**GENERAL AGREEMENT ON**

**TARIFFS AND TRADE**

**COUNCIL**
24 March 1993

**MINUTES OF MEETING**

Held in the Centre William Rappard
on 24 March 1993

Chairman: Mr. A. Szepesi (Hungary)

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1. United States Andean Trade Preference Act
   - Report of the Working Party (L/7190)

   The Chairman recalled that at its meeting on 18 February 1992, the Council had established a Working Party to examine the United States Trade Preference Act (ATPA). The Working Party's report was now before the Council in document L/7190.

   Mr. Rossier, Chairman of the Working Party, introducing the report, recalled that on 19 March 1992 the CONTRACTING PARTIES had granted the United States' request for a waiver to implement preferences to four Andean countries, and had established certain reporting requirements (L/6991). Also, on 18 February 1992, the Council had established a Working Party, open to all interested contracting parties, to "(a) examine the Andean Trade Preference Act in the light of the relevant provisions of the GATT, and of the Waiver Decision in document L/6991; (b) examine thereafter from time to time the annual reports to be submitted by the United States under paragraph 6 of the Waiver; and report to the Council under (a) and (b) above" (L/7172).

   The Working Party had held two meetings on 22 January and 22 February 1993. There had been widespread support and understanding in the Working Party for the stated objectives and purposes of the ATPA, particularly in regard to its central aim of supporting the beneficiary Andean countries in their efforts to fight against the production, processing and trafficking of narcotics by encouraging the expansion of trade in alternative legitimate products. While several members had considered the waiver as the appropriate procedure to be used to grant the ATPA the necessary derogation under the General Agreement, they had reiterated their general position that working party examinations should take place prior to the granting of waivers from Article I:1. It had been noted that any extension of the ATPA to additional beneficiary countries and to additional products would require a new waiver request. The Working Party had also noted concerns that the ATPA provided for a number of non-trade criteria in the designation of the four eligible countries as beneficiaries, and that these and other trade-related specific criteria were not directly related to the precise goals stated in the Waiver Decision. It had further noted
that only two of the four eligible countries had as yet been designated as beneficiaries.

With respect to the trade impact of the ATPA, the Working Party had noted the United States' affirmation that the overall trade covered by the ATPA benefits was negligible, and its assurances that the Act would not have adverse effects on the trade of non-beneficiary contracting parties. Some members had expressed concern that trade in individual products might nevertheless be adversely affected, as had also been recognized by the United States. The Working Party had noted with appreciation the United States' commitment, in accordance with paragraph 4 of the Waiver, to enter into consultations, upon request, with any interested contracting party with respect to any difficulty or matter that might arise as a result of the implementation of the trade-related provisions of the Act.

Finally, the Working Party had recalled that, as required by its terms of reference, it would examine, from time to time, the annual reports to be submitted by the United States on the implementation of the trade-related provisions of the Act under paragraph 6 of the Waiver. Accordingly, and pursuant to the modalities established by it for such examinations (C/M/255), the Working Party would meet thereafter upon the request of any contracting party or on the basis of consultations carried out by its Chairman.

The representative of the United States recalled that the terms of the Waiver committed the United States to making a report on the ATPA programme one year after the adoption of the Waiver. Since the Waiver had been granted in March 1992, this report would be due by the end of the month. However, since the Working Party had recently met and had reviewed the most recent information concerning the ATPA, the United States believed that submitting an annual report so soon afterwards did not make sense. He proposed instead that his Government wait until trade data for the whole of 1993 were available before submitting this report. The United States would be willing to submit such a report by the end of the month if the CONTRACTING PARTIES insisted, although it would request, for the reasons stated above, that they agree to allow the United States to postpone this annual report until the beginning of 1994.

The representative of Australia said that overall Australia supported adoption of the report. Australia had supported the stated objectives of the ATPA and welcomed the United States' commitment to periodic reviews on its implementation of the Act on the basis of annual reports to be submitted by it in accordance with normal GATT practice and the terms of the Waiver. Australia was flexible as to the date of the first review. It was Australia's understanding that other members of the Working Party had generally found the report in L/7190 to be satisfactory. However, Australia wished to reiterate its position that the procedures followed for the ATPA Waiver and Working Party should not be repeated in the future. There were a number of different approaches within the GATT framework to the establishment of preferential schemes, and each case should be analyzed on the basis of all the circumstances peculiar to it.
Australia believed that the following additional options should have been considered prior to the Waiver Decision on the ATPA: action under the Enabling Clause in conjunction with either Article XXV or XXXVIII; or action under Article XXIV. Also, the exceptional circumstances referred to in Article XXV should have been established via a working party examination prior to the granting of a waiver. These possibilities should have been considered more fully and would possibly have been chosen if the working party had been established before the Waiver had been granted. Australia believed that two aspects of the ATPA, in particular, had implications for GATT "due process". First, the introduction of certain non-commercial criteria by a contracting party as a prerequisite for granting trade benefits was outside the mandate of the GATT. Second, the trend towards regionalism outside the framework of Article XXIV demonstrated by the ATPA had detrimental implications for the practices of contracting parties and for the application of GATT rules and disciplines. Australia had stated this position formally in the Working Party itself, and the United States and the ATPA beneficiary countries would understand that this was a general position that Australia would take in respect of similar agreements.

Referring to a related issue of general policy, he recalled that the United States had itself drawn strong parallels between the ATPA and the Caribbean Basin Initiative (CBI) (L/7190, paragraphs 6 and 18). In this connection, he noted that in the deliberations of the CBI Working Party on the terms and conditions of a possible waiver (see BISD 31S/180), and in the subsequent Waiver Decision on the CBI (BISD 31S/20), the United States had committed itself to submitting annual reports on the implementation of the trade-related provisions of that programme. Similar to the United States' review commitments under the ATPA, Australia wished the United States to reaffirm its commitment to provide regular annual reports on the implementation of the CBI to allow periodic examination of the implementation thereof. Australia's information suggested that the United States' most recent report on the CBI had been submitted in December 1990 (L/6773).

The representative of New Zealand thanked the United States for its important undertaking to provide annual reports on the implementation of the trade-related provisions of the ATPA to facilitate monitoring of the future trade effects of the Waiver. New Zealand supported the stated goals of the ATPA but noted the concerns expressed in the Working Party on the trade- and non-trade-related criteria in the ATPA that were not directly linked to the precise goals stated in the Waiver. New Zealand recalled that members of the Working Party had noted that non-beneficiaries' trade in individual products might be adversely affected by the ATPA. It wished to draw attention also to the general position of several members that working party examinations should take place before waivers from Article I were granted.

1Differential and More Favourable Treatment, Reciprocity and Fuller Participation of Developing Countries (BISD 26/203).
The representative of the United States, referring to Australia's comment regarding the United States' commitment to provide regular reports on the operation of the CBI, said that such a report was under preparation and would be submitted shortly. As to the question of the procedure to be followed in respect of a waiver request, the United States agreed that under normal circumstances a working party should meet before a decision was taken on a waiver. He recalled that when the United States had sought the ATPA waiver, it had indicated that although it considered it unnecessary to follow the normal procedure for that request so soon after the request for a waiver on the CBI, an almost identical programme, had been examined and granted, it would have been willing to have a working party meet beforehand if that had been the wish of the Council.

The representatives of Colombia and Bolivia expressed their respective Governments' gratitude to the Chairman of the Working Party, to all contracting parties that had given their support and understanding for the objectives and purposes of the ATPA, and to the United States.

The representative of Ecuador, speaking as an observer, said that his delegation had participated as an observer in the Working Party and, in view of the number of questions asked as to why only two of the four eligible countries had as yet been designated as beneficiaries, had indicated that Ecuador's exclusion was not at all directly related to any reason relating to a drug-trafficking problem. This exclusion not only hindered Ecuador's fight against drug-trafficking, but was incompatible with both the letter and the spirit of the ATPA. Ecuador had therefore appealed to the United States to revoke the exclusion. Ecuador wished to reiterate the unfairness of this exclusion, and that many benefits would accrue to it from the preferences under the Act. According to his Government's information, twenty-three products from Ecuador would immediately benefit from the non-traditional agricultural export programme under the ATPA. Accordingly, he reiterated that it was urgent for Ecuador to see this exclusion revoked, particularly since the United States was its main trading partner and because the exclusion had a ten-year validity of which only one year had gone by.

The Council took note of the statements, adopted the report in L/7190, and agreed that the United States should submit its first annual report by early 1994 and that the annual reporting requirements in paragraph 6 of the Waiver be then met by the submission of reports annually thereafter.

2. United States - Restrictions on imports of wool suits from Brazil - Communication from Brazil (DS37/1)

The Chairman recalled that the Council had considered this matter at its meeting in February and had agreed to revert to it at the present meeting.

The Director-General recalled that at the February Council meeting, Brazil had requested his "good offices" on this matter in accordance with the provisions of paragraph 1 of the 1966 Decision on Procedures under Article XXIII (BISD 14S/18). At that meeting, he had proposed that, as a
first step, the parties engage in further bilateral talks on an urgent basis. It was his understanding that the bilateral contacts that had taken place had yet to produce a mutually satisfactory solution. He would be pursuing this matter in a timely and constructive manner.

