready, under the Council's guidance, to discuss with the United States the details of how this action could best be accomplished.

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

5. United States - Restrictions on imports of tuna
   - Panel report (DS21/R)

The Chairman recalled that at its meeting in February 1991, the Council had established a Panel to examine this matter at Mexico's request. At its meetings in February and March 1992, the Council had considered the Panel report at the European Communities' request, and in March had agreed to revert to this item at the present meeting and had also authorized him to hold consultations on how this report could be dealt with. On the basis of his consultations, he proposed that the Council invite the two parties to the dispute -- Mexico and the United States -- to communicate any recent developments in their bilateral dealings.

The representative of Mexico emphasized the importance his Government attached to GATT's dispute settlement mechanism and to the interests and concerns that had been voiced in recent months by other contracting parties. He recalled his detailed report at the March Council meeting on the efforts undertaken by his Government and by the US Administration to find a satisfactory solution to the problem, at least insofar as its direct impact was concerned, and said this would have made it easier to understand the overall issue and possibly to reduce the political and sensitive aspects thereof. He had also made it very clear then that this issue should not lead to any conflict between the environment and trade. The efforts underway were headed in this direction. His Government had actively promoted the development of a greater dialogue and understanding of this issue at a multilateral level, in defence of the environment and of the different species in need of protection, and with a view to strengthening the GATT. In this overall framework, his Government had convened an important high-level meeting to discuss responsible fishing techniques, to be held the following week in Cancún, Mexico. Mexico hoped that the sum total of efforts in this area would further strengthen the dialogue in and among all countries. He would continue to inform contracting parties of all developments related to this matter.

The representative of the United States said that Mexico had very clearly described the status of their bilateral efforts to resolve this matter and to reach an acceptable agreement which would limit incidental dolphin mortality in tuna fishing in the eastern tropical Pacific Ocean. At the March Council meeting he had described the United States'
legislative proposals to address the embargo issue. His Administration was still working intensively with the relevant congressional committees on this proposal and while there was still more work to be done, it believed that these consultations were moving in a very positive direction. It was encouraged by the progress underway and believed that this represented the best means of achieving the United States' primary objective, namely, to secure enactment of a legislation which would provide alternative means to achieve the environment and conservation objectives already set forth in the original legislation.

The representative of Venezuela said that as his delegation had already noted at the March Council meeting, his Government had initiated consultations with the United States in order to reach a multilateral agreement aimed at doubling efforts toward reducing incidental killing of dolphins and developing technology for this purpose. In this regard, Venezuela had informed the United States that it was ready to pronounce a moratorium on dolphin fishing as from 1994 until the appropriate technologies had been found. Obviously, Venezuela's initiative was subject to action by the United States to lift the present restrictions on tuna imports therefrom. Regrettably, consultations with the United States had not thus far progressed satisfactorily. Venezuela was concerned that a change in the United States' legislation seemed increasingly uncertain. The same uncertainty affected Venezuela's tuna fishing industry which had lost nearly US$80 million since the beginning of the embargo. His Government would therefore pursue its efforts to find a solution to this problem both at the bilateral and multilateral levels. The Council's adoption of this Panel report ranked at the top of the limited range of possibilities for solving the problem. For this reason, Venezuela reiterated that the United States would have to bear complete responsibility for its decision in not agreeing to have this report considered for adoption in the Council. Venezuela had a constructive attitude to this problem, which stemmed from its deep-rooted conviction that all possible ways of finding an expeditious solution had to be explored.

The representative of the European Communities recalled that this item was on the Council's agenda for the third time. It involved a Panel report, and the normal course of action in respect of panel reports -- which the Community favoured -- was their adoption, and, in the case at hand, for the United States to take the necessary measures to bring its legislation into compliance with the Panel's recommendations. The Community was increasingly frustrated with the blockage of the dispute settlement procedures in this regard; it had therefore had no choice but to initiate its own dispute settlement proceeding with the United States (DS29/1). A round of bilateral consultations had been held and, to the extent that a satisfactory solution with regard to the present Panel was not found by the time of the next Council meeting, the Community would have no alternative but to request then the establishment of a panel to examine its complaint.

The representative of Canada expressed disappointment that the United States and Mexico had had so little to report. Canada continued to be concerned over the lack of progress on this case. The US measures had been found to violate its GATT obligations, and had affected a large number of contracting parties. Canada's producers had seen their access to the US
market blocked. In previous Council meetings, Canada had outlined its views on the Panel report and its concerns over the United States' lack of action. It urged adoption of the report and speedy action to remedy the situation. Canada supported the Community's concerns and wished to intervene as a third party in any new panel which might be established on this issue, although it would regret it should such a panel prove necessary.

The representative of Chile said that the fact that the Panel report had been considered at the February and March Council meetings, with a broad consensus to adopt it, indicated contracting parties' concerns that the US measures, taken for environmental reasons, were nonetheless in contradiction to Article XI and could not be justified by Article XX. These were trade restrictive measures applied in a unilateral and discriminatory manner. Although every contracting party was sovereign in the definition of its own environmental policies, it could not extend their application beyond its own territory. Chile was therefore in favour of adopting the Panel report and, at the same time, for drawing up specific agreements for environmental protection when interests of two or more countries were involved. Chile believed that the non-adoption of the Panel report would have an impact on the credibility and the efficiency of the GATT dispute settlement process as the central mechanism to ensure the preservation of all contracting parties' rights and obligations. There would be no point in establishing panels if their recommendations and findings were not respected. While the fact that Mexico and the United States were seeking a bilateral solution was positive, there should be adequate respect for the broad consensus in favour of adoption of this Panel report.

The representative of Colombia said that there was now an awareness that the United States' restrictions on imports of yellow-fin tuna from Mexico and intermediary nations was no longer a bilateral but a multilateral matter. Interest in it arose from the interlinkage between environment and trade, and the real effect which these restrictions had on many countries through the United States' primary and secondary embargoes. Mexico had again made its position very clear, and, for its part, the United States had indicated the course of action it was following in order to change its legislation. Although Colombia believed that such action was necessary, it could be supplemented by adoption of the Panel report, which would strengthen the multilateral trading system of GATT.

The representative of Costa Rica said that adoption of this report would serve the dispute settlement mechanism. Costa Rica therefore urged that it be adopted at the present meeting regardless of any other solution to the matter that might be found subsequently.

