The secretariat has received from the secretary of the Consultative Sub-Committee on Surplus Disposal (FAO) the following letter dated 10 March 1978.

The pertinent paragraphs from the minutes of the meetings of the Management Committees were circulated to the CSD in early January and substantive discussion was held during the 14 February meeting. As you will see from the enclosed Summary Record of that meeting, various views were expressed ranging from the suggestion to request the Management Committees to keep the CSD fully informed on "grey area" transactions to cautioning the CSD to stay within its scope of work. One delegate said he would recommend to his authorities that CSD be informed about such transactions. Another stated that the CSD had done its work on the issue for the present and if it were to be pursued further at this time, it should be done in the GATT. The Chairman summed up as follows: "It would appear that the situation concerning 'grey area' transactions could not be effectively changed at the present time. At the same time, CSD remained open to complaints or to requests for information on food aid transactions."

1 See MCDP/50, paragraph 32 and MCMF/19, paragraph 14.
2 See Annex (only the pertinent section of the Summary Record is reproduced)
ANNEX
COMMITTEE ON COMMODITY PROBLEMS
Consultative Sub-Committee on Surplus Disposal

Summary Record
238th Meeting, 14 February 1978, 10 a.m.

VII. GATT Arrangement Concerning Certain Dairy Products

The Chairman noted that the secretariat had included in the documentation a copy of document Limited Distribution CSD/78/1, "GATT Arrangement Concerning Certain Dairy Products and Related Protocols". He recalled that in this paper the Secretary had reviewed, and at the last meeting the Chair had summarized, the discussions which led to the question of the relationship of the GATT provision to the FAO notification and consultations procedures. In the paper the pertinent views of the GATT Management Committee were reproduced. In essence these were that: (1) the transactions envisaged in paragraph 8, Article III of the Arrangement, went somewhat beyond the framework of the FAO Catalogue of Transactions; (2) the provisions of the Arrangement did not empower the Management Committee to refer transactions involving concessional elements to the CSD, but there was nothing in the Arrangement to prevent its signatories from bringing such transactions to the notice of the CSD; and (3) on the other hand, the Committee could decide to communicate details of such transactions to the CSD for information. These views were also expressed by the Management Committee to the Protocol Relating to Milk Fat.

Mr. Smith (Australia) observed that there was some deficiency in both the GATT Arrangement and FAO Catalogue of Transactions, in that "grey area" transactions could escape the consultation requirement. Australia did not believe that this was the intention of the GATT when the Arrangement was negotiated in 1969. The particular transaction in question appeared to be an isolated case; accordingly Australia wondered if there were reasons to modify the Arrangement or the Catalogue. If there were a consensus to pursue this in the CSD, Australia could support the effort. He also believed it was appropriate for the CSD to request the Management Committee to alert and to keep the CSD fully informed on "grey area" transactions.

Mr. Stevenson (New Zealand) noted the decision of the GATT Management Committee. As he understood it, if a participant in the Arrangement did not inform the CSD of "grey area" transactions the Management Committee could do
so; he hoped that this useful approach could be extended. The New Zealand position had been and was still that all transactions substantially involving food aid and concessional elements should be examined by the CSD for damaging trade effects. Therefore, he would support the Australian suggestion that it would be appropriate to ask the Management Committee to bring to the attention of its participants the rôle of the CSD in these types of transactions.

As a relatively disinterested delegate on this issue, Mr. Chandra (India) observed that the letter from the GATT secretariat set at rest the lengthy debate on one of the provisions. This was the second paragraph which read:

"The Committee was of the opinion that consequently the second sentence of Article III, paragraph 5 of the Arrangement was not to be interpreted as meaning that the members of the Committee must notify the CSD of all transactions effected under that paragraph of the Arrangement. The Committee also noted that not all the signatories of the Arrangement were members of the CSD."

The next paragraph, Mr. Chandra continued, stated that the provisions of the Arrangement did not empower the Management Committee to refer such transactions to the CSD. It was not obligatory for CSD members to report upon such transactions, though as pointed out by the United States delegate (sometimes in the past), in the spirit of CSD co-operation information about such transactions could certainly be obtained.

Mr. Pieters (the Netherlands), in agreeing with the delegate for India, cautioned the CSD not to move into an area which was not its responsibility nor to make hard and fast rules.

Mr. El-Gamassy (Egypt) supported the delegates for India and the Netherlands in regard to staying within the scope of CSD work; he also supported the suggestion to request from GATT information on "grey area" transactions.

Mr. De Lange (EEC) said he had listened carefully to the discussions and the remarks of the Indian delegate could not express better his own position. He would transmit to his authorities the recommendation to co-operate, that is, to provide information on the kind of transactions under discussion.

Mr. Doering (United States) considered that progress was being made toward a consensus with which the United States could be associated. The practical issue was which international body had jurisdiction on transactions having concessional features but which did not fall under Types 1 through 13 of the Catalogue, that is the "grey area" transactions. At the same time,
the question of jurisdiction was also a "grey area". Since governments had to date agreed that FAO had jurisdiction only on Types 1 through 13, the CSD did not have authority for remedial action. The GATT might be said to have a residual jurisdiction, in that it was competent to deal with "any" or "all" issues concerning trade, but it did not have special procedures to handle "grey area" matters. Some years ago, such a proposal for Types 14 through 20 transactions had been made, but no decision had been taken. Therefore, under present arrangements, FAO could not and GATT probably would not provide remedial action.

Mr. Doering continued that this situation was not necessarily unsatisfactory, given the well-known difficulties and sensitivities of "grey area" transactions. Governments were apparently not ready to agree on international rules for the "grey area". Nevertheless, the FAO/CSD jurisdiction was not fixed forever and countries having problems had the right to raise them and to seek information in the CSD; it was possible that such discussions could in future lead to the expansion of the FAO Catalogue. Even if not, members were traditionally co-operative in providing information, irrespective of jurisdictional questions.

Finally, Mr. Doering pointed out that under the multilateral trade negotiations, discussions were proceeding in the GATT toward a possible international dairy agreement to replace or supersede existing limited arrangements. As part of these efforts, interested countries could seek agreement on obligations on non-food aid transactions having concessional features or seek a revision and clarification of paragraph 8, Article III of the Arrangement Concerning Certain Dairy Products. In his view, the CSD had done its work on this issue for the present and if it were to be pursued further at this time, it should be done in the GATT.

Mr. Pieters (the Netherlands) said that in respect of the statement of the United States delegate the observations concerning a possible dairy agreement and a link created between the GATT and CSD touched on a delicate issue. The GATT might be moving into the scope of the CSD, while the latter refrained from moving toward the GATT sphere. While he recognized that most CSD governments also had representatives in Geneva, the reason for his intervention was to caution that the CSD field of work be left intact.

The Chairman thanked the delegates for their thoughtful remarks. He believed that they had enlightened the Committee on a complex subject and that there was general agreement among delegates with respect to CSD responsibilities and approaches to these problems. It would appear that the situation concerning "grey area" transactions could not be effectively changed at the present time. At the same time, CSD remained open to complaints or to requests for information on food aid transactions.