The representative of Brazil said that the current twelve-month restraint period in the Brazil-United States Agreement under the Multifibre Arrangement (MFA)\(^2\) would expire on 31 March. Inaction by the United States Almost eight months after the first clear recommendation by the Textiles Surveillance Body (TSB) in July 1992 (COM.TEX/SB/1797) threatened Brazil with further prejudice. This would have to be taken into consideration in any acceptable formula for a solution to the case. The passing of time made redress more complicated, and put into doubt the usefulness of the surveillance mechanism under the MFA. Brazil hoped that the efforts by the Director-General, on the basis of the TSB’s recommendations, would result in a satisfactory solution. In having recourse to the 1966 procedures, Brazil was particularly interested that the good offices of the Director-General thereunder should result in a prompt solution to this matter.

The representative of the United States said that Brazil and the United States had held several discussions in Washington during the past month on this matter. Both sides had exchanged formal and informal offers although they had not thus far been able to reach a mutually satisfactory agreement. The United States noted with regret that Brazil had not yet responded to the United States' latest proposal, and hoped it would do so soon. As his delegation had stated at the February Council meeting, the United States was willing to continue bilateral consultations with Brazil on this issue on an urgent basis, following the direction given by the Director-General.

The representative of Brazil said that since the Director-General had been requested to lend his good offices in this matter, Brazil had considered it inappropriate to go into details at the present Council meeting as to which party had made a formal proposal and when. Brazil did not agree with the United States' assertions, and would provide detailed information to the Council to support its case if that delegation so wished.

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

3. United States - Anti-dumping and countervailing duty actions on steel products
   - Communication from Brazil (L/7174)

The Chairman recalled that the Council had considered this matter at its meeting in February and had agreed to revert to it at the present meeting.

\(^2\)Arrangement Regarding International Trade in Textiles (BISD 218/3).
The representative of Brazil recalled that at the February Council meeting, representatives speaking on behalf of about thirty-five contracting parties had expressed their concern over the on-going measures affecting steel imports in the US market and had referred not only to the actual disturbance to trade but also to the perceived potential of even larger and irreversible damage. Following that meeting, the United States and Brazil had held bilateral consultations under the relevant provisions of both the Anti-Dumping and Subsidies Codes. While these consultations had been helpful in clarifying some factual aspects of the cases, they had not allayed Brazil's concerns. Brazil noted, in this connection, that the European Economic Community and the United States had also held consultations. It noted further that anti-dumping and countervailing duty determinations had continued to proliferate following the February Council meeting. In one case, in a double anti-dumping and countervailing duty investigation on lead and bismuth bars, one Brazilian exporter had been found to be subsidized by the margin of 0.82 per cent. However, since the margin of dumping had been found to be not less than 148.12 per cent on the basis of the "best information available", imports of those products had been penalized by the corresponding amounts of duties. Some companies from other countries had also been heavily penalized in analogous investigations.

In another development, a group of pipe and tube makers in the United States was currently lobbying for duties to be applied on steel products not covered by the existing duties, on the allegation that these could easily be converted into "like products". In the light of past US action, there was ground to fear the decision of the US authorities in this regard. Under the prevailing circumstances, one could not expect any significant progress in the negotiations on a Multilateral Steel Agreement (MSA), the most recent round of which had been held three weeks earlier. The US actions were a serious impediment to international trade in general and affected the operation of the General Agreement much beyond the specifics of each of the many cases. Almost all of the most active steel-trading countries were affected, billions of dollars were involved, and trade flows and commercial relations had already been seriously affected. For Brazil, the effect on privatization and liberalization was not to be underestimated. More than half of its steel exports to the United States, involving hundreds of millions of dollars in annual trade, had been affected by these actions, and a hundred and thirty thousand direct jobs in the steel industry had been jeopardized, thus further aggravating an already hostile economic environment. No reasonable observer of international trade could fail to recognize the turmoil that steel trade had been put into as a consequence of the massive US actions. Although an unmistakable signal had been sent at the February Council meeting by practically all contracting party steel traders, the impediments continued.

3 Respectively, the Agreement on the Implementation of Article VI (BISD 26S/171), and the Agreement on Interpretation and Application of Articles VI, XVI and XXIII (BISD 26S/56).
New requests for investigations and affirmative provisional and definitive determinations continued to be made. Nothing had happened, or seemed to be happening, to allay fears or give hope that the trade effects were being examined and given careful consideration.

Brazil would continue to pursue this matter in all competent fora. However, as all knew, these processes were slow and complex. Meanwhile, the harassment and the chilling effect on trade that his delegation had referred to at the February Council meeting was a continuing process that could not be ignored. The protectionist effect of the US measures had generally been recognized. All were aware of the risks, economic as well as political, of following "beggar-thy-neighbour" policies in international trade. The international community in general, and developing countries in particular, had been greatly encouraged by the US President's recent reference to the rôle that could be played by trade liberalization efforts in global economic growth, and to the United States' commitment to exercise its leadership in this process. Brazil therefore hoped that the US authorities would translate this message into action and impart the same spirit in their deliberations and decisions. Brazil urged them to reverse the new methods and practices that had been introduced in the steel investigations and which had been responsible for the present disarray in steel trade. While Brazil intended to continue exploring all means available under the General Agreement and the Tokyo Round Codes in order to protect its interests, a prompt US response along these lines would decisively contribute to alleviating tensions in the multilateral trading system.

The representative of the European Communities associated his delegation with Brazil's statement. The Community continued to be preoccupied by the US actions on steel which, in terms of their number and substance, were unwarranted and out of proportion. In a final determination made two weeks earlier, Community exports of a certain steel product had been found to have caused material injury to the US industry, despite the fact that voluntary export-restraint arrangements (VERs) had been in place during the period concerned and that export levels thereunder had been respected. The Community would continue to resort to the consultation procedures under both the Anti-Dumping and Subsidies Codes, and reserved its GATT rights on this matter. Like Brazil, the Community believed that the present economic environment would be better served by measures aimed at stimulating trade, and not by those which served to close the US market to foreign steel producers. The Community urged the United States to reconsider its actions and to develop solutions in consultation with its trading partners.

The representative of Sweden, speaking on behalf of the Nordic countries, said that at the February Council meeting, a very clear message had been sent to the US authorities by several contracting parties which had argued that the US measures had been both excessive and unwarranted. Regrettably, no positive developments had occurred since then. The Nordic countries continued to be seriously concerned by the on-going US investigations which had led, thus far, to the imposition of anti-dumping and countervailing duties against Sweden of nearly 28 per cent, and of
anti-dumping duties against Finland as high as 53 per cent. These measures had already effectively cut off all exports of the affected products to the United States. In the present circumstances, it would be extremely difficult to regain market shares in the event that final determinations proved to be negative.

In the Nordic countries' view, the very large number of petitions, companies and countries involved in the investigations could not be regarded as a normal use of anti-dumping legislation. The situation was exceptional and involved a considerable amount of trade harassment on the part of US industry. An analysis of the actions already taken showed that the US authorities had not been in a position to deal with the large amount of petitions in a way that would guarantee fair treatment of the exporting companies involved, which gave rise to more specific concern and criticism. While each individual case had its unique features, the extensive use by the US authorities of "best information available" -- in effect, information presented by the petitioners -- in the preliminary phase of the investigations seemed to be a problem that arose in several cases. In anti-dumping investigations against Swedish and Finnish companies, US authorities had chosen to disregard relevant and detailed information submitted by those companies. In one case, this was said to have been due to time-constraints, which seemed questionable under the Anti-Dumping Code, to say the least. Although the Council was not the proper forum for a detailed discussion of matters such as this, his delegation had raised it to illustrate a serious problem in several current US investigations.

Sweden and Finland were currently carefully examining the relevant preliminary US determinations and would decide in the very near future on whether to request formal consultations with the United States under the relevant GATT instruments. The Nordic countries believed that the US measures negatively affected the on-going negotiations on the MSA, as had become clear at the most recent meeting on the MSA held in February. This was a political problem that had to be solved in a political manner. A multilateral solution, such as the MSA, and not massive unilateral action, was the only viable long-term solution to the global problems facing the steel industry. The Nordic countries urged the United States to show foresight and to act accordingly.

The representative of Argentina associated his delegation with the previous speakers' concerns regarding the US actions on steel. Argentina had outlined its concerns on the repercussions of these actions on its privatization process in a letter sent by its embassy in the United States to the US Commerce Secretary. In response, the latter had welcomed privatization as an economic liberalization measure to which the United States gave its full support. He had also stated that privatization was a positive development which contributed to greater stability and rationality in the overall system in which the steel industry operated, and which would help to remove distortions. Argentina hoped that the US administration would act in accordance with these comments and that steel products would no longer be subjected to these measures. Recalling the Commerce Secretary's recent statement that the US actions on steel had resulted from mandated procedures and were not indicative of a shift in US
trade policy towards greater protectionism, he hoped that further US action would not reflect another attitude.

The representative of Austria said that his country, as a very small exporter of cold rolled steel to the United States -- 1,158 tons in 1992 -- had repeatedly argued against the US measures. No causal link could be established between Austria's small share of the US market and the alleged difficulties of the US industry. In fact, given this share of the market and the de minimis provisions of the Anti-Dumping and Subsidies Codes, action against Austria should not even have been initiated. Austria therefore urged the United States to reconsider its position. It believed that structural problems could not be solved by either countervailing and anti-dumping duty actions or VERs. While Austria reserved its GATT rights, it looked forward to a successful conclusion of the negotiations on the MSA, which it believed would be facilitated by a satisfactory solution to the on-going harassment in steel trade.