The representative of Argentina said that as his delegation had stated on earlier occasions, this Panel report should be adopted. The report contained two aspects of substantial importance: first, it established the parties' rights and obligations under the General Agreement and the GATT-inconsistency of the United States' embargo; second, it was an important precedent for any future action in GATT on environmental protection measures that had an effect on trade. He stressed the need for
collective action by the CONTRACTING PARTIES. Argentina was concerned that the parties to the dispute continued to postpone the Council's consideration of the report, particularly as they were fully aware that the embargo affected a large number of contracting parties, thus preventing a multilateral solution to this problem. Multilateral action on this issue would restrain countries which wanted to do so from adopting national legislation that might be inconsistent with GATT rules and principles. For these reasons, Argentina felt that Council action on this important issue should not be postponed any longer. Proof of this was to be found in the Community's decision to request consultations on an urgent basis (DS29/1) under Section C:4 of the April 1989 Decision on improvements to the GATT dispute settlement rules and procedures (BISD 36S/61). Argentina favoured adoption of the report at hand, but if the parties concerned did not agree to it, it would support establishment of the panel requested by the Community.

The representative of Brazil reiterated his country's support for the early adoption of the Panel report. The Panel's conclusions were of fundamental importance in defining the parameters for the use of trade measures in dealing with environmental goals. Given the potential impact of the Panel report on a wide range of questions, it was understandable that the interested parties wished to ascertain the implications of its adoption for their domestic legislation. Council action on this report should indeed be seen as a form of inducing the parties concerned to introduce modifications in their domestic legislation in such a way as to bring it into line with their GATT obligations. Contracting parties should not lose sight of the fact that the Panel's conclusions in the context of this bilateral dispute had a very important bearing on the operation of the General Agreement itself.

The representative of Senegal recalled his country's position on this issue as stated at earlier Council meetings. Senegal was a major fishing nation with an important tuna industry. While Senegal did not fish in the zone in question, it was suffering the secondary effects of the US embargo. Senegal supported the efforts undertaken by both Mexico and the United States towards a solution, but hoped that the report would be adopted as soon as possible and its recommendations implemented, so as to enable Senegal's industry to resume its former level of operations.

The representative of Japan expressed his Government's disappointment, frustration and concern at the lack of progress on this issue. The Panel report was balanced and valuable, and indicated that the United States had disregarded certain GATT rules in this area. The credibility of the GATT and of its dispute settlement process had to be reinforced and, for these reasons, Japan urged the United States to bring its laws and regulations into GATT conformity and to adopt this report without delay.

The representative of Thailand said that, in his view, there were really two issues before the Council: first, the adoption of the Panel report, and second, the consultations between the parties to the dispute. As to the first, Thailand reiterated its strong support for the early adoption of the report; the credibility of the GATT's multilateral dispute settlement mechanism was clearly at stake. As to the second, while Thailand appreciated the fact that consultations between the parties were
continuing, this was not a sound reason to delay adoption of the report. Thailand therefore urged the parties involved to reconsider their position and come forward with a helpful stance. As a third party in this dispute, Thailand wished to register its strong interest in participating in any consultations which could be relevant to Thailand’s GATT rights.

The representatives of Sweden, Pakistan, Hong Kong and Peru referred the Council to their respective delegations’ statements at the February and March Council meetings, which they said reflected clearly their countries’ positions on this matter and therefore did not need repeating (see C/M/254, item 9 and C/M/255, item 2).

The representative of Uruguay said that his delegation wished to join others that had urged the prompt adoption of this Panel report and for the same reasons.

The representative of India said that his delegation had already given its detailed views on this report at the February and March Council meetings. India welcomed the information that had been provided by Mexico and the United States at the present meeting on the steps being taken bilaterally to resolve the dispute. The Panel report, however, had addressed other issues which went beyond the bilateral element of the dispute and were fundamental to the operation of the multilateral trading system. His delegation therefore favoured early adoption of this report.

The representative of New Zealand recalled that his delegation had asked some questions at the March Council meeting, to which no reply had been received. In particular, New Zealand had wanted to know whether the arrangements that were being discussed between Mexico and the United States would be of a multilateral or a regional nature. It was also interested to know which other countries were already involved in these discussions or might subsequently be involved, and whether the process underway was expected to lead to the adoption of the Panel report.

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

6. United States - Measures affecting alcoholic and malt beverages
- Panel report (DS23/R)

The Chairman recalled that at its meeting in May 1991, the Council had established a Panel to examine this matter at Canada’s request. The Panel report was now before the Council in document DS23/R.

Mr. Lacarte-Muró, Chairman of the Panel, introducing the report, said that the Panel had met with the parties to the dispute in October and December 1991, and had received submissions from the parties and from three other interested contracting parties. The Panel had presented its report to the parties to the dispute on 7 February 1992, and had circulated it to contracting parties on 16 March. The report was a voluminous one, as the Panel had been asked to examine various aspects of the liquor regulations of 44 different states. A total of 76 specific state measures, as well as two federal-level measures, had been before the Panel.
The Panel had reached the following conclusions: (i) the provision of lower rates of excise taxes, or excise tax credits, whether at the federal or state level, on certain domestic beer and wine, which was not available to imported beer and wine, was inconsistent with Article III:2; such discriminatory taxes on imported products could not be justified by Article III:8(b); (ii) the exemption of local producers from state requirements to use wholesalers, which applied in the case of imported beer and wine, was inconsistent with Article III:4 and had not been justified under Article XX(d); (iii) the requirements, which did not exist for in-state like products, that imported beer and wine be transported into certain states by common carrier, were inconsistent with Article III:4 and had not been justified under Article XX(d); (iv) the application of a higher licensing fee for imported beer and/or wine than for like domestic product was inconsistent with Article III:4 in one case, and inconsistent with Article III:4 in another case; (v) the exemption by a certain state of domestic in-state wine, but not the like imported product, from decisions to prohibit the sale of alcohol within political subdivisions of the state was inconsistent with Article III:4, whether or not the law was being implemented; (vi) the price affirmation requirements for imported beer and wine in certain states, which were not applicable to the like domestic products, were inconsistent with Article III:4, whether or not these requirements were being enforced; (vii) listing and delisting practices maintained by liquor control boards in certain states which accorded less favourable treatment to imported wine than to the like domestic product were inconsistent with Article III:4; (viii) the record did not support a finding that state wholesaler distribution requirements were "mandatory existing legislation" in terms of the Protocol of Provisional Application; (ix) the United States had not demonstrated to the Panel that the conditions for the application of Article XXIV:12 had been met; and (x) certain non-discriminatory requirements, including on labelling and points of sale, based on the alcohol content of beer were not inconsistent with either Article III:4 or Article III:1. In view of the Panel's conclusions in respect of federal and state tax measures, it had not been necessary to address Canada's subsidiary argument that these measures nullified or impaired tariff concessions on beer, wine and cider granted by the United States pursuant to Article II. The Panel had recommended that the CONTRACTING PARTIES request the United States to bring its inconsistent federal and state measures into conformity with its GATT obligations.

He recalled that on 27 February 1992, the Panel had notified contracting parties (DS23/5) that it could not circulate its report in the six months following agreement on the composition and terms of reference of the Panel due to the sheer volume and complexity of the complaint before it. The Panel had been left with the impression that more intensive bilateral consultations between the two parties before its establishment might have resulted in an earlier clarification of disputed facts, some of which remained disputed between the parties until the end of the Panel proceeding. More complete consultations would perhaps have permitted bilateral resolution of some of the matters at hand. The Panel therefore wished to emphasize the importance of thorough bilateral consultations and efforts at bilateral resolution in order to ensure the rapid and efficient completion of GATT dispute settlement procedures.

