Just before the date of the filing of the first written submission of the European Community in the so-called tuna case, the US Congress adopted the International Dolphin Conservation Act which amends the Marine Mammal Protection Act (MMPA). This Act was signed into law recently by the US President. In addition, we understand, another text was enacted on the United Nations International Driftnet Fishery Conservation Plan, which in Section 401 contains a new definition of the notion of "intermediary nation" and on this point also amends the MMPA.

These changes in US law have led the Community to request the Chairman of the Panel to observe a short pause in the Panel procedures in order to give the Community an opportunity to study this new legislation. Now that it has done so, the Community would like to request the United States to have a supplementary consultation under Article XXIII in order to exchange views on the amendments of the MMPA and their conformity with the GATT. A first review of the new provisions leaves us with the impression that they are equally mandatory as the provisions which they complement or replace and that Section 101(a)(2)(B) and (c) of the MMPA, as amended or complemented by Section 305 and 307 of the International Dolphin Conservation Act, are in conflict with Article XI of the GATT and not justified by any exception contained in Article XX. This assessment is not affected by the changes introduced in the definition of the concept or "intermediary nations". The consultations will provide us with an opportunity to exchange views on this first assessment of the new US legislation.

The Community proposes that the consultations take place on 27 November (or another date to be agreed) in the building of the Council of the European Communities, Chemin Louis Dunant 2. A further communication containing some questions on the new US legislation will reach you soon.