The representative of Australia said that this issue should remain before the Council until it had been resolved to the satisfaction of all concerned. As many contracting parties had stated at the February Council meeting, there were significant adverse implications in the US approach for individual contracting parties, for world steel trade and for the multilateral system. A number of contracting parties had indicated that they were, or would be, pursuing their interests with the United States through bilateral consultations or the consultative processes of the Anti-Dumping and Subsidies Codes. It was appropriate for this matter to remain before the Council through the course and outcome of those processes. Like Brazil and others, Australia had its own concerns about this matter and, in consultation with its industry, was beginning preliminary consideration of the options available to it, including the basis for GATT consultations. Furthermore, while early progress on an MSA appeared unlikely in the present climate, Australia remained strongly supportive of a successful conclusion to those negotiations and believed the MSA provided the best prospect for effectively resolving current frictions in steel trade on a long-term basis.

The representative of Korea echoed the concerns expressed by previous speakers. At the February Council meeting, his delegation had expressed concern at the implications of the US actions on the trading environment -- particularly on the future of the MSA and the Uruguay Round negotiations -- and at the immediate negative effect they would have on Korea's steel exports to the United States. These concerns remained unabated. Apart from the chilling effect of the investigations on steel trade, more than US$300 million of Korea's steel exports to the United States had been put in jeopardy by the US Department of Commerce's decision requiring the posting of cash or bond equivalents of the amount of the provisional duty. Korea had often found its exports subjected to anti-dumping and countervailing duty actions abroad and believed that much stronger rules and disciplines should be established to govern these actions. In this context, Korea maintained that the text of the Uruguay Round Draft Final Act (MTN.TNC/W/FA) in respect of anti-dumping should not be tampered with.
He informed the Council that on 2 March, the US authorities had undertaken an on-the-spot investigation in which members of Korea's steel industry had fully cooperated. Korea hoped that the final determination by the Department of Commerce, and the injury determination by the US International Trade Commission, would be based on objective information and made in a GATT-consistent manner. Korea believed that a successful conclusion of the on-going MSA negotiations would provide the only viable long-term solution to the matter at hand, and looked forward to early progress thereon. In the meantime, Korea would continue to monitor the matter closely, and reserved its GATT rights.

The representative of Canada said that, as his delegation had indicated at the February Council meeting, Canada's steel exporters were adversely affected by the US actions. Canada shared Brazil's views on this matter. The US actions were a continuation of a long tradition of protection for the steel sector, and were all the more surprising because they followed a long period in which protection had been extended through VERs. Canada continued to have serious doubts about the standards and the grounds for launching these cases. It was also concerned by the effects of these actions on the trading system in general, and urged the United States to take full account of the views expressed by contracting parties in the Council in reviewing its actions.

The representative of Japan associated his delegation with the concerns expressed by previous speakers. Japan's views on the US actions had been outlined at the February Council meeting. In its view, these actions had seriously hindered trade and could not be justified. Japan therefore urged the United States to reconsider its position on this matter. Japan was presently considering the specific action it could take to protect its interests, and reserved its GATT rights in this matter.

The representative of New Zealand recalled his delegation's statement on this matter at the February Council meeting, especially in relation to the effects of these actions on the privatization process.

The representative of the United States said that, once again, statements by many of the Council members seemed to imply that the anti-dumping and countervailing duty actions in question were the brainchild of the US Administration. However, as his delegation had explained earlier, these cases had been filed by the US steel industry and were the subject of a quasi-judicial procedure in the United States. To indicate the context in which the US industry had filed these cases, he quoted from production and consumption statistics for steel in key world regions for 1992. The statistics showed that there was surplus steel production in every region except in North America, and that, in effect, about 70 million tonnes of surplus world steel was trying to squeeze into a North American market where consumption exceeded production by about 9 million tonnes. Referring to Austria's statement that anti-dumping and countervailing duty actions should not be used as a means of addressing structural problems, he suggested that the figures he had cited indicated that the structural problems in steel production lay outside of the US market.
As his delegation had indicated at the February Council meeting, the administrative investigations were on-going. The US Department of Commerce would make its final anti-dumping and countervailing duty determinations on 21 June, and the US International Trade Commission (USITC) would make its final injury determinations in early August. He added that on 26 February, the United States had held bilateral consultations under the Subsidies Code with the Community and under both the Anti-Dumping and Subsidies Codes with Brazil, which had proved to be very useful. On 29 and 30 March, a second round of consultations under the Subsidies Code and one under the Anti-Dumping Code would be held with the Community. Brazil had not thus far requested a second consultation. None of the other contracting parties that had spoken on this matter had as yet requested consultations under any of these instruments, and the United States encouraged them to do so if they believed these would help them make their case. He noted that in the previous week, the USITC had made a ruling of no injury in an anti-dumping case involving steel rail from the United Kingdom even though the dumping margin had been established at 70 per cent. He emphasized that none of the actions taken thus far were final until the USITC had made its final injury determination, and that the mere fact of high margins did not mean that there would be an affirmative injury determination.

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

4. United States - Taxes on automobiles
   - Recourse to Article XXIII:2 by the European Economic Community (DS31/2)

   The Chairman drew attention to document DS31/2 containing a request by the European Economic Community for a panel to examine the United States' taxes on automobiles.

   The representative of the European Communities said that the United States maintained three taxes or charges on the sales of cars which all had in common a higher than normal incidence on the sale of imported cars. These charges and taxes were illustrative of a new kind of protectionist measure that appeared to be proliferating, namely, domestic regulation that was aimed at having a particular impact on imported products. The Community had held consultations under Article XXIII:1 with the United States on these taxes and charges on 15 July and 20 September 1992. However, no satisfactory solution had resulted therefrom. The Community therefore requested the establishment of a panel to examine whether these taxes and charges and their incidence on imported cars were contrary to Articles III:1 and III:2.

   The representative of the United States said that the United States wished to have an opportunity to develop further the information relevant to the concerns expressed by the Community in order to determine if a mutual understanding of that information could prove beneficial to this dispute. As a result, the United States was not prepared to accept establishment of the panel at the present meeting.
The representative of Sweden said that his country's automobile producers were also affected by the taxes referred to by the Community in DS31/2. Sweden supported the Community's request for a panel, and reserved its right to make a third-party submission to the panel if one were established.

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

5. Monitoring of implementation of panel reports under paragraph I.3 of the April 1989 Decision on improvements to the GATT dispute settlement rules and procedures (BISD 36S/61)

The Chairman recalled that at its meeting on 29 September-1 October 1992, the Council had agreed that this matter would continue to appear on its agenda in its present form until further informal consultations thereon had been concluded. At the Council meeting in February 1993, he had announced that he would resume these consultations in the near future. He had since held and concluded those consultations, which had shown that from a purely procedural point of view, the applicability or scope of the April 1989 Decision did not extend to panel reports which predated it and, consequently, that they should not be listed or considered under this item on the Council's agenda. It had been pointed out, in this connection, that contracting parties retained the right to raise any issues related to those panel reports under separate agenda items. It had therefore been understood that this item would continue to appear on the agenda in its present form. In connection with the Council's consideration of this item at its present meeting, he drew attention to a recent communication from the United States in document DS23/7 on the status of implementation of the Panel report on its measures affecting alcoholic and malt beverages (DS23/R).

The representative of Canada thanked the United States for the information in DS23/7, and said that such regular reports were useful. Canada was disappointed, however, with the results of the United States' efforts to date as indicated in that report. There had been virtually no progress at the state level in implementing the Panel's recommendations and none at the federal level. He recalled that in consultations with the United States in October 1992, Canada had indicated its objective of obtaining full compliance with the Panel's recommendations by the summer of 1993. In view of what the United States had now indicated, it was most unlikely that that goal would be met. Canada urged the United States to make serious efforts to implement the Panel's recommendations. It was aware of public reports that the United States might be considering amendments to its federal alcoholic beverages taxes, and believed that Congressional action to modify these taxes would present an opportunity to implement the Panel's recommendations and remove the discriminatory excise taxes on imports. In this regard, Canada wished to recall that the mere extension of preferential tax rates to foreign companies producing within the specified volume limits was not a GATT-consistent means of implementing the Panel's recommendations.
The representative of the United States said that, given the broad scope and the number of practices covered by the Panel on alcoholic and malt beverages, the implementation of its recommendations was a difficult task. However, the United States was continuing to make progress on implementation. As to Canada's comment that there did not appear to be much progress since the United States' previous status report, he said that given the substantially longer period between the present Council meeting and the next, it was likely there would be more progress to report in the next status report.

The representative of Australia said that in light of the Chairman's statement concerning the general understanding he had found in his consultations on the scope and application of paragraph I.3 of the April 1989 Decision, Australia wished to register its view that the Panel reports on US import restrictions on sugar (BISD 36S/331) and Korea's restrictions on imports of beef (BISD 36S/202, 234 and 268) represented unfinished business, and that no progress reports thereon had been submitted thus far under the provisions of that Decision. Australia held to this view because these Panel reports had been adopted after the April 1989 Decision had come into provisional effect.