The representative of Canada said that the Panel report was sound and well-reasoned, and that Canada agreed with its conclusions. He noted that
more than thirty days had passed since the report had been circulated to contracting parties. In accordance with the April 1989 Decision on improvements to the GATT dispute settlement rules and procedures (BISD 36S/61), Canada therefore requested that the report be adopted at the present meeting. The Panel’s recommendations required the United States to bring its federal and state measures into GATT conformity, and Canada urged the United States to take immediate steps to implement them. In requesting the Panel, Canada had taken into consideration the concerns expressed both by its producers and its provincial governments regarding US practices affecting beer, wine and cider imports. It was important that Canadian producers in the North American market had an equal opportunity to compete in that market. The measures that had been found to be GATT-inconsistent by the Panel -- including those which affected taxation, distribution, transportation, pricing, listing/delisting and access to points of sale -- constituted significant trade barriers, and restricted the ability of Canada’s beer, wine and cider producers to compete in the US market, which was their single largest export market. Canada looked forward to an early meeting with US officials to discuss implementation of the Panel’s recommendations.

The representative of the United States said that this Panel report was unprecedented in scope and complexity -- it was more than 100 pages long and had addressed some 80 individual federal and state practices. The report was also unprecedented in that it was the first to address state practices in the United States and their consistency with its GATT obligations. In the US federal system of government, each state had substantial law-making authority. This was particularly true in the area of the regulation of alcoholic beverages, in which the states operated under an explicit grant of authority from the 21st amendment to the US Constitution. While the scope and complexity of the Panel report were broad, the cumulative trade effect of all the measures at issue in the report was negligible. By and large, the beer and wine of all countries, including Canada, could freely and fairly be offered for sale in all 50 states. Commercial competitiveness, not trade barriers, determined which brands succeeded in the US market. Despite the negligible cumulative trade effect of all the measures at issue, the United States took its GATT obligations and the dispute settlement process very seriously. For this reason, it had embarked on an extensive consultation campaign with its states when Canada had first brought its complaint, and had intensified those consultations since the Panel had issued its report. It was currently consulting with all affected jurisdictions in the country. Correspondence had been exchanged with contact points established in each affected state for the purposes of this dispute and also for airing their concerns and questions. The Office of the Attorney General -- the principal law-enforcement officer -- had been consulted in each state, as also had the Congress on the federal measures at issue. This was a daunting task, but one that the United States had undertaken with vigour. The consultation process, however, was not yet complete. For this reason, the United States could not agree to adoption of the Panel report at the present time. The consultations with the states would continue, and his Government expected to have a more definite and positive response to the Panel report at the next Council meeting.

The representative of Australia said that Australia had a substantial interest in this matter and had made a third-party intervention in the
Panel proceeding. Australia supported the Panel's findings and recommendations, and joined Canada in urging the early adoption of its report. Australia noted with satisfaction that the United States was taking steps that would hopefully prepare the way for early adoption and implementation of this report.

The representative of New Zealand said that New Zealand, too, had made a third-party submission to the Panel and had underlined the importance it attached to the United States as an export market for its beer and wine. New Zealand supported the Panel's conclusions and urged the early adoption of its report and the implementation of its recommendations.

The representative of the European Communities said that the Panel report was well-reasoned and should be adopted rapidly. The Community noted with interest the United States' statement, which could be summed up as saying that even though the cumulative trade effect of all the measures at issue in the Panel report was negligible, the United States could not agree to its adoption the first time it was considered in the Council.

The representative of Canada expressed his disappointment that the United States was not in a position to agree to adoption at the present meeting. The measures in question, contrary to what the United States had stated, had clear and adverse trade effects on Canada's producers. If the United States' statement implied that it could agree to adoption at the next Council meeting, Canada would welcome it. Finally, Canada requested derestriction of the Panel report at the present meeting.

The representative of the United States said that the United States did not object to the derestriction of the report.

The Council took note of the statements, agreed to derestrict the Panel report in DS23/R, and agreed to revert to this matter at its next meeting.

7. **EEC - Payments and subsidies paid to processors and producers of oilseeds and related animal-feed proteins**
   - Follow-up on the Panel report
   - Report of the members of the original oilseeds Panel (DS28/R)

The Chairman recalled that at its meeting in January 1990, the Council had adopted the report of the original Panel on this matter (BISD 37S/86). Following discussions regarding the follow-up on this Panel report, the United States had proposed at the October 1991 Council meeting that the original Panel be reconvened to assist the CONTRACTING PARTIES in determining whether measures being taken by the Community would bring its regulations into GATT conformity and would eliminate the impairment of the Community's tariff concessions on oilseeds. Following further discussion at the November Council meeting, the CONTRACTING PARTIES at their Forty-Seventh Session in December 1991 had reached an agreement (SR.47/1) under which the members of the original Panel were to be reconvened to examine whether the measures taken by the Community in Council Regulation 3766/91 of 12 December 1991 complied with the Panel's recommendations and rulings, and to make such findings as would assist the CONTRACTING PARTIES. Their follow-up report was now before the Council in document DS28/R.
Introducing the report on behalf of the Chairman of the original Panel, he said that the members of the original Panel had, as requested by the CONTRACTING PARTIES, examined whether the measures taken by the Community complied with the recommendations and rulings in paragraphs 155 to 157 of the original Panel report adopted on 25 January 1990, and had made findings in order to assist the CONTRACTING PARTIES in this matter (paragraphs 69 to 92). As a result of these findings, they had reached the following conclusions. With respect to paragraph 155 of the original report, they suggested that the CONTRACTING PARTIES take note of the Community's statement that the new support system for oilseeds under Regulation No. 3766/91 was intended to eliminate any inconsistency with Article 111:4 by the discontinuation of payments to processors conditional on the purchase of domestic oilseeds. With respect to paragraph 156 of the original report, they found that benefits accruing to the United States under Article II in respect of the zero tariff bindings for oilseeds in the Community's schedule of concessions continued to be impaired by the production subsidy scheme provided for in Regulation No. 3766/91. With respect to paragraph 157 of the original report, they considered that there was no reason for the CONTRACTING PARTIES to continue to defer consideration of further action in relation to the impairment of the tariff concessions. They had accordingly recommended that the Community should act expeditiously to eliminate the impairment of the tariff concessions -- either by modifying its new support system for oilseeds or by renegotiating its tariff concessions for oilseeds under Article XXVIII. In the event that the dispute was not resolved expeditiously in either of these ways, the CONTRACTING PARTIES should, if so requested by the United States, consider further action under Article XXIII:2.