The representative of Brazil expressed appreciation for the United States' report in DS23/7. Brazil hoped that the United States would continue to strive to overcome the difficulties it was encountering in complying with its obligations in that dispute. As regards the implementation of the Panel report on the United States' denial of m.f.n. treatment as to imports of non-rubber footwear from Brazil (DS18/R), he recalled the United States' statement at the February Council meeting that a new Administration had taken office which would review the case and decide on how best to resolve it. However, no measures appeared to have been taken thus far towards that goal. He reiterated that one of the pillars of the GATT -- the m.f.n. principle -- was at stake in this dispute. Persistence in delaying a solution represented added prejudice to Brazil's trade interests, besides signalling contempt for the GATT dispute settlement system. The United States had also stated at the same meeting that the Panel had not required any action on its part in the context of its findings and had not recommended that the United States either refund or refrain from collecting the countervailing duties assessed upon Brazilian footwear imports and the interest thereon. Brazil could not understand that an action found to be a breach, and a continuing violation, of a fundamental GATT obligation was not to be remedied. Brazil expected the Council to urge the United States once again to cease the actions that had been found to be in violation of Article I, thus bringing itself into compliance with the Panel's conclusions.

The representative of Chile, referring to the non-rubber footwear Panel report, recalled that Chile had supported its adoption. It had also stressed the importance of the application of the m.f.n. clause and the principle of non-discrimination as the basic tenets of the GATT, and the importance of ensuring that they were respected and applied by all. Since the adoption of the report in June 1992, the United States had not yet brought itself into compliance with its findings. The effectiveness of the dispute settlement system in ensuring respect for the rights of all
contracting parties was at stake in this case. It was urgent to recover the credibility of this system, and Chile therefore reiterated that the United States should make efforts to bring itself into compliance as soon as possible.

The representative of Canada expressed support for Brazil's position regarding the non-rubber footwear Panel report; this report had been before the Council for quite some time, and Canada urged the parties to seek a mutually-satisfactory solution. With respect to Australia's statement regarding the application of the April 1989 Decision, he said that the Decision applied to panels established, not to reports adopted, after 1 May 1989, as was indicated in paragraph A.3 thereof. As to the United States' statement that a longer period of time between the present Council meeting and the next would permit it to present a more substantial response on the implementation of the alcoholic and malt beverages Panel report, he hoped this would be proved correct.

The representative of Korea said that his Government wished to put on record that the monitoring exercise under paragraph 1.3 of the April 1989 Decision was not applicable to the Panel reports on Korea's restrictions on imports of beef. In holding to this view, Korea was fully in accordance with the general feelings expressed at the informal consultations on this matter, on which the Chairman had reported earlier.

The Council took note of the statements.

6. EEC - Import régime for bananas
   - Communications from Colombia, Costa Rica, Guatemala, Nicaragua and Venezuela, and from the European Communities (DS38/1, 2, 3 and 5, and DS38/4)

The Chairman recalled that at its meeting in February, the Council had considered the Community's import régime for bananas, and had agreed to establish a panel to examine the Community's former import régime. The terms of reference and composition of that Panel had been recently circulated in document DS32/6. The Council had also agreed to revert to the then-outstanding matters related to the Community's banana import régime at the present meeting. Since that meeting, the Governments of Colombia, Costa Rica, Guatemala, Nicaragua and Venezuela had requested the Community to hold consultations under Article XXII:1 with regard to the Regulation on the Common Market Organization for Bananas adopted by the Community's Agriculture Council on 13 February. He understood that the Community had agreed to these consultations.

The representative of Costa Rica, speaking also on behalf of Colombia, Guatemala, Nicaragua and Venezuela, said that in regard to the Panel established at the February Council meeting to examine the GATT compatibility of the Community's former banana import régime, intensive exchanges had been held between the parties concerning participation in the Panel's work of those contracting parties that had expressed their wish to do so. The parties to the dispute had agreed to grant Jamaica, Côte d'Ivoire, Madagascar, Cameroon and Senegal a broader participation than
that stipulated in the April 1989 Decision for interested third parties, whereby these countries would attend all the Panel's meetings and speak when invited to do so by the Panel. He emphasized the specific nature of this agreement, under which parties to the dispute had accepted conditions beyond those provided for in the rules and procedures governing the GATT's dispute settlement process; this agreement, consequently, did not create any obligations that could be invoked as a binding precedent in the future.

With regard to the Community's new banana import régime, their countries had reiterated to the Community their request for Article XXII:1 consultations (DS38/5), following adoption by the Community's Council of Agriculture Ministers of a Regulation on the Common Market Organization for Bananas on 13 February. The Community had accepted consultations, and a first round had been held on 22 March. The Community, however, had insisted on placing the discussion of this matter in the context of the Uruguay Round negotiations. Without prejudice to the oft-repeated desire of their Governments to conclude the Round promptly and successfully, such a result still remained uncertain, while the Community's new regulation would inflict serious economic and social damage to the Latin American region, which could not allow delaying the search for a solution.

The representative of Brazil said that Brazil was an interested party in this matter and reaffirmed its support to the Latin American banana producers concerned. Brazil hoped the Community would accord due importance to this issue, so that it could be settled without delay. Brazil was concerned to hear that a special agreement had been reached between the parties to the dispute with regard to the participation of certain third parties in the proceedings of the Panel on the former banana import régime. While he had noted that this was a specific agreement between the parties to the dispute and did not constitute a precedent for other panels, it was nevertheless disquieting that under certain circumstances, departures from established procedures could result from pressure from one contracting party.

The representative of Chile said that the adoption of the Regulation on the Common Market Organization for Bananas and the application of its restrictive provisions would have a serious effect on the economies of the Latin American banana-exporting countries. While Chile understood the Community's wish to respect its obligations to the ACP countries under the Lomé Convention, it believed that the Community should do likewise with respect to its commitments in the context of the GATT. Chile therefore reiterated that the Community make every effort to find a mutually satisfactory solution to the dispute.

The representative of Argentina, referring to Brazil's statement concerning the agreement between the parties in the Panel on the Community's former régime, which was not apparently to be considered as a precedent, said that this came in addition to a number of other such

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4 Improvements to the GATT dispute settlement rules and procedures (BISD 36S/61).
precedents one was witnessing in the GATT as a result of the lack of agreed rules and procedures in certain areas. The fact of the matter was that there was no respect for certain precedents regarding the participation of interested third parties in panel proceedings. He hoped that in future panels, agreements between parties adopted in such conditions should not be based on this lack of precedent and invoked as a means of forcing deviation from the rules and procedures for dispute settlement.

The representative of Peru considered it unfortunate that the Community had used delaying tactics to avoid discussion on a substantive issue over such a long period of time. Peru reiterated the importance of respecting GATT obligations and commitments. The Community's suggestion that a solution to the banana problem could be obtained within the context of the Uruguay Round seemed to be completely meaningless, because tropical products were one area therein in respect of which it had been agreed, since Punta del Este, that a solution should be found as quickly as possible. Everyone knew that this had not been possible. Nevertheless, if one were to follow this line of reasoning, it could also be argued that the Community's measures should be postponed until a solution had been reached in the Uruguay Round on tropical products. With regard to the Community's obligation to the ACP countries under the Lomé Convention, Peru believed there might be a possibility for the Community to help in defining the real shared interest between the Lomé countries and the Latin American banana-exporting countries. Direct linkage between them would perhaps help to shed light on their respective positions. Finally, he voiced Peru's concerns at the agreement amongst the parties in the Panel on the former régime to allow the participation of third countries. Peru believed that this should not at all constitute a precedent.

The representative of Bolivia recalled that at previous Council meetings, his delegation had expressed its concern at the repercussions of the Community's banana import régime on the economies of countries in the Latin American region. Bolivia wished also to ensure that the rights of developing countries -- smaller countries in need of protection through the system, particularly the dispute settlement mechanism -- were preserved.

The representative of Uruguay said he wished to place on record Uruguay's support for the position of the Latin American banana-exporting countries. His delegation had noted that the decision to allow participation of third countries in the Panel on the Community's former régime was not meant to constitute a precedent. He urged the Community to review its position on its banana import régime, given that its Common Agricultural Policy had already created enough trouble for Latin American countries which did not wish to see yet another problem being created, particularly one involving an important product such as bananas.

The representative of the European Communities said that he had carefully listened to and noted the statement by Costa Rica. He recalled that a Panel had been established on the Community's former banana régime, and said that it would not be appropriate during the work of that Panel, to try to argue the case in detail again in the Council. The right place to discuss this matter was within the Panel itself. With regard to the Community's new banana import régime, consultations had been held with the
Latin American countries concerned, in which the Community had indicated its willingness to seek solutions. The parties had agreed on another date to continue the consultations. As to the concerns expressed by several delegations that well-established procedures had been altered by the parties to the dispute to allow participation of interested ACP countries in the Panel proceedings, he said the Community was unaware of any such well-established procedures under the 1966 Decision on procedures under Article XXIII (BISD 14S/18). The procedure under which the Panel on the Community's former régime was under way had no well-established precedent. No-one could have been surprised by the Panel's procedural arrangements, considering that at the February Council meeting, the ACP countries concerned had clearly indicated their desire to participate in the work of the Panel and this had not been objected to by anyone. As the minutes of that Council meeting showed, there was clearly a distinction between the kind of participation in the Panel that the ACP countries had sought, and that sought by others as interested third parties to the dispute. It should therefore have been expected that this would be reflected in the Panel's procedures.