The representative of the United States recalled that the members of the original Panel had been reconvened in accordance with paragraph I.3 of the April 1989 Decision on improvements to the GATT dispute settlement rules (BISD 36S/61), which provided that: "The Council shall monitor the implementation of recommendations or rulings adopted under Article XXIII:2." Their task had been to examine whether measures taken by the Community to establish a support system for oilseeds producers complied with the recommendations and rulings of the original Panel report. They had further been directed to "provide such findings as will assist the CONTRACTING PARTIES." In the context of paragraph I.3 of the April 1989 rules, their mandate was to advise the CONTRACTING PARTIES as to whether the Community had implemented the recommendations of the original Panel report. Their report was clear and precise in its advice. In light of the directive of the CONTRACTING PARTIES and the findings of the reconvened members of the original Panel, the United States wished to know what the Community had already done, or intended to do expeditiously, to comply with the original Panel's recommendations to eliminate the continued impairment of benefits accruing to the United States under Article II in respect of the zero tariff bindings for oilseeds in the Community's Schedule of concessions by the production subsidy scheme provided for in Regulation No. 3766/91.
The representative of the European Communities noted that the report of the reconvened members of the Panel was being considered by the Council for the first time. While the Community could not accept the report, it had already made clear that it was looking for a solution to the dispute. The Community would come forward with a concrete proposal for a solution before the next Council meeting.

The representative of Brazil said that as an interested third party, Brazil had followed this matter closely. Brazil had shared the original Panel's view that the Community's régime conflicted with its GATT obligations, and had hoped for early action by the Community to implement that Panel's recommendations. Following the issuance of the Community's new oilseeds régime in Regulation No. 3766/91, Brazil had been concerned that the new régime continued to distort international trade and did not comply with the recommendations of the original Panel report. The conclusions of the follow-up report had corroborated Brazil's perception. He therefore urged the Community once again to review its position and to take the necessary steps to effectively bring itself into GATT conformity. Arguments that had been publicly used to avoid the Community's GATT obligations, such as that the new Regulation had been adopted unanimously by the European Council of Ministers or that a solution would be sought in the Uruguay Round, were totally unacceptable. All contracting parties should keep in mind that much of the Uruguay Round was dedicated to the establishment of an improved dispute settlement system. Since the Mid-Term Review of the Round in December 1988, the international trading community had had some benefits from such an effort. It was important that all parties respected the principles of the improved dispute settlement mechanism and contributed by their actions to its reinforcement.

The representative of Canada said that his country had a significant trade interest in this case and had participated as a third party in the original Panel as well as in the follow-up proceedings. The reconvened members of the original Panel had found that the Community's present support programme for oilseeds did not redress the problem of nullification or impairment. Canada believed this analysis was correct and urged the Community to take the necessary action as soon as possible on the basis of the Panel's recommendations. Canada welcomed the Community's firm undertaking to deal with this matter in a definitive way at the next Council meeting, and believed that the Community's response should fully comply with the Panel's recommendations.

The representative of Argentina recalled that his country had participated in the original Panel's proceedings as a substantially interested third party. Exports of oilseeds and semi-processed products thereof represented 20 per cent of his country's total exports. Argentina had an open economy and considered it indispensable that decisions regarding production and investment be determined exclusively by the evolution of international demand, particularly in the Community, which was Argentina's main trading partner. It was not possible to conceive of an open and equitable international trading system that would function on the basis of uncertainty. The stability and predictability of the tariff concessions negotiated by the Community in the oilseeds sector were a
necessary precondition for the continuity and development of related economic activities in Argentina. Furthermore, given the importance of the Community as a trading partner, its strict compliance with international obligations was fundamental for the credibility of the multilateral trading system as embodied in the GATT. Argentina could not accept any linkages between the fulfilment of commitments undertaken decades prior to the launching of the Uruguay Round and the results of those negotiations. Argentina therefore supported adoption of the reconvened Panel's recommendations and urged the Community to redress immediately the situation of nullification and impairment which had been determined by the original Panel. Argentina believed that the reconvened members of the Panel should also have considered the Community's continuing violation of the national treatment principle in Article III, and had serious doubts as to whether the Community had made its oilseeds legislation consistent with this fundamental principle.

The representative of Australia said that his country had a substantial interest in the oilseeds case and had intervened as a third party in both the original and the reconvened Panel proceedings. Australia supported the arguments, conclusions and recommendations of the reconvened Panel. Australia was also conscious of the special nature of this case. The reconvened members had been requested to examine whether measures taken by the Community complied with the recommendations and rulings of a report adopted over two years earlier. The nature of their recommendations and the expression of urgency thereof appropriately reflected the special nature of the case. Australia believed that contracting parties had a legitimate right to expect an immediate and positive reaction from the Community, which should have been prepared at the present meeting to agree to adoption of the report and also to indicate its preparedness to rapidly bring its oilseeds régime into compliance with the recommendations and provide a definite time-frame for taking implementation steps. Australia maintained this position, although it had noted the Community's undertaking to come forward with a proposal prior to the next Council meeting. Australia took this to mean that the Community would adopt the report at that meeting and that its proposal would effectively and expeditiously implement the recommendations of the report.

The representative of Colombia said that although his country's trade interests had not been affected substantially by the Community's régime, it strongly supported the principles of inviolability of tariff concessions and of procedural automaticity in dispute settlement, including the rapid implementation of Panel recommendations. Colombia therefore supported the rapid implementation of the recommendations of both the original and the follow-up Panel reports on the oilseeds case.

The representative of Chile said that his country's exports had also been adversely affected by the Community's oilseeds régime. Chile supported the principle of procedural automaticity in dispute settlement, including the rapid adoption of panel reports and implementation of their recommendations. It would not be appropriate for the Community to delay further the implementation of the reconvened Panel's recommendations since this would weaken the credibility of the GATT dispute settlement system.
The representative of the United States recalled that the oilseeds issue had gone unresolved for many years. The United States had brought the case to the GATT in 1988. At that point, the first indication of the Community's intransigence had surfaced as it had refused to agree to terms of reference or membership of the Panel for one year, i.e., until June 1989. Thereafter, the Panel process itself had been expeditious and the report of the Panel had been submitted to the parties in November 1989. The report had agreed that the basis for the US complaint had been justified, and had concluded that the Community should modify its regulations to eliminate the crusher subsidy which favoured use of domestic oilseeds and to eliminate the impairment of the tariff concessions for oilseeds. Upon adoption of the report in January 1990, the Community had become obligated, under the terms of the GATT and the broader rules of international law, to fully implement the report. In connection with the adoption of the report, the Community had indicated to US authorities that corrections to make the Community's régime fully consistent with its obligations under the report would be in place for the 1991 marketing year, i.e., by the end of 1990.

In January 1991, the United States had reviewed the Community's 1991/92 price package proposal for oilseeds and had concluded that it did nothing to comply with the Community's obligation to eliminate the impairment of tariff concessions. The Community had then promised to propose an oilseeds reform package no later than July 1991 -- for adoption by the European Council of Ministers no later than October 1991 -- which would be effective for crops harvested beginning in 1992. The United States had reluctantly agreed to this one-year delay in the Community's oilseeds reform. When the proposed reform package had been announced in July 1991, however, the United States had found that while the crusher subsidy appeared to have been eliminated, the Community had failed to eliminate the impairment of tariff concessions. The United States then began a concerted effort to convince the Community to alter its régime to make it consistent with the Panel report. The Community had refused, however, and the plan had been adopted in October 1991.

Although all had known from that moment that the plan would not be changed in any meaningful way, the Community had blocked GATT consideration of whether the new scheme fully implemented the Panel report, arguing that GATT oversight was improper until the European Parliament had rendered an opinion and regulations had been issued. Finally, the Community had agreed at the CONTRACTING PARTIES' Forty-Seventh Session in December 1991 that the members of the original Panel should be reconvened to assist the CONTRACTING PARTIES in determining whether the Community had fully implemented their report. It was important to emphasize that the CONTRACTING PARTIES had not established a new panel. They had acted under their powers to monitor the implementation of an existing Panel report, and had been explicit that the mandate of the reconvened members of the Panel was to determine whether the Community had implemented the findings of the original Panel report. The reconvened members had completed their review expeditiously, providing their follow-up report to the parties on 16 March 1992. Once again they had determined that the United States was correct in its claim that the Community had not fully implemented the original Panel report. Recalling their recommendation in that report that the Community should be given a reasonable period to come into compliance, they had said that this period had now passed. Thus, the Community was obliged to take steps at once to eliminate the impairment of tariff concessions to the United States. Failing such expeditious implementation, withdrawal by the United States of equivalent concessions would be appropriate.
The Community's reaction to the follow-up report had been swift, definitive and wholly negative. On 31 March 1992, the Community's Council of Agriculture Ministers had unanimously rejected the follow-up report and had declared that the new oilseeds régime would not be changed. The United States had asked the Community at the present meeting to indicate whether it would immediately change its oilseeds régime to comply with its international obligation to fully implement the January 1990 Panel report. The response had not been positive. The United States was disappointed that the Community had refused to fulfil its international obligations by not informing the Council at the present meeting of action taken, or to be taken expeditiously, to modify its oilseeds subsidy régime. Since the Community was unwilling to implement the Panel report, he asked whether it was then, in accordance with Article XXIII:2, willing to allow the United States to suspend the application of appropriate GATT concessions or other obligations.

The representative of the European Communities said that his previous statement had been very clear. The Community would put forward a concrete proposal before the next Council meeting; this showed its desire to find a solution to the dispute and was indeed a very expeditious response to the Panel's conclusions, given that the present Council meeting was the first occasion to consider its report as well as the fundamental importance of the issues at stake. It would be quite unreasonable to expect the Community to go further at this stage.

The representative of the United States regretted that the Community was not prepared to implement the Panel's clear and precise recommendations. The follow-up report had stated expressly that the Community should act expeditiously to bring its programme into full compliance, failing which it should accept the withdrawal of equivalent concessions by the United States. The Community's response at the present meeting could only be interpreted as a continued rejection of its obligations. As he had previously stated, the Community's Council of Agriculture Ministers had already declared publicly that the follow-up report was unacceptable. The United States therefore had no grounds to believe that the Community took its obligations seriously. This issue had gone unresolved for too long, and had provided a regrettable example of delayed implementation of a clear panel ruling. After eighteen months of stalling, the Community had put into place a new régime which clearly did nothing to address the impairment problem. It now appeared that the Community officials concerned were unwilling to go further. Under these circumstances, and in light of the damage suffered by US exporters which currently amounted to US$1 billion, the United States was left with no choice but to act to remedy the situation. His Government would announce, that same day, the steps it would shortly be taking to withdraw GATT concessions in order to re-establish a balance of concessions in its trade with the Community. The United States had hoped that the Community would have made a proposal at the present meeting to change its oilseeds régime so as to end the impairment of concessions. While the United States hoped that such a solution would still be forthcoming so that its intended course of action could be avoided, it would remain firm in its resolve to redress this unacceptable situation. The choice now lay with the Community as to how best this matter could be brought to an end.
Regarding any charges of unilateralism that might be made, he underlined that the United States had sought to resolve this matter through the GATT process. The Community's oilseeds subsidy programme -- which had cost billions of dollars -- had led to a 400 per cent increase in production over the past decade, and to a loss of markets for competing US producers. European agricultural officials had often justified this system by saying that they would not abandon their farmers. Did they believe that others should abandon their farmers to the Community's policies? That was, however, the implication to be drawn from the Community's current policies. The United States strongly preferred an amicable solution, and would not benefit from the withdrawal of GATT concessions. However, until this matter was taken seriously, there could be no effective solution through the GATT system. The United States was prepared to discuss this matter with the Community at any time, and earnestly hoped that a solution could be found thereby.

The representative of the European Communities said that the previous statement by the United States had a strong touch of unilateralism about it and was regrettable. The United States was aware that it would be quite out of order, at the first consideration of a panel report, for the Council to act on a request for some form of authorization to proceed with withdrawal of concessions in regard thereto. While the United States charged the Community with procrastination, it had itself been unable to respond to requests for action on a number of earlier occasions involving panel reports that had been unfavourable to it. As all were aware, the case at hand was one of the highest importance to the Community. Yet, the Community had indicated that it was not only prepared to look for a solution but to come forward with a proposal prior to the next Council meeting. Despite this positive response, the United States had indicated an inclination towards unilateral action. The Community, however, had nothing more to say at the present time. It had made its position clear, and stood by it.

The representative of Finland, on behalf of the Nordic countries, said that they recognized the importance of the report by the reconvened members of the Panel. However, the findings and recommendations of that report gave rise to important questions as to the implication or the interpretation of various GATT provisions. The Nordic countries were not ready yet to take a position on the United States' views as to the legal nature of the report and its implications, and wished to have more time for a deeper and more thorough examination thereof. The Nordic countries therefore reserved their position on this matter and hoped to be able to revert to it at a later stage.

The representative of Canada urged the United States to refrain from taking any GATT-inconsistent action, particularly with respect to the serious question of retaliation. Canada believed that the Community should not be permitted to block adoption of the report of the reconvened members of the Panel. However, even if the Community should take such action, Canada was of the view that the United States should seek GATT authorization prior to taking any retaliatory steps against the Community. Canada would support such a request by the United States.
The representative of Switzerland noted that in paragraph 92 of their report, the reconvened members of the Panel had recommended that in the event the dispute had not been resolved expeditiously by the Community, the CONTRACTING PARTIES should, if so requested by the United States, consider further action under Article XXIII:2. It appeared from the Community's statements at the present meeting that rapid action to resolve this situation was still possible. However, the CONTRACTING PARTIES, as recommended by the Panel should, if so requested by the United States, also consider further action. He underlined that, as Canada had stated, any measures to be taken by the United States should be authorized by the CONTRACTING PARTIES, and this only after it could be said with certainty that the Community had not acted expeditiously. In Switzerland's view, such a statement could not be made at the present meeting. The time requested by the Community -- until the next Council meeting -- to present concrete proposals did not appear to be unreasonable given the Council's tradition. He cautioned against any escalation of the problem at hand, which would be detrimental to all.