The representative of Jamaica said that although he would speak only on behalf of Jamaica, many ACP countries found themselves in much the same situation as that of his own. All ACP countries were faced today with a complex procedural dilemma. The Latin American banana-exporting countries concerned had presented them with what amounted to a procedural ultimatum by pressing forward with dispute settlement processes, firstly for a Community banana import régime that had virtually expired, and secondly, with the same great speed, for a future banana import régime that was not yet in effect. The only issues addressed thus far had been procedural, and had not challenged the appropriateness of the 1966 Decision for discussion of the question of the former banana régime. The Community, for its part, had negotiated on this matter as respondent, and had also limited itself thus far to the procedural question. The dilemma of the ACP countries was that although they had the most important stake in the outcome of this dispute, their resources were thin and they were not sure of the right moment to press in between these two giants to make their voices heard. They had to decide whether to intervene now, in the expedited process, on a régime that was virtually out of existence. As Côte d'Ivoire had stated at the February Council meeting, there would seem to be no point in doing so. Yet, if they did not do so, the precedent would be established that the issues -- of the greatest importance for the developing world -- in the second dispute settlement process were to be decided at the same fast pace as the totally irrelevant and meaningless process on the present banana régime. At such speed, as defendants, they would not be able to defend their interests in the "real" case, i.e., that on the future banana régime.

With regard to the issue of speed -- which necessarily involved the 1966 Decision -- he said that a developing contracting party that had a grievance under the GATT could take the time to prepare its complaint, marshal its facts, seek the advice of lawyers and other experts, and seek the approval of its government officials, often thousands of miles away, before taking the step of initiating a dispute settlement procedure. The
date on which it proceeded would be of its own choosing. When that contracting party initiated procedures under Articles XXII and XXIII, and the respondent was a developed contracting party, the latter would easily have at its disposal all the lawyers and experts it needed to defend itself. The developing countries had been put at a disadvantage by this disparity in technical endowments for many years, although much had been done to correct the imbalance and some legal assistance was available to them from the Secretariat -- indeed, the previous day, an ACP country had sought such assistance, which his delegation also now formally requested.

The 1966 Decision was clearly intended to push forward the time schedule of dispute settlement in the one and only situation he had described, namely, one in which the complaining party was a developing country -- which, as the petitioner had plenty of time to prepare -- and the respondent party was a developed country which, because of its vast resources, was able to respond relatively quickly. This was why, in the 1979 Understanding, the CONTRACTING PARTIES had reaffirmed that the customary practice relating to dispute settlement "includes the procedures for the settlement of disputes between developed and less-developed countries adopted by the CONTRACTING PARTIES in 1966 and that these remain available to less-developed contracting parties wishing to use them" (paragraph 7). This clearly showed that the 1966 procedures were a form of assistance to a special class of plaintiffs, namely developing countries, but only in cases against a special class of defendants, namely, developed countries. However, in the Panel established on the Community's former banana import régime at the request of the Latin American banana-exporting countries, the Community was a defendant in name only, since it was protecting a stake -- the Lomé Convention -- that was really that of the ACP countries. The ACP countries, therefore, were the real respondents in this case. They could not then explain to their people and their governments that their lifeline -- the Lomé Convention which, moreover, despite several working party examinations had never been found to be GATT inconsistent -- was not to be adequately defended because they had not been accorded the appropriate rights for conciliation and consultation usually given to contracting parties. Yet, they found themselves about to be ensnared in this trap, the 1966 Decision. The latter would surely not require this great dispatch if they were the named respondents in this matter, because it only applied when a developed country was the respondent. Yet, it was they that had to defend themselves in this case as if they were industrialized countries with unlimited legal and other resources at their disposal, at the speed envisaged in the 1966 Decision only for such countries.

He recalled that although some ACP contracting parties, including Cameroon, Madagascar, Côte d'Ivoire and Senegal -- had sought from the very

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5Understanding Regarding Notification, Consultation, Dispute Settlement and Surveillance (BISD 26S/210).
beginning to be included in the consultations on the issue of the Community's banana-import régime, they had not been involved. Given their stake in the outcome of the case and the language of the 1966 Decision that "the Director-General shall consult with the contracting parties concerned and with such other contracting parties ... as he considers appropriate...", even the few ACP contracting parties which had sought to be included from the very beginning of the process had not been consulted. His delegation wondered how many others would be shut out of the real processes in the case that really mattered. While it was clearly difficult to consult all ACP contracting parties, one could not resolve problems in the GATT in a sensitive and comprehensive manner unless the consultation exercise was undertaken earnestly. To do otherwise would push aside the Lomé Convention as if it were a mere obstruction in the road. In developed countries, the court systems allowed more time for ordinary civil lawsuits than the CONTRACTING PARTIES were about to allow, under the 1966 procedures, to the consideration of how the Lomé Convention was to relate to the GATT. He was not sure that even a panel of experts could decide an issue of such a dimension. There was no reason to do this, because the 1966 Decision did not apply in this case since it did not involve a developing country and a developed one.

Jamaica believed that this matter could be managed otherwise, and that one did not need to be a prisoner of a Decision which was not applicable in this case. First, the Council should discontinue the ongoing Panel proceeding on the Community's former régime. If that Panel was as worthy as he believed it to be, it would only conclude that it could decide nothing because the case was of historic interest only. One should not waste the Panel's time. Second, with respect to the Latin American banana-exporting countries' concerns about the Community's future banana régime, which was an appropriate subject for discussion, the best approach would be to create a working group, which could treat these issues in a sensible manner. Jamaica would undertake to use its best efforts to have such a working group reach successful conclusions in time for the result to be incorporated into the Final Act of the Uruguay Round. Third, the Latin American countries concerned might still wish to pursue their rights under Articles XXII and XXIII. However, while this was their right, the Council had to decide that the 1966 Decision could not be so twisted away from its original purposes as to apply in this case. The Council should therefore hold the 1966 Decision inapplicable, because the real respondents were the ACP banana-producing contracting parties. The poorest in the GATT should not have to defend themselves as if they were the richest therein. Instead, if the future Community banana régime had to be examined, a reasonable schedule for the operation of Articles XXII and XXIII should be set. Furthermore, all concerned ACP States should with immediate effect, be fully consulted and, with regard to any panel, present or future, adequate time should be allowed for them to fully apprise themselves of the situation, gather their facts and arguments, consult fully with their governments and with each other so as to be able to make the most effective showing possible. This being said, he doubted that a panel could decide the matters arising from a potential attack on the entire Lomé Convention. Even if it did, it remained open to speculation under the current rules whether such a decision should be accepted by the Council. Finally, the rights of developing countries should be fully respected in any dispute settlement proceedings.
The representative of Costa Rica, speaking also on behalf of Colombia, Guatemala, Nicaragua and Venezuela, said that his earlier reference to the 1966 Decision had been made on the understanding that the procedures therein had been established by the CONTRACTING PARTIES in the spirit prevailing at that time, i.e., in 1966. That Decision did not refer to the rights of third contracting parties. He recalled that at the February Council meeting, the Community had said more time would be needed for determining the terms of reference and composition of the Panel on its former régime, and it had been agreed that reference would be made in this regard to the April 1989 Decision, which set specific deadlines for agreement to be reached on composition and terms of reference of a panel. For the sake of legal coherence, he suggested that the same approach be adopted with regard to the question of third party participation. In other words, if the 1966 Decision was not specific with regard to the participation of third parties, the Community should, therefore, perhaps also refer in this case to the 1989 Decision in the same manner. When a number of contracting parties had reserved their right, at the February Council meeting, to participate in the Panel as third parties, he had not understood this reference to have been based on anything other than the April 1989 Decision. After intensive consultations with the Community, the Latin American banana-exporting countries had reached an agreement regarding such participation, as he had explained earlier. As to the concern expressed by some, which he shared, that a precedent might have been set, he stressed that this agreement had been reached by the parties to the dispute and that, therefore, this was a bilateral understanding limited to this specific case. Should any attempt be made to innovate by binding contracting parties in terms of procedures, one should look at it carefully within the framework of the Uruguay Round.

The representative of Côte d'Ivoire said that Jamaica's statement reflected his Government's position. Côte d'Ivoire supported, in particular, Jamaica's request for legal assistance from the Secretariat, as had been granted to one of the interested ACP countries. This was particularly important in view of the limited resources that countries such as his had to defend themselves in such cases. The ACP countries' interest in the banana dispute was not minor, whether from a quantitative or a qualitative point of view, and the best way for them to defend their interests was to participate at all stages of the discussion on this matter. The Community had been right in raising the question of their participation in the Panel process, and the resulting agreement on this enabled them to participate in the Panel as well as in any other discussion aimed at finding a solution.

The representative of Belize said that her Government supported Jamaica's position and, like the latter, it wished to be associated in all discussions and proceedings at all levels concerning the Community's banana import régime.

The representative of Trinidad and Tobago fully supported Jamaica's statement on behalf of ACP countries. He recalled the fragile nature of the small economies of the ACP banana-exporting countries as opposed to those of the large Latin American banana-exporting countries. Participation of the ACP countries in the Panel was not only necessary, but should be welcomed and encouraged.
The representatives of Senegal, Cameroon and Madagascar said that their concerns were similar to Jamaica's, and expressed support for the latter's statement. The dispute on the Community's banana import régime could not leave African ACP countries indifferent, and they thanked the Latin American countries concerned for having agreed to their participation in the Panel's proceedings. They wished to be associated with all consultations and dispute settlement proceedings which might be undertaken with respect to the banana problem, and requested technical assistance from the Secretariat.