The representative of Austria said that the report by the reconvened members of the Panel deserved careful study, and his delegation was not in a position to adopt it at the present meeting. On the other hand, Austria would encourage the parties involved to seek a mutually acceptable solution. It believed that there was hope for such an outcome because, on the one hand, the Community had indicated it would present concrete proposals by the next Council meeting and, on the other, the United States had indicated its readiness to discuss the matter further with the Community. Austria called on both parties to try to resolve this matter. If counter measures were finally to be taken by the United States, these should only be done with the CONTRACTING PARTIES' consent.

The representative of Uruguay said that on this occasion, as indeed on other issues of this nature, Uruguay wished to ensure that the GATT dispute settlement mechanism was respected fully. Uruguay's main interest was to see that the contracting parties concerned complied with panel recommendations, once these had been adopted, and also that the right of any contracting party to use any aspect of the current dispute settlement procedures be respected. As Switzerland had stated, paragraph 92 of the report at hand indicated quite clearly that if the dispute were not resolved expeditiously, the CONTRACTING PARTIES should, if so requested by the United States, consider further action under Article XXIII:2. Uruguay would be guided by this paragraph in the dispute at hand, bearing in mind the need for strict compliance by the parties concerned with all the provisions of the dispute settlement procedure. Indeed, it was the duty of all to strengthen and to respect those procedures in all their aspects.

The representative of Argentina said that while the United States was within its rights in withdrawing concessions, it could do so only if it were authorized by the CONTRACTING PARTIES. Argentina would support the United States if it made such a request to the CONTRACTING PARTIES. However, like the Community, Argentina was against unilateral measures, and believed that all the procedures provided for in the General Agreement should be fulfilled first. He reiterated Argentina's traditional position of preference for the elimination of GATT-inconsistent measures.
The representative of Colombia said that, in his view, the GATT dispute settlement mechanism was based on four fundamental pillars: (1) the right to a panel; (2) the general application of a panel's recommendations; (3) the evaluation of each case on its merits; and (4) the prohibition of unilateral measures. Because of the foregoing, and given the overall framework of the GATT, Colombia urged the United States to reconsider its position and to act in accordance with the parameters of the General Agreement and the dispute settlement procedures.

The representative of Australia said that his Government understood and shared the United States' frustration over the situation that had been allowed to develop in this case. As he had said earlier, contracting parties had a legitimate right in the circumstances to expect an immediate and positive reaction from the Community, i.e., to adopt the report and to provide a definite timetable for the implementation of its recommendations. It would, indeed, be a perversion of the dispute settlement system if panel processes were to be used as a device to suspend compliance with GATT obligations indefinitely. When it was clear that a contracting party continued to be in breach of its GATT obligations, as confirmed through the dispute settlement process, that contracting party was required to take steps to repair the nullification or impairment. If it refused to take steps to repair the breach, it should then be prepared to accept the consequences of GATT-sanctioned retaliation. It would therefore be appropriate, especially in view of the specific recommendations in the Panel report at hand, for the Council, in the absence of firm proposals and a timetable for implementation, to consider a request from the United States for the suspension of GATT concessions as provided for in Article XXIII. Australia urged that such a request be made, and recognized that consideration of its specifics would have to wait until a further Council meeting, and take account of any positive confirmation of the Community's position on adoption and implementation of the report in the interim.

The representative of Chile said that his Government supported the full respect for GATT rules including the prohibition of unilateral actions and compliance with panel reports. For this reason, Chile urged the Community to implement the Panel's recommendations, and also urged the United States to avoid applying unilateral measures. Chile joined Canada in urging all parties to find a mutually acceptable solution as soon as possible.

The representative of India said that if the United States were to pursue the course of action that it had indicated, i.e., to withdraw current concessions from the Community in the near future, it would itself be violating the recommendations in the Panel report at hand. Moreover, India's views on the question of unilateralism were well-known, and he would not repeat them. By taking such action, the United States would be embarking on a course of unilateralism which would be in violation of its GATT commitments. India would not agree with this course of action, and strongly discouraged the United States from pursuing it; instead the United States should follow the course proposed by the Panel.
The representative of New Zealand said that the recommendations of the original Panel report on this issue had been clear and unequivocal, and had asked that the Community bring its oilseeds régime into GATT conformity. The follow-up to that report had shown that despite steps taken by the Community, the impairment of the original tariff binding continued. A prompt resolution of this long-standing dispute was now called for. The credibility of GATT's rules and disciplines for dispute settlement, and therefore of the GATT itself, was at stake. He hoped one could assume from the Community's statement that it intended to bring itself into conformity with its GATT obligations at once. New Zealand fully understood the frustrations felt because of the time that had been taken in resolving this dispute thus far. At the same time, it believed that multilateral procedures should be adhered to at all times, and that action had to be taken in the context of these procedures.

The representative of Brazil expressed his disappointment that the Community had not shown any willingness to comply with the Panel's recommendations and had only spoken of a proposal to be presented at the next Council meeting. Brazil believed that compliance with panel reports should be always pursued, if possible by conciliation. Further steps, again within the framework of GATT rules, should only be considered as last resort solutions. Brazil recognized, however, that such steps might be unavoidable since indefinite procrastination could not be accepted or stimulated. However, Brazil could not lend its support to measures or threats thereof outside the scope of the GATT dispute settlement mechanism. It hoped that the United States would reconsider its decision.

The representative of the European Communities said that no delegation had supported the United States' view that there should be a move in the direction of issuing retaliation lists as of that day. He asked whether there was any legal basis for the issuance of such a list -- as threatened by the United States -- which would have immediate effect and the threat of which would affect trade.

The representative of Japan said that Japan was not an exporter of oilseeds and was in that sense a disinterested third party. However, this issue had a number of implications which Japan had noted already in January 1990, namely the relationship between domestic support and tariff concessions; these implications needed careful consideration. Moreover, as the Nordic countries had noted, the legal nature of the reconvened Panel members' report was not totally clear; again, one needed to reflect on what that might be. With regard to the United States' suggestion that it might depart from GATT obligations, Japan would find such a unilateral departure from multilaterally accepted rules unacceptable.

The Council took note of the statements and agreed to revert to this matter at its next meeting.
8. **Yugoslavia**  
- **Transformation to the Federal Republic of Yugoslavia (L/7000)**

The representative of Yugoslavia, speaking under "Other Business", said that on 27 April 1992, his delegation had informed the Director-General in writing of the promulgation, that same day, of the Constitution of the Federal Republic of Yugoslavia (FRY) by the Assembly of the Socialist Federal Republic of Yugoslavia. As indicated in document L/7000, the Socialist Federal Republic of Yugoslavia (SFRY) had been transformed into the FRY consisting of the Republics of Serbia and Montenegro. Strictly respecting the continuity of the international personality of Yugoslavia, the FRY would continue to fulfil all the rights conferred to and obligations assumed by the SFRY in all international organizations, including participation in international treaties ratified or acceded to by Yugoslavia. The FRY as a founding member of the United Nations acknowledged its full commitment to the world organization, the United Nations Charter and to the Conference on Security and Cooperation in Europe, as its founding participating State and all CSCE documents, in particular the Helsinki Final Act and the Charter of Paris. The FRY would continue to pursue Yugoslavia's foreign policy of the broadest possible equitable cooperation with all international factors, including its activities in the Non-Aligned Movement as a founder member State.

The representative of the United States said that his Government was not ready to take a position on the matter set out in document L/7000, and fully reserved all its GATT rights.

The representative of the European Communities said that his delegation had indeed already noticed the major event that had taken place in Belgrade and the effect it had on the contracting party status of the country sitting behind the nameplate of Yugoslavia in this institution. The Community noted the claim for succession made by the new FRY, but was not ready to take a firm position thereon, as this claim could not be dealt properly with under "Other Business" at the present meeting but required appropriate Council debate and action. The question of Yugoslavia’s contracting party status should therefore be on the agenda of a future Council meeting. In the interval, the Community felt that the Panel process which had been initiated between the former SFRY and the European Communities no longer had any foundation, for the reasons just explained, and could not proceed until the clarification of Yugoslavia’s claim for succession had taken place.

The representative of Austria said that his delegation had listened with interest to Yugoslavia’s statement. His authorities considered this matter to be a very difficult political and juridical problem on which they could not take a position at the present meeting. Austria therefore reserved its right to revert to this matter at a future date.

The representative of Yugoslavia said that his statement had been meant to inform the Council and not to initiate a discussion. As to the Panel process referred to by the Community, his authorities' position had not changed since the sanctions in question were still being applied. The Panel process should therefore continue.

The Council took note of the statements.

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3 See C/M/255, item 3.
9. **Canada - Import, distribution and sale of certain alcoholic drinks by provincial marketing agencies**

- Follow-up on the Panel report (DS17/R, DS17/5)

The representative of the European Communities, speaking under "Other Business", referred to a recent communication from Canada (DS17/5) advising contracting parties of measures taken to ensure compliance with the General Agreement by Canada's provincial governments pursuant to the Panel's recommendations on this matter (DS17/R). His authorities were unhappy that Canada had not afforded the Community, an interested party, any real opportunity for consultation in establishing those measures, and had thus far refused to provide full information thereon. The Community was disappointed with the limited scope of the information in DS17/5 and intended to pursue this matter bilaterally, and, if necessary, multilaterally. The Community was particularly concerned with the announcement of a transitional period to implement these measures. Most of these measures responded to an earlier Panel report on this matter adopted in 1988, and the Community was therefore surprised to see a transitional period being suggested until 31 March 1995. The Community also had specific concerns as to the precise meaning of the planned actions by the different provinces as announced in the communication. It would take up these matters in bilateral consultations with Canada.

The representative of Canada reiterated his Government's willingness to consult with any interested contracting party on this matter. Indeed, consultations with the Community were ongoing in Ottawa. Canada had also consulted with the United States, at the latter's request, and a provisional understanding had been reached under which discussions would continue on a set of agreed principles. Canada would implement the Panel's recommendations on an m.f.n. basis, and would inform contracting parties of developments as early as possible.

The Council took note of the statements.

10. **Peru - Establishment of a new Schedule XXXV**

- Request for a waiver under Article XXV:5

The representative of Peru, speaking under "Other Business", said that her Government had approved, as of the present month, the adoption of the common tariff nomenclature of the countries members of the Andean Group (NANDINA), which was based on the Harmonized System and which replaced the earlier tariff based on the Customs Cooperation Council nomenclature. Her delegation had only recently received this information and had not been able to circulate a request for a waiver to implement the new schedule in time for consideration by the Council at the present meeting. Accordingly, Peru hoped the Council could consider this request at its next meeting.

The Council took note of the statement.

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4Canada - Import, distribution and sale of alcoholic drinks by provincial market agencies (BISD 35S/37).
11. **Central European Cooperation Committee**

The representative of Hungary, speaking also on behalf of the Czech and Slovak Federal Republic and Poland, under "Other Business", informed the Council that on 17 April these countries had signed a Joint Declaration on the establishment of a Central European Cooperation Committee. The Committee was designed to provide a forum for regular consultations on different aspects of the three countries' external economic policies, in particular on matters in which they had common or similar interests. The Committee would meet at ministerial level at least once a year alternately in the three countries, under the chairmanship of the host country's representative. Appropriate provisions were foreseen with a view to adopting the necessary organizational structure for work to be carried out within the Committee's framework. Simultaneously with the adoption of the Joint Declaration, the Committee's first meeting had been held, at which ministers had expressed their satisfaction with the entry into force, on 1 March 1992, of the Interim Agreements putting into effect the trade provisions of the Association Agreements concluded between the European Communities and their respective countries. They had agreed that this was an important step in the process of integration of their economies into the European Communities. The ministers had also exchanged views on the state of implementation of the economic objectives defined in the Visegrád and Cracow Declaration of their Heads of State and Heads of Government, with special regard to the negotiation of free-trade agreements between the three countries. It had been stated that these negotiations were proceeding satisfactorily and would enable their successful conclusion and the signature of the agreements in the course of 1992. The ministers had stated with regret that no meaningful progress had yet been made regarding their countries' participation in the OECD countries' aid programme offered to the Commonwealth of Independent States (CIS). They had expressed concern that under such circumstances these programmes had not promoted the maintenance of the three countries' traditional trade flows to that region. They had expressed the hope that in order to prevent lasting displacement from the CIS markets, their countries would be included therein in the near future.

The Council **took note** of the statement.

12. **Working party on "German unification - Transitional measures adopted by the European Communities"**

The **Chairman**, speaking under "Other Business", recalled that at their Forty-Sixth Session in December 1990, the CONTRACTING PARTIES had established a Working Party to examine this matter, and that its chairmanship had been announced at the Council meeting held on 6 February 1991. Mrs. Escaler (Philippines), the Chairperson of the Working Party, had recently departed from Geneva. He informed the Council that it had been agreed in informal consultations that since the Working Party would be holding only one or two meetings before concluding its work, Mr. Carlisle, Deputy Director-General -- who had kindly accepted to do so -- would replace her and chair the Working Party for the remainder of its work.