The representative of Brazil said that while he recognized the ACP countries' interest in the case at hand, he was uncertain as to the exact status of their participation in the Panel. It appeared that some countries, which were neither parties to the dispute nor third parties, were participating in the Panel in some "intermediary" capacity; this had not been, to his knowledge, foreseen in the April 1989 procedures, and he wished to record Brazil's disquiet at the way this decision had been taken. He added that Brazil held initial negotiating rights for bananas, and wished to preserve these rights.

The representative of Japan recalled that at the February Council meeting, during consideration of the Fourth Lomé Convention (C/M/261, Item 12), Argentina had noted that in the Working Party on the third Lomé Convention, some members had expressed doubts that the Convention could be fully justified in terms of the legal requirements under the General Agreement, and that the Working Party understood that the Convention would in no way affect the GATT rights of contracting parties. Japan had fully associated itself with that statement. Although the statement had referred to the rights of contracting parties, one should also bear in mind the obligations of contracting parties, and in this particular instance the obligations of the Community and certain of its member States. The Community's banana régime appeared to be a complicated matter, related to exporting countries on the one hand, and to internal Community producers, and perhaps even distributors, on the other. It had to be stressed, however, that the Community had to act in accordance with its GATT obligations, and Japan hoped that the Community would fully honour them.

The Chairman, summing-up the discussion, noted that Jamaica and a number of other ACP countries had requested technical assistance in these proceedings. He was certain that the Secretariat would provide these delegations with such assistance in accordance with established procedures in this regard. Furthermore, a number of observations had been made with respect to the proceedings of the Panel established at the February Council meeting. However, this was a matter that had to be, and had been, determined by the Panel itself. With respect to some of the proposals made by Jamaica, and supported by a number of ACP countries, there did not appear to be a consensus in the Council. The Panel on the Community's former régime had been established, and was following its own course. With respect to the Article XXII:1 consultations concerning the future régime, it was his understanding that the parties directly involved had noted the statements or proposals that had been made, and that they would take these into consideration in their proceedings.
The representative of the European Communities expressed reservation at the Chairman's statement that only the Panel could decide on the point that had been raised by Jamaica. However, the highest body in the GATT remained the CONTRACTING PARTIES, and when they were not in session, the Council. The Council always had to retain the possibility to take a position on any matter. The Community therefore could not associate itself with this statement by the Chairman.

The Chairman said his remark had related to the observation made by a number of non-ACP countries with respect to certain procedures that had been decided upon by the parties in the framework of the Panel. He had not questioned the supremacy of the Council. He could simply not sense an emerging consensus on the various proposals that had been put forward at the present meeting in this respect.

The Council took note of the statements and agreed to revert to the Community's new banana-import régime at a future meeting.

7. Committee on Balance-of-Payments Restrictions
   (a) Consultation with the Philippines (BOP/R/204 and Corr.1)
   (b) Note on the meeting of 18-19 February (BOP/R/205)
   (a) Consultation with the Philippines (BOP/R/204 and Corr.1)

Mr. Witt (Germany), Chairman of the Committee, said that at the consultation with the Philippines on 18 and 19 February 1993, the Committee had welcomed the signs of recovery in the Philippines' economy. It had noted that, after a decline in 1991, real GDP growth had resumed towards the end of 1992; inflationary pressures had receded and the country's external position had become stronger; the current account deficit had been reduced substantially; the overall balance-of-payments (BOP) surplus had grown, assisted by debt rescheduling and restructuring; and foreign-exchange reserves had increased. The Committee had recognized that these improvements in economic performance had resulted, to a considerable extent, from the macroeconomic stabilization and structural adjustment measures taken under the Economic Stabilization Programme of 1991. The Committee had emphasized that, in order to ensure continued economic growth from 1993 onwards with a sustainable BOP position, it was important to maintain macroeconomic stability and strengthen structural reforms, particularly in the area of public finances. The Committee had noted with satisfaction that the Philippines was continuing to liberalize its foreign exchange and import systems. In this context, it had noted that the temporary import surcharge introduced in 1991 had first been reduced and then eliminated ahead of schedule, and the collection of the import surcharge on petroleum and petroleum products had been suspended. Also, the tariff system had been simplified and rates were to be reduced further. The Committee had, however, expressed concern over the rationale and trade-distorting effects of the Home Consumption Valuation system.

The Committee had also noted with satisfaction that the coverage of quantitative import restrictions had been narrowed to 135 items and that a decision had been taken to liberalize approximately half of these over
time. The remaining 69 items were to be restricted for health, safety and national security reasons. The Committee had questioned whether there remained any import restrictions justified under Article XVIII:B and had requested the Philippines to notify, by tariff line, all remaining restrictions maintained for BOP purposes. Taking into account the progress achieved in the Philippines' reform programme and the improvement in the BOP situation, the Committee had looked forward to an announcement by the Philippines of a time schedule for the removal of such restrictions. It had also requested the Philippines to consider the disinvocation of Article XVIII:B.


(b) Note on the meeting of 18-19 February (BOP/R/205)

Mr. Witt (Germany), Chairman of the Committee, said that at its meeting on 18-19 February, the Committee had agreed, under "Other Business", that the next full consultations with Nigeria and Turkey would take place on 22-23 March and 1-2 April, respectively. Also, the Committee had taken note that the dates for the consultations with South Africa and Poland were subject to further consultations. He informed the Council that following the Committee's meeting, Nigeria had requested the postponement of its consultation, for which the suggested new date was 24-25 May. Also following the Committee's meeting, agreement had been reached that the consultation with Poland under Article XII would take place on 31 March-2 April, at which time the Committee was also expected to establish the dates for the consultations with Nigeria, Israel and South Africa.

The Council took note of the statement and of the information in BOP/R/205.

The representative of the United States expressed concern that postponements of balance-of-payments consultations were becoming the norm rather than the exception, and that the dates for consultations were not being announced until there was little time left -- a month or less -- to prepare for them. The United States encouraged the Secretariat to establish a schedule well in advance of the actual consultations -- at least two and preferably three months in advance -- and that these dates should appear in the tentative programme of GATT meetings issued by the Conference Office. The United States attached great importance to these consultations, and had been working over the years to strengthen balance-of-payments disciplines. One aspect of increased discipline was having a schedule and adhering to it. At the same time, the consulting country, the International Monetary Fund and the Committee members should be given adequate time to prepare. The United States hoped that in future there would be improved notice of meetings, that the appropriate documentation would be received well in advance of these meetings, and that countries would adhere to the established schedule.

The representative of Sweden said that Sweden also attached importance to strengthening balance-of-payments disciplines, and wished to underline
the importance of adhering to established consultation schedules. All parties needed to have sufficient time to prepare for these consultations.

The Chairman of the Committee said that he was aware of these concerns. If contracting parties could reach a consensus to adhere to the dates established for consultations, the Secretariat could prepare and circulate the relevant documents in time.

The Council took note of the statements.

8. International Trade Centre UNCTAD/GATT - Appointment of a new Executive Director

The Chairman recalled that at its meeting in February, the Council had agreed to invite the Director-General to pursue his informal consultations on issues related to the International Trade Centre (ITC), in particular on the appointment of a new Executive Director, and had also agreed to revert to this matter at the present meeting.

Mr. Carlisle, Deputy Director-General, said that at the request and on behalf of the Director-General, he had held another informal consultation on this subject on 9 March at which, regrettably, no consensus had been reached. Shortly before that consultation, the Secretariat had been informed that as part of his plan to restructure the United Nations, in the framework of the revised Budget, the UN Secretary-General (UNSG) was proposing an important change in the ITC. The proposal, which had been submitted to the Fifth Committee of the UN General Assembly, was as follows: "In addition, with regard to the Assistant Secretary-General post of Head of the International Trade Centre which is financed jointly by the Organization and GATT, it is the intention of the Secretary-General, subject to the concurrence of the General Assembly, to advise the Director-General of GATT that the post stands abolished and that the Centre should be headed at the D-2 level" (UN document A/C.5/47/88). Such a decision would imply that the post of Deputy Executive Director at the D-2 level would be abolished as well. The new structure proposed by the UNSG for the ITC management would be composed of the Executive Director at the D-2 level, plus four divisional directors at the D-1 level. During the consultations, some delegations had suggested that the CONTRACTING PARTIES express their disagreement with this proposal in a communication to the relevant UN bodies. Others had not agreed and had been willing to accept the proposal in order to speed up the appointment of a new Executive Director. It had been understood that those governments wishing to make their disagreement known would be free to do so through their delegations in New York. He informed the Council that the Fifth Committee was presently examining the UNSG's budget proposals. Turning to another issue, he said that the CONTRACTING PARTIES would also need to take a decision on the question of whether a meeting of the Joint Advisory Group (JAG) should be held before the new Executive Director had been appointed. He intended to hold further informal consultations on both these issues in the near future.
The representative of Finland, speaking on behalf of the Nordic countries, said that the Nordic countries were among the major donors to the ITC, which reflected the importance they attached to its work. However, for more than a year, the ITC had been left drifting without a new management, which was unacceptable. The prolonged differences with regard to the conditions for the post of the Executive Director were having serious consequences for the work of the ITC and hence for meeting the needs of developing countries. The urgency of solving the management problems of the ITC was underlined by the risk of endangering both staff morale and general confidence in the ITC. The international community's perceptions were reflected in the fact that financial contributions for new activities were being withheld, with negative implications for the planning and execution of projects.