The Council **took note** of this information.
13. **Appointment of a new Director-General**  
- Announcement by the Chairman of the CONTRACTING PARTIES

The Chairman of the CONTRACTING PARTIES, speaking under "Other Business", recalled that the procedures for the future appointment of a Director-General, approved by the CONTRACTING PARTIES in November 1986 (BISD 33S/55), provided, inter alia, that "the decision to appoint the Director-General for a first term should be taken after a process of consultation to be conducted by the Chairman of the CONTRACTING PARTIES and to be started by an announcement at a meeting of the Council of Representatives not less than six months before the Session of the CONTRACTING PARTIES where the appointment is made." The term of office of the present Director-General would expire on 31 December 1992 and the appointment of a successor would have to be made at the Forty-Eighth Session of the CONTRACTING PARTIES to be held in early December. Accordingly, he wished to inform the Council that he would begin consultations in July regarding the appointment of a successor.

The Council took note of this information.

14. **International Trade Centre (UNCTAD/GATT)**  
- Appointment of a new Executive-Director

The Chairman of the CONTRACTING PARTIES, speaking under "Other Business", said that on the basis of informal consultations with contracting parties regarding the appointment of a new Executive-Director of the International Trade Centre (ITC), he had been requested, together with the Council Chairman, to try to see and discuss this matter with the United Nations (UN) Secretary-General when the latter visited Geneva in the week of 6 April. He recalled that the two parent organizations of the ITC, i.e., the GATT and UNCTAD, had together recommended the appointment of an official as Executive-Director for a three-year period under existing conditions regarding salary and other allowances. However, in March, it had become known that the UN Secretary-General intended to downgrade the post of Executive-Director, and also to make the appointment for only one year, which had led to concerns that the designated official would probably withdraw his candidature. Despite having made every effort to see the UN Secretary-General on his visit to Geneva, he and the Council Chairman had been unable to obtain any response or to meet with him. Regrettably, therefore, he had to inform the Council that the situation remained unresolved, and that the designated official had now withdrawn his candidature.

The representative of Egypt said that, according to his information, the UN Secretary-General welcomed the meeting requested by the Chairman of the CONTRACTING PARTIES. If such a meeting did not take place, he believed that it may have been difficult to arrange due to the Secretary-General's busy schedule during his visit to Geneva.

The representative of Venezuela informed the Council that Venezuela, as coordinator of the Latin American Group in UNCTAD, and Peru, as coordinator of the Latin American Group in GATT, had sent a letter to the UN Secretary-General informing him of the Latin American countries' support for the candidature of the person designated by the GATT and UNCTAD for this post.
The representative of Costa Rica expressed concern at the situation in the ITC. With the termination of the contract of the acting Executive-Director as of the day before, and with the recent departure of other officials, the ITC was practically without any senior administrative staff. Numerous countries that received assistance from the ITC had been affected by this situation. This assistance was now held up, possibly for the next three or four months, and Costa Rica believed that the CONTRACTING PARTIES needed to take some action in this regard. He recalled that the ITC had previously been part of the GATT for many years, before the UNCTAD and GATT had jointly undertaken responsibility therefor. In his view, the CONTRACTING PARTIES should draw up a plan of action in order to remedy the situation under which the ITC had been without an Executive-Director for practically four months.

Mr. Carlisle, Deputy Director-General, said that following the withdrawal by the person who had been designated by UNCTAD and GATT as the next Executive-Director of the ITC, and with the person temporarily in charge scheduled to retire that same day, the two organizations had been confronted by the immediate problem of designating someone to be in charge of the ITC beginning 1 May. Following discussions with the UNCTAD, it had been agreed that a director within the ITC would be placed in charge of the organization "for the time being". He pointed out that this appointment was temporary and not intended to prejudge any question. Rather, the purpose was to ensure that the ITC would continue to operate effectively while an attempt was made to resolve the existing difficulties.

The representative of Switzerland said there was no need to reiterate that many, if not all, contracting parties greatly appreciated the ITC. It had served very effectively, and one expected it to continue to do so even more in the future. The ITC played a very important rôle in the chain of cooperation which no other organization could do. Switzerland was therefore very concerned by the present situation, given its own commitment, like that of others, to the ITC. He had noted the information provided by the CONTRACTING PARTIES' Chairman and by the Deputy Director-General on the present situation and on the provisional measures that had been taken until the CONTRACTING PARTIES could examine the matter further. He suggested that the CONTRACTING PARTIES tackle this worrying situation on a most urgent basis.

The representative of Uruguay agreed with Costa Rica and Switzerland that the ITC's present situation was alarming. Uruguay believed that the CONTRACTING PARTIES should turn their attention to this matter urgently and find a lasting solution. The ITC currently had neither an Executive-Director nor an Administrative Director; many posts had also been left vacant, and many decisions of the Technical Group to improve the ITC's functioning needed to be implemented. All this was of fundamental importance, and the present situation was certainly to the detriment of those countries that received assistance. There was no possibility at present for medium- or long-term planning, and the ITC's activities needed to be reoriented on a permanent basis; there was, however, no leadership to effect these changes. He reiterated therefore that the CONTRACTING PARTIES deal with this on an urgent basis. Uruguay asked the Secretariat what alternatives were available and how a rapid solution could be found to fill the post of Executive-Director in an effective manner. To fill it for
one year was not feasible as it would not provide any person the
opportunity to draw up a framework to implement technical assistance
programmes effectively. One could neither, on the other hand, entertain
the possibility of seeing the ITC's work held up for a year.

The representative of Canada said that the fairly low level of
leadership in the ITC at the present time raised some fundamental
questions. Canada supported the ITC financially through assessed and
voluntary contributions, and also as a GATT contracting party through the
GATT's share of the ITC budget. His delegation would find it difficult to
convince his authorities that, given the current situation, the ITC was a
worthwhile organization to continue supporting through voluntary
contributions. This also brought into question the extent to which the
GATT CONTRACTING PARTIES should be supporting this organization. He hoped
that one could draw up a plan of action soon, based on these kinds of
questions. All countries faced serious funding constraints and the
CONTRACTING PARTIES had to decide whether or not their interest in the ITC
was sufficient that they wanted to see it through this crisis, and whether
or not they could find a way to designate someone who could take charge of
the organization effectively.

The Chairman of the CONTRACTING PARTIES shared the view that this was
a very urgent matter. It might, indeed, take a very long time before a
solution could be found because the UN and GATT had different views on the
level of the Executive-Director's post. If that problem were not resolved,
one could not try to find a successor to the post. He proposed that the
Council Chairman conduct consultations with contracting parties to see if a
way out of this situation could be found.

The Chairman said he would be pleased to take upon himself the
responsibility of conducting such consultations, if that were the
wish of contracting parties, and agreed that a solution was needed sooner
rather than later.

The Council took note of the statements and agreed that its Chairman
should hold consultations on this matter.