The Nordic countries remained concerned at this intolerable situation. It was now crucial to fill the post of Executive Director so that the ITC would be given the leadership it desperately needed, and that continued funding for its activities would be ensured. If this were not done, the whole future of the ITC might be at stake, to the detriment of developing countries. They hoped that a unanimous solution to the present impasse would be found by governments, also represented in the GATT, during the current examination of the matter in the UN in New York. It was important to facilitate a speedy process towards the appointment of a new Executive Director, and the Nordic countries therefore wished to see a prompt agreement in the GATT to accommodate the decision in New York. With regard to the question of holding a regular JAG meeting, the Nordic countries could not see any justification therefor before the leadership issue had been settled and the ITC's operating conditions normalized.

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

9. EEC - Import régime for apples (DS39/1)

The representative of Chile, speaking under "Other Business", said that on 19 February, the European Economic Community had put into effect Regulation No. 384/93 which established a special surveillance system, until 31 August 1993, for apple imports from third countries. Under this system, apple imports into the Community were conditional on the presentation of an import licence or certificate and on a prior import deposit of ECU 1.5 per 100 kilograms. The certificates were valid for 40 days as of the delivery date. Chile recalled that in 1988, a similar market situation had led the Community to apply an import licensing system, which had led later to the application of quantitative restrictions and to a suspension of the issuance of import licences. Chile had then requested the establishment of a Panel that had found the system to be GATT inconsistent. Chile believed that the application of the measures

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6 European Economic Community - Restrictions on imports of dessert apples (BISD 36S/93).
established in the Community's recent Regulation caused an impediment to trade by imposing additional administrative procedures; by demanding a prior import deposit, which imposed an additional cost without any GATT justification; and by the uncertainty that the system created for exporters. Chile therefore believed that this system impaired concessions granted on this product and that it was inconsistent with Articles II, VIII and XI.

Chile wondered why it had now become necessary to monitor apple imports into the Community market, and whether there was a reference import level implicit in the system which, in the event it were exceeded, would lead to the application of quotas or the suspension of licences, as had happened in 1988. Chile suspected this to be the case. The licensing system made sense only if it were meant to administer a quota. It therefore appeared to be not only a surveillance system, but also part of a wider system to protect domestic production from imports from third countries under surplus market conditions, which would make it contrary to GATT. While such reasoning implied second-guessing the Community's future actions, he noted that there was a precedent which provided the grounds therefor. Chile's concerns also stemmed from the Community's stated arguments that the licence system was being introduced because the Community's current apple production was considerably higher than the average of previous years; production prices were experiencing a strong decline; available stocks were higher than in previous years; and imports of excessive quantities of apples at the present time might cause serious disturbances to the market. For these reasons, Chile had in the present week initiated formal consultations with the Community and hoped that that process would lead to a mutually satisfactory solution and not require Chile to take further action. The recommendations of the 1988 Panel were still fully valid, and Chile urged the Community to revoke its licensing measure or to guarantee that present or future trade would not be restricted. Chile wished to avoid a repetition of past events and to ensure that the Community followed the recommendations of GATT panels.

The representative of Brazil said that his delegation subscribed to the statement by Chile and joined it in expressing concern about the Community's new import licensing system. One could not but be worried at this action, given the experience with the Community's previous introduction of a licensing system, the deterring effect of such a system on trade in apples, and the psychological pressure imposed on the Community's partners to obtain so-called voluntary restraint commitments that were contrary to the objectives of the GATT, as well as of the Uruguay Round.

The representative of Colombia shared Chile's concerns. The Community's surveillance measures were limited for the time being to import licences and prior import deposits but might in the future also lead to the application of quantitative restrictions on apple imports. Given this situation and the precedent of the 1988 Panel that had considered the Community's measures to be GATT inconsistent, Colombia hoped that the Community would abide by GATT provisions. The General Agreement had to be respected both in letter and in spirit.
The representative of New Zealand shared several of the concerns expressed by the previous speakers on the Community's new import licensing system for apples. New Zealand had noted the Community's explanation that this system had been instituted to monitor the Community's apple market. New Zealand would watch the implementation of the new system closely and continue to consult its industry on the trade effects thereof. Given past experience, concerns that the present system should not be a precursor to the imposition of restraints on imports were understandable. In this connection, it was to be noted that the Regulation had referred to the possibility of imports causing "market disturbance". New Zealand was opposed to any restrictions on apple imports in addition to the existing tariff, and noted that the licensing period, up to 31 August, appeared to coincide with the main period of imports from Southern Hemisphere suppliers. Finally, New Zealand wished to draw the Community's attention to its Uruguay Round standstill and rollback commitments.

The representative of Argentina said that his delegation, too, shared the concerns of the previous speakers. He added that on 17 March, the Community had adopted a regulation which extended the surveillance system for apples to the following products: plantains, pineapples, guavas, mangosteens and avocados. In justifying this, the Community had said that it would be appropriate to establish an import certification licence for "sensitive products" -- for which no definition had been given -- representing fairly important import flows. As the majority of these products, like most fruits and vegetables, went to the Community's market to be then sold by auction, the import certificate, which created an atmosphere of uncertainty, was a fairly clear-cut way of in fact deviating trade flows in a rather subtle manner. The forthcoming consultations between Chile and the Community on apples might also show that it was a somewhat GATT-inconsistent manner of conducting business. His delegation questioned whether the Community's policy was compatible with the commitments it had entered into in the Uruguay Round and whether this was the type of atmosphere one really wanted to create in the trading world.

The representative of the United States shared Chile's concerns at the Community's recent action, which, clearly, had not been taken solely for informational purposes, as the regulation itself cited the Community's large crops and low prices. The Community had an obligation under the General Agreement and the Agreement on Import Licensing Procedures (BISD 26S/154) to ensure that any licensing system was not used to restrict trade and was not protective in nature. It was the United States' view that any action by the Community to suspend the issuance of import licenses for any period of time would be inconsistent with its GATT obligations. He recalled that as recently as in 1989, in response to complaints by Chile and the United States, two Panels had found certain import licensing and quantitative restriction régimes of the Community to violate the GATT.  

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7European Economic Community -
(a) Restrictions on imports of dessert apples (Complaint by Chile) (BISD 36S/93).
(b) Restrictions on imports of apples (Complaint by the United States) (BISD 36S/135).
The United States intended to monitor closely the effects of the Community's recent regulations in this area.

The representative of South Africa said that while his delegation did not question the Community's right to introduce certain licensing measures as an instrument to monitor the imports of apples from Southern Hemisphere countries at this stage, care should be exercised by the Community to prevent the application of these measures from becoming an impediment to trade. South Africa reserved its GATT rights in this matter.

The representative of Malaysia, speaking on behalf of the ASEAN contracting parties, said that this measure seemed to be part of a worrying and increasing trend in the Community of relying on non-tariff measures to protect certain agricultural products. He noted, in this connection, that at the beginning of 1993, Community-wide import quotas had been introduced for canned tuna and sardines where there had been none before. These developments contradicted and disappointed the ASEAN contracting parties' expectations with regard to the single Community market. They urged the Community to adhere to the appropriate GATT procedures and provisions and that due cognizance be taken of the implications of such actions on the Uruguay Round negotiations.

The representative of Bolivia hoped that consultations on this matter between Chile and the Community would lead to a satisfactory solution and avoid unfavourable trade and economic repercussions that were not in keeping with the overall spirit of the General Agreement.

The representative of Australia said that as an exporter of apples to the Community, Australia shared the concern about the possible consequences of the latter's reintroduction of a surveillance mechanism for apple imports, as well as the doubts as to the GATT-consistency of the administration of the licensing system. Like others, Australia would be extremely concerned if this were to lead to the reintroduction by the Community of quotas on apple imports. It would be helpful, therefore, if the Community would use the opportunity of its consultations with Chile to make clear that in spite of the reintroduction of a surveillance mechanism, there was no intention to renew quantitative restrictions. Such assurances would greatly alleviate trading uncertainty and help maintain the transparency of the Community's import régime.

The representative of Venezuela said that his delegation had listened with interest and concern to the statements by the previous speakers, and in particular those of Argentina and Chile. Venezuela exported some of the additional products that had been mentioned by Argentina and to which this measure had been extended. His delegation was concerned that, once again, use was being made of measures other than those that had been recommended by past Panels. These measures were also in violation of the Community's standstill and rollback commitments in the Uruguay Round. Venezuela believed that the recommendations of the 1988 Panel on the complaint by Chile were self-explanatory. The lack of respect and compliance with the recommendations of a panel report by a major contracting party created difficulties for both the dispute settlement mechanism and the multilateral trading system. Venezuela had only recently acceded to the GATT and had
noted with concern that instead of greater trade liberalization taking place hereunder, trade barriers were increasing, in particular those against developing contracting parties. Venezuela urged the Community to give careful consideration to the 1988 Panel's recommendations and to do everything in its power to abide by them. His delegation welcomed the holding of consultations requested by Chile, and hoped that they would lead to a satisfactory solution to the problem.

The representative of Peru shared Chile's concern at the Community's measure, and noted that the extension thereof to the additional products mentioned by Argentina would affect Peru. His delegation hoped that the surveillance system would be implemented solely for monitoring or registration purposes, although it believed that, in any case, such measures directly affected the Uruguay Round, in that the expected increase in market access for developing countries was not actually taking place. Furthermore, this measure did not comply with the standstill and rollback commitments of the Uruguay Round.

The representative of Canada wished to record Canada's interest as an exporter in this matter. Canada hoped that the measures introduced were indeed an automatic licensing system for so-called monitoring purposes and not a precursor for the imposition of quantitative restrictions, as had been the case with the Community's earlier scheme of this nature in 1988. Canada wished to be kept advised of the progress in this area.

The representative of Costa Rica joined the other speakers in sharing Chile's concern. It was clear that these non GATT-consistent administrative procedures and extra cost involved constituted an additional burden which further hampered international trade. Costa Rica considered very timely the concern that had been raised regarding the possibility that this surveillance system might be the first step toward the establishment of a protectionist policy. It hoped that the consultations that had been initiated would provide a framework for reaching a mutually satisfactory solution. Costa Rica, as an exporter of some of the additional products to be covered by this measure, urged the Community not to convert this regulation into a new trade barrier.

The representative of Uruguay said that his delegation endorsed Chile's concern. The measures adopted by the Community on apple imports were disturbing and reflected a protectionist intention with clear negative consequences for the imports of this product into the Community market. He urged the Community to review these measures with a view to their elimination, bearing in mind that they were incompatible with the trade liberalization one was seeking through the Uruguay Round.

The representative of the European Communities said that his delegation had duly noted all the concerns expressed, and that the Community and Chile had held consultations on this matter two days earlier. He noted that at a meeting of the Committee on Import Licensing the previous day, none of the delegations that had spoken at the present meeting had raised any issues or questions, which he understood to imply that none of them questioned the compatibility of the Community's monitoring scheme with its obligations under the Import Licensing Code.
The Code sought to ensure that automatic licensing was indeed automatic, and did not result in a non-tariff barrier. Clearly, if delegations had had concerns regarding the Community's implementation of its automatic licensing scheme, they would have raised it in that meeting of the Committee.

The Council took note of the statements.

10. Trade Policy Review Mechanism
   - Programme of reviews for 1993

The Chairman, speaking under "Other Business", recalled that at its meeting in June 1992, the Council had agreed on a programme of reviews for 1993 (L/7040) under the Trade Policy Review Mechanism (TPRM). During the Council's recent review of the Philippines' trade policy, he had circulated an informal note outlining the proposed dates for the 1993 review meetings. At that time, concern had been expressed about the date scheduled for the second review of the European Economic Community, and some delegations had asked that this question be taken up at the present meeting. He noted, in this connection, that the Community had made it clear that it would not be able to hold its review in April 1993 as previously scheduled, and had sought a postponement until the week of 17 May. He had also been requested by South Africa to postpone its review, originally planned for the week of 19 April together with Mexico's, and it was now proposed to hold that review on 1-2 June. In addition, the Secretariat had been informed by Kenya that, for budgetary reasons, it would be unable to participate in a review in early July. The Secretariat was currently discussing with Kenya the possibilities for rescheduling this review later in that month. He informed the Council that the other reviews to be held before the summer remained as scheduled in his informal note: Bolivia - 29-30 March, Mexico - 19-20 April, and Malaysia - week beginning 5 July.

He expressed his strong disquiet about the postponement of so many TPRM reviews. While recognizing that most contracting parties had managed to fulfil their obligations regarding the review dates, he stressed that it was important for the countries concerned to realize that once a commitment to a review had been made, a process was established which was inscribed in the Council's programme. Any slippage that might occur therefore affected the efficiency of the Council's work, as well as of the Secretariat which had had to devote hard-pressed resources to the preparation of its reports. The TPRM had been established by the will of the CONTRACTING PARTIES. It was a commitment which all, as contracting parties, had undertaken and it was therefore important to take both the reporting requirements and the timing of the process seriously.

The representative of Peru asked whether the announced delays in conducting some TPRM reviews would have a spillover effect on the scheduled reviews of other contracting parties.

The Chairman said that in his understanding there would be no such spillover effect.
The representative of Japan expressed concern at the further delay in the Community's review. He recalled that under the decision establishing the TPRM (BISD 368/405), the Community's second review should have been held in 1992, and that at its meeting in July 1991 the Council had agreed that that review would be conducted in December 1992 (L/6887). In June 1992, the Council had been informed that the Community's 1992 review had been rescheduled for February/March 1993. It was now being suggested that the review be delayed further. He noted that the Community -- as one of the four largest trading partners -- was subject to review on a two-year cycle, which implied that its next review should be held in 1994. He hoped that this would be confirmed at a future Council meeting when the 1994 programme of reviews was agreed upon.

The representative of Argentina said that Argentina had an interest in ensuring that the TPRM worked systematically and that the reviews thereunder were held on a regular basis. Reviews of the Community and some other contracting parties, through the TPRM exercise, were useful, *inter alia*, to discover the actual trade policy they followed.

The representative of the European Communities acknowledged the delay in the Community's second review. However, while slippages sometimes occurred, these were not always the fault of the contracting parties concerned. While the concern over slippages in TPRM review dates was understandable, the Community believed that this issue was of secondary importance in relation to the objective and the "grand design" of the TPRM. The Community believed that contracting parties should concentrate more on developing the TPRM to its full value than on discussing slippages in review dates.

The Council took note of the statements.

11. Austria - Mandatory labelling of tropical timber and timber products and creation of a quality mark for timber and timber products from sustainable forest management

The Chairman, speaking under "Other Business", recalled that at its meeting on 9-10 February, he had informed the Council that high level bilateral and plurilateral contacts had been established on this matter between certain ASEAN countries and Austria, and that the ASEAN contracting parties and Austria would continue informal consultations on this matter under the GATT too.

He had now been informed that Austria's Parliament had amended the federal law concerning the labelling of tropical timber and timber products and the creation of a quality mark for timber and timber products from sustainable exploitation (Federal Law Gazette No. 309/1992). The mandatory labelling of tropical timber and timber products had thereby been abolished, while the voluntary use of the quality mark for timber and timber products from sustainable forest management had been maintained. In view of the change in the content of the law, its title had been changed to "Federal law for a creation of a quality mark for timber and timber products from sustainable exploitation". It was to be stressed that the
use of a quality mark was voluntary and that there was no obligation to use such a mark, irrespective of the origin, the raw materials and the quality of the products concerned. He understood from Austria that the use of the voluntary quality mark had to fulfil certain criteria and guidelines which had been accepted by the relevant international organizations. He hoped that the GATT notification procedures would be observed with regard to the changes in this law.

The Council took note of the statement.

12. Council review of the status of observers and of their rights and obligations

The Chairman recalled that at its meeting on 4-5 November 1992, the Council had agreed that consultations concerning the review of the status of observers and of their rights and obligations should be conducted early in 1993. Accordingly, he had held the first such consultation on 18 March, at which the participants had had a useful exchange of views. A consensus had emerged for continuing the discussion on the basis, inter alia, of a list of specific issues for consideration and decision to be drawn up by the Secretariat. He intended to hold further consultations on this matter in April, and would keep the Council informed of developments.

The Council took note of this information.

13. Fourth Lomé Convention
   - Working Party Chairman

The Chairman, speaking under "Other Business", recalled that at its meeting on 9-10 February, the Council had established a Working Party to examine the Fourth Lomé Convention and had authorized him, in consultation with principally interested contracting parties, to designate its Chairman. He informed the Council that Mr. J.W.P. Wong (Hong Kong) had agreed to serve as Chairman of the Working Party.

The Council took note of this information.

14. EFTA-Israel Free-Trade Agreement
   - Working Party Chairman

The Chairman, speaking under "Other Business", recalled that at its meeting on 9-10 February, the Council had established a Working Party to examine the EFTA-Israel Free-Trade Agreement and had authorized him, in consultation with principally interested contracting parties, to designate its Chairman. He informed the Council that Mr. P. Gosselin (Canada) had agreed to serve as Chairman of the Working Party.

The Council took note of this information.
15. Accession of Mongolia  
- Working Party Chairman

The Chairman, speaking under "Other Business", recalled that at its meeting on 8 October 1991, the Council had established a Working Party to examine Mongolia's application for accession and had authorized the Council Chairman, in consultation with the representatives of contracting parties and with the representative of Mongolia, to designate the Chairman of the Working Party. He informed the Council that Mr. W. Lang (Austria) had agreed to serve as Chairman of the Working Party.

The Council took note of this information.

16. EEC - Interim Agreements with the Czech and Slovak Federal Republic, Hungary and Poland  
- Working Party Chairman

The Chairman recalled that at its meeting on 30 April 1992, the Council had established a Working Party to examine this matter. The Working Party's chairmanship had been announced at the Council meeting on 19 June 1992. Since Mr. S.G. Park (Korea), the appointed Chairman of the Working Party, was soon to leave Geneva, he informed the Council, on the basis of informal consultations, that Mr. A. Bisley (New Zealand) had accepted to replace him and chair the Working Party.

The Council took note of this information.